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PI 1217

The State of South Carolina



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January 8, 1985

Edwin E. Bowen, Jr.
Executive Director
State Board of Chiropractic Examiners
1001 Assembly Street
Columbia, South Carolina 29201

Dear Mr. Bowen:

You have asked whether it would be authorized for a duly licensed chiropractor to employ a massage therapist to work in his office if the massage therapist performs colonic irrigations. Even though the chiropractor would not be referring patients for this procedure, the massage therapist would perform the procedure in an office provided by the chiropractor. This arrangement would most probably be unauthorized because the relationship between the chiropractor and massage therapist in such a situation would be that of employer and employee, and further because the chiropractor would most probably be practicing beyond the scope of chiropractic.

A chiropractor may not perform colonic irrigations himself, as this goes beyond what he is licensed to do. ^{1/} The scope of chiropractic practice is specifically set forth in Section 40-9-10(a), Code of Laws of South Carolina (1976, as amended) as follows:

^{1/} This opinion addresses the performing of colonic irrigations by a chiropractor or one of his employees in the chiropractor's office and does not address the performing of the same procedure by an ordinary person outside a chiropractor's office not in the practice of a learned profession.

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"Chiropractic practice" is defined as the spinal analysis of any interference with normal nerve transmission and expression, and by adjustment to the articulations of the vertebral columns and its immediate articulations for the restoration and maintenance of health and the normal regimen and rehabilitation of the patient without the use of drugs or surgery.

In Bauer v. State, 267 S.C. 224, 227 S.E.2d 195 (1976) the South Carolina Supreme Court held that "[i]t is clear that the scope of chiropractic is limited under the law to 'palpation and adjustment'" by hands only. Id. at 232, 227 S.E.2d at 198. Accordingly, "therapeutic methods such as diathermy, ultrasonic devices and colonic irrigations are outside the scope of chiropractic and the use of such is...in violation of the law." Id. See also 1960 Op. Atty. Gen. No. 60-42, p. 132.

Furthermore, if a person employs another to engage in the practice of medicine (or as in this case, massage therapy), the employer may be guilty of the unlawful practice of medicine, notwithstanding the fact the employee is licensed to practice medicine. Wadsworth v. McRae Drug Co., 203 S.C. 543, 28 S.E.2d 417 (1944) (corporation). Thus, it has been held that an unlicensed person who employed a practicing physician to make eye examinations was guilty of illegally practicing optometry, though the physician was properly licensed. Ezell v. Ritholz, 188 S.C. 39, 198 S.E. 419 (1938); Ritholz v. Commonwealth, 184 Va. 339, 35 S.E.2d 210 (1945). See also 61 Am.Jur.2d Physicians and Surgeons, § 31 at 179; 70 C.J.S. Physicians and Surgeons, § 12 at 847-55. The licensed person cannot properly act in the practice of his vocation as an agent of another where that other's interests are, by their very nature, commercial in character. 188 S.C. at 46, 198 S.E. at 422.

Therefore, in the present situation, a chiropractor who employed a massage therapist would most probably be practicing outside the scope of chiropractic to the extent that the massage therapist performed colonic irrigations. This would be true even though the chiropractor does not refer patients for this procedure, because under Ezell it is the business relationship itself which is prohibited. Id. The rationale behind these cases is that the employer's only concern is that his employee makes a profit and further that the employer may interject control over the employee and interfere with the proper exercise of his duly licensed profession.

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This, however, would not prevent a chiropractor and a massage therapist from entering into an office sharing arrangement. Nor would it prohibit a chiropractor from leasing space to a massage therapist, provided that the chiropractor does not interfere with or in any way control the therapist. See Informal Opinion dated August 12, 1981 (optometrists).

Sincerely,



William Edgar Salter, III
Staff Attorney

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REVIEWED AND APPROVED BY:



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