By order of the above-entitled Superior Court, this thirteenth day of December, 1935.

Attest: My hand and seal of said court, the day and year last above written.

(Seal) L. E. LAMPTON, *County Clerk,*
By K. E. LYNCH, *Deputy.*

OPINION OF COUNSEL PEART

December 27, 1935.

To the Secretary:—Answering your recent letter regarding amendment to the statute thought to impose an obligation upon physicians to give expert testimony without compensation. As I wrote you, the statutes have not yet been printed by the State printer, so we have to examine them painstakingly by advance sheets and without the aid of an index.

We find that the amendment in question is to Section 2021 of the Code of Civil Procedure providing for the taking of depositions of witnesses. Paragraph 1 of this Section now reads as follows, the words in italics have been added by the amendment of 1935:

"1. When the witness is a party to the action or proceeding or an officer, member, *agent, or employee* of a corporation, *or the agent or employee of a municipal corporation,* which *corporation or municipal corporation* is a party to the action or proceeding, *or an agent or employee of an individual who is a party to the action or proceeding,* or a person for whose immediate benefit the action or proceeding is prosecuted or defended."

This amendment does not affect a physician as an expert witness in any manner. It merely provides for the taking of the deposition of an agent or employee.

In the case of *Webb* v. *Lewald Coal Company,* the Supreme Court held that a physician who made a confidential report on a patient's condition, without treatment, could not be compelled to testify in regard to the patient's physical condition. This decision may be construed as determining that the relation of agency exists as between patient and physician.

You read me portions of the subpoena served on Dr. Ruddock, which, in our opinion, merely requires Dr. Ruddock to appear at a time and place specified and to give his deposition as to facts, and to produce the records specified.

The opposing attorney will doubtless very properly raise the question as to whether or not Dr. Ruddock is an agent or employee within the meaning of this Section. Before the amendment was adopted, Dr. Ruddock could be subpoenaed to attend the *trial* of this case and produce his records. Under the amendment, he may be subpoenaed to *give his deposition before the trial,* and that is all that the amendment does. This is based on the assumption that it will be held that Dr. Ruddock is an agent or an employee of some party to the action.

In our opinion, Dr. Ruddock can no more be compelled to give expert or opinion evidence without compensation at the taking of his deposition than he could be at the trial of the action.

The question of privilege also arises, and the patient's attorney, unless the privilege is waived, will doubtless object, if the testimony sought to be elicited from Dr. Ruddock is, in fact, privileged.

I trust that this will clarify the matter. I, of course, do not know the facts, or Dr. Ruddock's relation to the case, or who is calling him, whether his own patient or the opposing side; I do not have a copy of Dr. Ruddock's letter, mentioned by Dr. Kress.

As to opinion evidence, the amendment does not change the law at all. We wrote an extensive brief on this subject as *amicus curiae* in the above-mentioned case of *Webb v. Lewald Coal Company* (214 Cal. 182), copy of which is in your files. The Supreme Court did not pass on the question of compensation of a physician called as an expert. It holds that a physician may properly act for a patient without having thereby prescribed for or treated him, and the testimony of the physician may be privileged under subdivision 4 of Section 1881 of the Code of Civil Procedure, if he merely acts for the patient, even though the patient is deemed, when he brings an action for damages for personal injuries, to have consented to permit "any physician who has prescribed for or treated" him for such injuries to testify; and in such action, where patient had a neurologist examine her and make a report to aid her counsel in preparing for trial, but he did not "prescribe for or treat" her, his testimony was privileged.

I am endeavoring to locate a copy of this brief, and if I find it I will mail a copy to Dr. Ruddock.

I am sending copies of this letter to Dr. Ruddock and Dr. Kress.

Very truly yours,
HARTLEY F. PEART.

Concerning "vaccines" against anterior poliomyelitis.*

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC HEALTH
SACRAMENTO

December 19, 1935.

Dr. George Parrish,
Health Officer,
Los Angeles, California.

My dear Doctor Parrish:—We have just received a report from the Surgeon-General, United States Public Health Service, regarding poliomyelitis following vaccination against this disease. This article, prepared by Dr. J. P. Leake, Medical Director, United States Public Health Service, will appear in the *Journal of the American Medical Association* of December 28.

Inasmuch as three of the cases listed in his report occurred in California, I am recommending that the use of vaccination against poliomyelitis be discontinued in this state.

Very truly yours,
W. M. DICKIE, M.D.
Director of Public Health.

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH

December 28, 1935.

To the Editor:—Doctor Geiger has instructed me to forward you the enclosed copy of Executive Order No. 119 that you may be informed of the attitude of the Director of Public Health on the use of immunizing agents against acute anterior poliomyelitis.

On authority from the Director of Public Health.

Sincerely,
JACQUES P. GRAY, M. D.,
Assistant Director of Public Health.

Executive Order Number 119

On the basis of the public announcement in the medical literature and in the press of the accumulated evidence against the use of so-called "vaccines" to protect the human against acute anterior poliomyelitis ("infantile paralysis"), by Medical Director J. P. Leake of the United States Public Health Service, and others, thereby confirming the recommendations made to the Director of Public Health by his Committee on Acute Anterior Poliomyelitis in the session of April 4, 1935, the use of such "vaccines" or other similar "immunizing" agents is prohibited within the city and county of San Francisco.

This action is believed indicated and appropriate as a public health measure directed at the control of a communicable disease, particularly because the evidence referred to supports the premise that acute anterior poliomyelitis occurs with a greater frequency in those "immunized" than in those not "immunized" in comparable population age groups under comparable conditions.

December 27, 1935.

Concerning privileged information: To whom may it be given:

STATE OF CALIFORNIA
LEGAL DEPARTMENT

San Francisco,
January 15, 1936.

W. M. Dickie, M. D.,
Director of Public Health,
312 State Building,
San Francisco, California.

Dear Sir:—In your communication of the 8th instant you state that you are frequently called upon to furnish information contained in morbidity reports of cases of in-

*Article by Dr. J. P. Leake, reprinted from the *Journal of the American Medical Association,* December 28, 1935, appears on page 141.