HENRY MCMASTER
ATTORNEY GENERAL

June 4, 2010

The Honorable James H. Harrison
South Carolina, House of Representatives
PO Box 11867
Columbia, SC 29211

Dear Representative Harrison:

We received your letter requesting an opinion of this office concerning chiropractors. You asked whether chiropractors are included under the language "physician" and/or "physician group" in Senate Bill 1031 and House Bill 4329.

As a way of background, you explained that currently under S.C. Code § 40-45-110, physical therapists are subject to penalty if he or she "requests, received, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits . . . with a person who referred a patient . . . ." In other words, under the current law, physical therapists could have their license revoked or suspended if they give or receive financial benefit from the referral of a patient. Senate Bill 1031, Session 118 of General Assembly, (S.C. 2009-2010), and its companion, House Bill 4329, Session 118 of General Assembly, (S.C. 2009-2010), (hereafter "P.T. Bills"), would allow employment relationships between physicians and physical therapists to whom they refer patients. The proposed language would provide that:

> Notwithstanding any other provision of this section or any regulation promulgated by the board, a person licensed under this chapter, who has a bona fide employment or independent contract with a physician, a physician group, or an entity with which a physician has a legal compensation arrangement, including fair market value wages, compensation, benefits, or rents for services or property provided, must not be deemed to be engaged in conduct that is subject to licensure denial, suspension, revocation, restriction, or any other disciplinary action or penalty under this chapter by virtue of such employment or contract, or by virtue of the provision of physical therapy services pursuant to a referral from the employing or

contracting physician as provided for in Section 44-113-30(A)(1).

The P.T. Bills would exempt an employment relationship between a physical therapist and physician from the requirements of S.C. Code § 44-113-10 et seq., and such relationships would be shielded from licensure denial or suspension.

This opinion will address prior opinions of this Office, relevant statutes, caselaw and legislative intent to determine if chiropractors are included under the language "physician" or "physician group."

Law/Analysis

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin. 293 S.C. 46, 358 S.E.2d 697 (1987). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). While this opinion is addressing proposed legislation - the P.T. Bills, not codified language, the rules of statutory construction are still helpful.

Chapter 45 of Title 40 in South Carolina Code of Laws of 1976 governs the Profession and Occupation of Physical Therapists. S.C. Code § 40-45-110(A)(1) currently prohibits a physical therapist from working for pay for a licensed physician or physician group.[1] "Such prohibition and protection is designed to guard against excessive health care costs, attempting to insure that referrals are based solely upon the patient's best interest rather than a desire by a professional to increase profits." See Op. S.C. Atty. Gen., March 30, 2004. This prohibition specifically references the Provider Self-Referral Act. In 1993, the South Carolina General Assembly enacted the Provider Self-Referral Act, 1993 S.C. Act No. 71 § 3 (presently codified at S.C. Code § 44-113-10 et seq (2002)), to curb "health care providers" from referring their patients to an entity in which the provider has an investment interest or from which the provider receives kickbacks. The heading of S.C. Code § 44-113-30 currently reads: "Health care provider not to refer patient to entity in which it has investment interest; exceptions; violations; penalties." S.C. Code § 44-113-20(8) defines "health care provider" as "a person licensed, certified, or registered under the laws of this State to provide health care services." Chiropractors would be considered a health care provider as they are licensed and provide health care services.

The P.T. Bills would alter the prohibition by providing an exception for referrals between physical therapists and physicians or physician groups. The intent of the P.T. Bills would not be frustrated by including chiropractors in the language "physician" or "physician group" because the overarching intent is to address referrals between all health care providers. To ensure that chiropractors are included, the P.T. Bills could be altered to read "health care providers" as opposed to "physician" and "physician group." Nevertheless, there is strong indication that chiropractors should be included

---

[1] The "physician/physician group" language is not currently used in the statute, but can be inferred.

in the language "physician" or "physician group."

On numerous occasions, the South Carolina Supreme Court has held that chiropractors are practitioners of medicine. In State v. Barnes,119 S.C. 213, 112 S.E. 62 (1992), the court held that "irrespective of statute, chiropractors, whose method is to cure disease by manipulation of the spinal column without the use of medicine or surgery, are included among those who 'practice medicine.'" In Williams v. Capital Life & Health Ins. Co., the South Carolina Supreme Court held that a chiropractor is a practitioner in the field of medicine, "and it appears to . . . be straining at a gnat to enter into a discussion of distinctions between a 'practitioner of medicine' and a 'physician.'" S.C. Code § 40-9-10(b) codifies the scope of "chiropractic practice" as "the spinal analysis of any interference with normal nerve transmission and expression, and by adjustment to the articulations of the vertebral column 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 an opinion of this Office dated March 12, 1985, we stated as follows:

> It has been recognized by the South Carolina Supreme Court that the practice of chiropractic is the practice of medicine, albeit in a very narrow field of medicine. See State v. Barnes, 119 S.C. 213, 112 S.E. 62 (1992); Williams v. Capital Life & Health Insurance Company, 209 S.C.512, 41 S.E.2d 208 (1947); Bauer v. State, 267 S.C. 224, 227 S.E.2d 195 (1976); Daniels v. Bernard, 270 S.C. 51, 240 S.E.2d 518 (1978). It must be noted that at the time Barnes was decided, there were no separate licensing provisions for chiropractic practitioners; they were required to be licensed under the statutes for licensing physicians until 1932, when a separate chiropractic licensing act was passed. Act No. 892, 1932 Acts and Joint Resolutions.

In an opinion of this Office dated December 14, 1982, we addressed the restrictions on how chiropractors may advertise themselves:

> On February 22, 1982, this office ruled that duly licensed chiropractors could lawfully refer to themselves as "Chiropractic Physicians" in advertisements concerning their services. This ruling was compelled by decisions of the South Carolina Supreme Court holding (1) that chiropractic is a field of medicine and that chiropractors are practitioners of medicine, albeit in a narrow field and (2) that a duly licensed practitioner of medicine is a physician at least to the extent that he limits his activities to the scope of this profession. . . .
>
> [I]f a chiropractor refers to himself as a physician or orthopedist without qualifying either designer, the public may be misled or deceived because these designations imply that the chiropractor's qualifications as a physician or orthopedist are not limited to the narrow field of chiropractic.

In the December 14, 1982 and February 22, 1982 opinions, the concern was with public deception. Chiropractors must indicate they are not general physicians to prevent the public from misunderstanding the scope of their abilities. The rationale for distinguishing between chiropractic physicians and general physicians serves the purpose of protecting the public.

When analyzing the intent of the P.T. Bills, distinguishing between chiropractic physicians and general physicians would serve no express purpose. In fact, the language "physician" or "physician group" could likely be substituted for the language "health care provider" (which certainly includes chiropractors) and maintain the intent of the P.T. Bills.

Conclusion

It is clear that chiropractors are considered "healthcare providers" and "practitioners of medicine." Moreover, including chiropractors in the language "physician" or "physician group," would not frustrate the intent of the General Assembly. Additionally, the South Carolina Supreme Court explained that distinguishing between a "'practitioner of medicine' and a 'physician'" would be like "straining at a gnat." Williams v. Capital Life & Health Ins. Co., 209 S.C. 512, 518. Therefore, a court would likely find that chiropractors fall under the language of "physician" or "physician group."

Sincerely,

Henry McMaster
Attorney General

Leigha Blackwell

By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Deputy Attorney General