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OPINION

of

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THE HONORABLE NICHOLAS C. PETRIS, SENATOR ELEVENTH DISTRICT, has requested the opinion of this office on the following questions concerning the Chiropractic Act:

1. Can a chiropractor under any circumstances use physical therapy in his practice of the chiropractic? If so, what are those circumstances?

2. Are there any circumstances under which a physical therapist can manipulate or adjust the hard tissue (i.e., the spine)? If so, what are those circumstances?

3. Section 302, Title 16, California Administrative Code, defines the practice of chiropractic and provides that a chiropractor may make "use of light, air, water, rest, heat, diet, exercise, massage, and physical culture ...." What is "physical culture" and what is its relationship to and/or difference from physical therapy?

The conclusions are:

1. A chiropractor may use physical therapy techniques in his practice of chiropractic to the extent that such techniques are used as an

adjunct to chiropractic manipulation. Only a chiropractor who is registered as a physical therapist may hold himself out as a physical therapist.

2. A physical therapist may not directly manipulate or adjust the spine or any other bony structure.

3. Physical culture is a term of art dealing with the systematic care and development of the body. Physical therapy is a system of treatment to rehabilitate or correct bodily or mental conditions. Physical culture may in some instances be involved in a course of physical therapy, but not always.

ANALYSIS

Background

A brief sketch of the background and history of chiropractic is necessary to understand the question presented. Chiropractic as a healing art was first formally recognized by the State of California in the Medical Practice Act of 1907 (Stats. 1907, ch. 212, p. 252), which provided for the issuance of three different forms of certificates by the Board of Medical Examiners to practitioners: (1) a certificate authorizing the holder to practice medicine and surgery, (2) a certificate authorizing the holder to practice osteopathy, and (3) a certificate authorizing the holder to practice any other system o mode of treating the sick and afflicted, not otherwise referred to. In order to qualify for a certificate in the third category the applicant had to file a diploma from a legally chartered college of the system or mode.

In 1909, the Legislature amended the Medical Practice Act of 1907 (by Stats. 1909, ch. 276, p. 418) to provide that any person who then held an unrevoked certificate of naturopathy issued by the Board of Examiners of the Association of Naturopathy of California, a private organization incorporated on August 8, 1904, could continue to practice naturopathy. Naturopathy was not defined in either the 1907 or 1909 statutes above cited. In Millsap v. Alderson, 63 Cal.App. 518 (1923), the court was called upon to distinguish between the rights of a physician and surgeon on one hand and a naturopath on the other. At page 525 the court found that the Legislature, in its 1909 amendment to the Medical Practice Act, gave official recognition to the Association of Naturopaths of California, and at pages 526-527 looked to the articles of incorporation of that organization to find that naturopathy involved treatment of the sick and afflicted by "light, air, water, clay, heat, besides rest, diet, herbs, electricity, massage, Swedish movements, suggestive therapeutics, chiropractic, magnetism, physical and mental culture."

In 1922 in an initiative measure to provide for separate licensing and regulation of chiropractors was submitted to the electors. It was approved on November 7, 1922,

and became effective December 21st of that year as the Chiropractic Act. Section 7 of that Act provides:

> "One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the state of California as taught in the chiropractic schools or colleges; and, also, to use all necessary mechanical and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

Except for the language in section 7 of the Chiropractic Act does not otherwise define the meaning chiropractic. In Evans v. McGranaghan, 4 Cal.App.2d 202 (1935) at page 205, the court held that section 7 of the Chiropractic Act was impossible of precise construction and placed the burden of showing what was taught in chiropractic schools upon the party claiming his conduct was authorized thereby. Shortly thereafter, in the landmark case of People v. Fowler, 32 Cal.App.2d Supp. 737 (1938), the court made a comprehensive analysis of section 7 and concluded at page 746, that the "...general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act."1/ The principal enunciated in Fowler:

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1. People v. Fowler, supra, at pages 745-747:

"The practice authorized must be 'chiropractic', and it must also be 'as taught in chiropractic schools or colleges'. Neither of these expressions can rule the meaning of the statute, to the exclusion of the other. Considering the first of them, the word 'chiropractic' had, when this law was passed in 1922, a well-established and quite definite meaning. In the Standard Dictionary, 1913 edition, it was defined as 'a drugless method of treating disease chiefly by manipulation of the spinal column'. Other equivalent definitions taken from dictionaries and encyclopedias appear in the decisions quoted below. In volume II of Corpus Juris, which was published in 1917, the following definition is given for 'chiropractors': 'A system of healing that treats disease by manipulation of the spinal column; the specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae. There are no instruments used, the treatment being by hand only'; in support of which Webster's Dictionary is cited, also several court decisions. In State v. Barnes (1922) 119 S.C. 213 [112 S.E. 62, 63], the court said: 'Chiropractic has been defined, and is commonly understood, as a system of treatment by manipulation of anatomical displacements, especially the articulation of the spinal column, including its vertebrae and cord.' In State v. Hopkins, (1917) 54 Mont. 52 [166 Pac. 304, 306, Ann. Cas. 1918D, 956], the court quoted from Webster's New Standard Dictionary this definition of 'Chiropractic': 'A system of [or] the practice of adjusting the joints,

especially the spine, by hand for the curing of disease. In Commonwealth v. Zimmerman, (1915) 221 Mass. 184 [108 N.E. 893, 894, Ann. Cas. 1916A, 858], the court quoted from Webster's International Dictionary a definition of 'chiropractic' as follows: 'A system of healing that treats disease by manipulation of the spinal column.' The same definition was cited in State v. Gallagher, (1911) 101 Ark. 593 [143 S.W. 98, 38, L.R.A. (N.S.) 328, 330], and State v. Johnson, (1911) 84 Kan. 411 [114 Pac. 390, 41 L.R.A. (N.S.) 539, 541]. In Board of Medical Examiners v. Freenor, (1916) 47 Utah, 430 [154 Pac. 941, 942, Ann.Cas. 1917E, 1156], the court quoted definitions of 'chiropractic' as follows: 'A system of therapeutic treatment for various diseases, through the adjustment of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension upon nerve filaments. The operation are performed with the hands, no drugs being administered.' (Taken from Nelson's Encyclopedia), and 'A system of manipulations which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation'. (from International Encyclopedia).

"This general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act. 'The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.' (25 R.C.L. 959 ; Werner v. Hillman etc. Co., (1930) 300 Pa. 256 [150 Atl. 471, 70 A.L.R. 967, 970]; Dunn v. Commissioner, (1933) 281 Mass. 376 [183 N.E. 889, 87 A.L.R. 998, 1002]; see, also, Lowder v. Union Tr. Co., (1926) 79 Cal. App. 598 [250 Pac. 703].) Nor has the accepted meaning of 'chiropractic' since changed, for in the latest (1938) edition of Webster's New International Dictionary we find the same definition quoted in State v. Hopkins, supra, (1917) 54 Mont. 52 [116 Pac. 304, 306, Ann. Cas. 1918D, 956]. Words of common use, when found in a statute, are to be taken in their ordinary and general sense. (Corbett v. State Board of Control, (1922) 188 Cal. 289, 291 [204 Pac. 823] ; In re Alpine, (1928) 203 Cal. 731, 737 [265 Pac. 947, 58 A.L.R. 1500]; Bagg v. Wickizer, (1935) 9 Cal.App. (2d) 753, 758 [50 Pac. (2d) 1047.)

"The effect of the words 'as taught in chiropractic schools or colleges' is not to set at large the signification of 'chiropractic', leaving the schools and colleges to fix upon it any meaning they choose. Were the word 'chiropractic' of unknown, ambiguous or doubtful meaning, this clause, 'as taught' etc., might serve to provide a means of defining or fixing its signification, but there is here no such lack o clarity. The scope of chiropractic being well knows, the schools and colleges, so far as the authorization of the chiropractor's license is concerned, must stay within its boundaries; they cannot exceed or enlarge them. The matter left to them is merely the ascertainment and selection of such among the possible modes of doing what is comprehended within that term as may seem to them best and most desirable, and so the fixing of the standards of action in that respect to be followed by chiropractic licensees. Such we understand to be the effect of the holding in In re Hartman, (1935) 10 Cal.App. (2d) 213, 217 [51 Pac. (2d) 1104]. Evans v. McGranaghan, supra, 4 Cal.App. (2d) 202, is not clearly to the contrary, but if it can be so regarded

we prefer to follow the later Hartman case. If our opinion in People v. Schuster, (1932) 122 Cal.App. (Supp.) 790, 795 [10 Pac. (2d) 204], is thought to go farther than this, we now qualify it in that respect, deeming the rule just stated to be the proper one. The court's instruction defining 'chiropractic' in the words already quoted from Webster's New Standard Dictionary was correct."

Has been followed by the courts of this state. Crees v. California State Board of Medical Examiners, 213 Cal.App. 2d 195, 205 (1963); People v. Augusto, 193 Cal.App. 2d 253, 257-258 (1961); Jacobsen v. Bd. Of Chiropractic Examiners, 169 Cal.App. 2d 389, 392 (1959); People v. Mangiagli, 97 Cal.App. 2d Supp. 935, 939 (1950); People v. Nunn, 65 Cal.App. 2d 188, 194-195 (1944).

In People v. Mangiagli, supra, 97 Cal.App. 2d Supp. At 943 (1950), the court invalidated a regulation adopted by the Board of Chiropractic Examiners which defined chiropractic as follows:

> "'The basic principle of chiropractic is the maintenance of the structural and functional integrity of the nervous system. The practice of chiropractic consists of all necessary means to carry out these principles.' (Cal.Admin.Code, title 16, subchap. 4, art. I, § 302(a).) ..."

The rejection was based on the finding that a chiropractor might under that regulation engage in almost any sort of treatment of the sick or afflicted.

In 1954, the Board of Chiropractic Examiners adopted a new section 302, Title 16, California Administrative Code providing:

> "(a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. The practice of chiropractic consists of the use of any and all subjects enumerated in Section 5 and referred to in any and all other sections of the act."

The regulation was held invalid in Crees v. California State Board of Medical Examiners, supra, 213 Cal.App. 2d 195, 209, on the basis that it purported to alter or enlarge the scope of chiropractic under the Chiropractic Act.

In 1965, as a result of the Crees decision, the Board of Chiropractic Examiners amended section 302, Title 16, California Administrative Code, to its present language as follows:

> "(a) Practice of Chiropractic: The basic principle of chiropractic is the maintenance of structural and functional integrity of the nervous system. A duly license chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the

joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, and he may use all necessary mechanical, hygienic and sanitary measures incident to the care of the body in connection with said system of treatment, but not for the purpose of treatment, and not including measures as would constitute the practice of medicine, surgery, osteopathy, dentistry, or optometry, and without the use of any drug or medicine include in materia medica."

"A duly licensed chiropractor may make use of light, air, water, rest, heat, diet, exercise, massage and physical culture, but only in connection with an incident to the practice of chiropractic are hereinabove set forth." (Emphasis added.)

With that background sketch we can proceed to the specific questions presented.

1. USE OF PHYSICAL THERAPY BY CHIROPRACTORS

We are first asked whether a chiropractor may use physical therapy in his practice of chiropractic. It is our opinion that many of the techniques and agents used in physical therapy are properly within the range of techniques available to a chiropractor in his practice of chiropractic. At the same time, a chiropractor may not practice or hold himself out as a practitioner of physical therapy, unless licensed to do so, except as such physical therapy techniques are a part of the practice of chiropractic in a particular instance.

The practice of physical therapy is limited by Business and Professions Code section 2630[2]/ which provides:

"It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected or to hold himself out as a physical therapist, unless at the time of so doing such person holds a valid unexpired and unrevoked license issued under this chapter.

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2. All section references are to the Business and Professions Code unless otherwise specified.

"Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to the provisions of Article 4.5 (commencing

with Section 2655) of this chapter or Article 18 (commencing with Section 2510) of Chapter 5 of this division.

"A person licensed pursuant to this chapter may utilize the services of an aide to assist the licentiate in his practice of physical therapy. Such aide shall at all times be under the orders, direction, and immediate supervision of the licentiate. Nothing in this section shall authorize such an aide to independently perform physical therapy or any physical therapy procedure.

The administration of massage, external baths or normal exercise not a part of a physical therapy treatment shall not be prohibited by this section."

Physical therapy is defined in section 2620 as follows:

"Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term 'physical therapy' as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease."

A comparison of the statutory definition of physical therapy and the accepted definition of chiropractic, and specifically the definition adopted by the Board of Chiropractic Examiners in section 302, Title 16, California Administrative Code, reveals that physical therapy and chiropractic each involve the use of physical agent used by the other. We do not believe that this common use of agent presents a major problem because a chiropractor is prohibited by section 2630 from practicing physical therapy as such and physical therapist is prohibited by section 15 of the Chiropractic Act from practicing chiropractic.

In 1953, chapter 5.6 pertaining to registered physical therapists was added to the Business and Professions Code by chapter 1823, Statutes of 1953, and chapter 5.7 pertaining to licensed physical therapists was added to the Business and Profession Code 1826, Statutes of 1953. The major difference in the two categories then established was that registered physical therapists were required to work under the direction or supervision of a physician and surgeon. See 43 Ops.Cal.Atty.Gen. 157 (1964). The two categories were merged in the Physical Therapy Practice Act in 1968 (Stats. 1968, ch. 1284, p. 2415) which does not require that physical therapist work under the direction or supervision of a physician or surgeon. We are informed,

however, that most do. In 23 Ops.Cal.Atty.Gen. 179 (1954), we held that the enactment of the two physical therapy statutes in 1953 neither increased nor decreased the scope of practice of chiropractic, and that a chiropractor could continue to practice physical therapy to the same extent that he could prior to the enactments. The basis for the conclusion was that an initiative measure cannot be amended except by vote of the electors, unless there is a provision in the initiative act authorizing legislative amendments. There is no such authorization in the Chiropractic Act. For the same reason, when the 1968 Physical Therapy Practice Act was enacted, it did not, and could not, alter the permissive range of activity for chiropractors.

We therefore conclude, that just as a physical therapist could not use light, heat, water, exercise and other physical agents for chiropractic purposes, a chiropractor cannot use such agent for physical therapy purposes. A chiropractor may, however, use these and any other agent which are mechanical, hygienic or sanitary measures within the meaning of section 15 of the Chiropractic Act and which do not involve the practice of medicine or surgery, or the use of drugs or medicine, provided such techniques are directly involved in chiropractic procedures.

2. MANIPULATION AND ADJUSTMENT OF HARD TISSUES BY PHYSICAL THERAPISTS

Having determined the extent to which a chiropractor may use physical therapy techniques, we proceed to the question of determining whether a physical therapist may manipulate or adjust the hard tissues (i.e., the spine). It is our opinion that a physical therapist may not directly manipulate or adjust the spine or other bone.

"Adjustment" is not a term used in physical therapy. It is a chiropractic word defined in Schmidt's Attorney's Dictionary of Medicine (1974), at page A-64, as follows: "In chiropractic practice, a manipulation intended to replace a displaced vertebrae, or one assumed to be displaced and the cause of symptoms." It is defined in Dorland's Medical Dictionary (23rd Ed. 1957) at page 37 as "...a chiropractic word for replacement of an alleged subluxed vertebrae for the purpose of relieving pressure on a spinal nerve." Blakiston's New Gould Medical Dictionary (1st Ed. 1951), at page 26, defines adjustment as a chiropractic treatment aimed at reduction of subluxed vertebrae. We do not believe that adjustment as thus defined, is within the scope of activity permitted a physical therapist under section 2620.

Another term which requires scrutiny is "manipulation of hard tissue." We have been unable to glean from any medical literature a definition of the term "hard tissues." The reference to spine suggests that hard tissue as used in the questions presented refers to bones or bony structures of the body. Bone is an osseous tissue, in effect a support, rigid, connective tissue. Blakiston's New Gould Medical Dictionary (1st Ed. 1951), page 147. In responding, we have therefore assumed that hard tissue has reference to bones. "Manipulation" has an accepted medical meaning, being defined in Blakiston's New Gould Dictionary (1st Ed. 1951) at page 592, as "[t]he use of hands in a

skillful manner as reducing a dislocation, returning a hernia to its cavity, or changing the position of a fetus."

"Chiropractic" is defined in Blakiston's New Gould Medical Dictionary (1st Ed. 1951), at page 207, as "[a] method which aims at restoring health by palpitating the spinal column for subluxations or misplaced vertebrae and adjusting them by hand without other aids or adjuncts."

In 39 Ops.Cal.Atty.Gen. 169 (1962) at page 170, we noted that there was substantial difference between massaging the muscles surrounding the spine and actually manipulating and adjusting the various bones that make up the spine. Based on that observation, we concluded that adjusting the spine by hand for the curing of disease constitutes the practice of chiropractic and under section 15 or the Chiropractic Act is beyond the permissive activity of a physical therapist. We know of nothing that changes that conclusion.

Therefore, we believe that the adjustment and manipulation of "hard tissues," that is bones and bone structures, is peculiarly a chiropractic technique beyond the scope of authorized activity for a physical therapist.

3. MEANING OF PHYSICAL CULTURE AND ITS RELATIONSHIP TO PHYSICAL THERAPY

The final question asks the meaning of physical culture as that term is used in section 302, Title 16, California Administrative Code, and its relationship to physical therapy. We believe that the term physical culture is generally synonymous to physical education and deals with the systematic care and development of the physical body, whereas physical therapy is a system of treatment to rehabilitate or correct bodily or mental conditions.

We have been unable to find the term physical culture defined in any medical literature or in any literature dealing with either physical therapy or chiropractic. Webster's Third International Unabridged Dictionary (1961), at page 1706, defines physical culture as "the systematic care and development of the physique." World Book Dictionary (1975 Ed.) at page 1556 defines it as "the development of the body by appropriate exercise." Encyclopedia Americana (International Ed. 1973) Volume 22, at page 22, refers the reader to the topic "Physical Education."

As previously noted, the term first appeared in the field of chiropractic in the Articles of Incorporation file in 1904 by the Association of Naturopaths of California, where reference was made to chiropractic and mental and physical culture as permitted materia medica for naturopaths. We find no reference to physical culture in the several Medical Practice Acts since 1904, in the Chiropractic Act, nor in any regulations adopted there under until the 1965 amendments to section 302 appear in any effective statute, and appears only once, as noted above, Title 16.

Whatever meaning physical culture as used in section 302, Title 16, California Administrative Code, has, it must be a meaning which is fairly within the scope of the Chiropractic Act. It is a settled principle that an administrative regulation cannot exceed the scope of the statute under which it was adopted, or alter or enlarge the scope. First Industrial Loan Co. v. Daughtery, 26 Cal.2d 545, 550 (1945); Witcomb Hotel, Inc. v. Cal. Emp. Com., 24 Cal.2d 753, 757 (1944); Cal. Drive-in Restaurant Assn. v. Clark, 22 Cal.2d 287, 294 (1943).

In People v. Fowler, supra, 32 Cal.App.2d Supp. at 747, the court held that the authorization in section 7 of the Chiropractic Act for the use of mechanical, hygienic and sanitary measures incident to the care of the body is not a definition but rather permits chiropractors to use measures in the practice of chiropractic which would not otherwise be within the scope of their licenses. Because section 302, Title 16, California Administrative Code, is not itself clear, it is manifest that whatever meaning was intended it must be consistent with an embraced in section 7 of the Chiropractic Act.

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