



HENRY McMASTER
ATTORNEY GENERAL

April 30, 2009

The Honorable James H. Harrison
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Harrison:

In a letter to this office you questioned whether or not the practices of “adjustment” and “manipulation” as performed by a licensed physical therapist, is the practice of medicine pursuant to the South Carolina Physical Therapy Practice Act.

The term “physical therapist” is defined by S.C. Code Ann. § 40-45-20(4) as “...a person who has met all the conditions of this chapter and is licensed in this State to practice physical therapy.” S.C. Code Ann. § 40-45-20(9) defines “the practice of physical therapy” as

...the evaluation and treatment of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction, and pain from injury, disease, and any other bodily or mental condition and includes the administration, interpretation, documentation, and evaluation of physical therapy tests and measurements of bodily functions and structures; the establishment, administration, evaluation, and modification of a physical therapy treatment plan which includes the use of physical, chemical, or mechanical agents, activities, instruction, and devices for prevention and therapeutic purposes; and the provision of consultation and educational and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain. The use of roentgen rays and radium for diagnostic or therapeutic purposes and the use of electricity for surgical purposes, including cauterization and colonic irrigations, are not authorized under the term "physical therapy" as used in this chapter, and nothing in this chapter shall be construed to authorize a physical therapist to prescribe medications or order laboratory or other medical tests.

Additionally, S.C. Code Ann. § 40-45-310 notes the distinction between physical therapist and other health professionals in providing that

[n]othing in this chapter may be construed as authorizing a licensed physical therapist or any other person to practice medicine, surgery, osteopathy, homeopathy, chiropractic, naturopathy, magnetic healing, or any other form, branch, or method of healing as authorized by the laws of this State. Nothing in this chapter shall be construed to restrict, inhibit, or limit the practice of chiropractic as now practiced in this State and as taught by accredited schools or colleges of chiropractic. Nothing in this chapter shall be construed to restrict, inhibit, or limit the practice of licensed nurse practitioners, licensed physicians assistants, certified athletic trainers, licensed massage therapists, exercise physiologists, or personal trainers. Moreover, nothing in this chapter shall be construed to restrict, inhibit, or limit in any way the practice of dentistry pursuant to Chapter 15 of Title 40 or the practice of medicine pursuant to Chapter 47 of Title 40.

The practice of medicine is defined by S.C. Code Ann. § 40-47-20(36) as:

- (a) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this State;
- (b) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;
- (c) offering or undertaking to prevent or to diagnose, correct or treat in any manner, or by any means, methods, or devices, disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of a person, including the management or pregnancy and parturition;
- (d) offering or undertaking to perform any surgical operation upon a person;
- (e) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within this State by a physician located outside the State as a result of transmission of individual patient data by electronic or other means from within a state to such physician or his or her agent;
- (f) rendering a determination of medical necessity or a decision affecting the diagnosis and/or treatment of a patient is the practice of medicine subject to all of the powers provided to the Board of Medical Examiners, except as provided in Section 38-59-25;
- (g) using the designation Doctor, Doctor of Medicine, Doctor of Osteopathic Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., D.O., or any combination of these in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this State that is applicable to the clinical setting; and
- (h) testifying as a physician in an administrative, civil, or criminal proceeding in this State by expressing an expert medical opinion.

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The State Supreme Court in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006) determined that physical therapists are generally prohibited from providing therapy to a patient without an order from a physician or a dentist. An opinion of this office dated October 3, 1986 referring to the decision of the State Supreme Court in Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177, 187 (1956) noted that the Court "...has held that the right to practice medicine is a qualified one which is subordinate to the State's duty to protect the public health and the exercise of its police powers."

While the statutes referenced above define the various practices, an opinion of the Washington Court of Appeals in Washington State Department of Health Unlicensed Practice Program v. Yow, 2008 WL 4561437 (2008) stated that "[w]hether actions constitute the practice of medicine is dependent upon the facts and not the name of the procedure, its origins, or legislative lack of clairvoyance." Therefore, a response to your inquiry is dependent upon a review of facts in rendering any opinion. However, this office has repeatedly stated that an opinion of this office cannot determine facts noting that the determination of facts is beyond the scope of an opinion of this office. See: Ops. dated November 12, 2008; March 19, 2008; October 8, 2007. Therefore, this office is not in a position to provide a response to your inquiry inasmuch as any response would necessitate a review of facts.

We regret that we cannot be of assistance at this time.

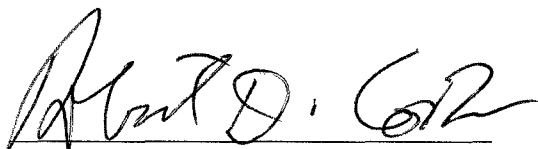
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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