

N.D.A.G. Letter to Sanstead (April 28, 1989)

April 28, 1989

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your January 27, 1989, letter requesting my opinion on whether doctors of chiropractic may perform physical examination upon high school students to determine their fitness to participate in athletic activities.

Article XI of the constitution and bylaws of the North Dakota High School Activities Association (HSAA) currently prohibits pupils from representing their school in high school athletics until the school's superintendent or principal receives a signed statement of a physician or nurse practitioner indicating:

- a. That the pupil has passed an adequate physical examination since May 20 of the past school year; and
- b. That in the opinion of the examining physician or nurse practitioner, the pupil is physically fit to participate in athletic activities.

The North Dakota Chiropractic Association has proposed amending article XI of the HSAA constitution to allow doctors of chiropractic to perform the examinations which are currently performed by physicians and nurse practitioners.

Obviously, HSAA has authority to amend its constitution and establish appropriate, reasonable standards for participation in HSAA sponsored activities. However, HSAA may not authorize doctors of chiropractic to exceed the statutorily defined limits of the practice of chiropractic.

The practice of medicine is the practice of the healing art, and unless restrictions are imposed by statute, the whole field of medicine, surgery, and obstetrics is open to the practitioner. See N.D.C.C. § 43-17-01. Conversely, the practice of chiropractic, a restricted form of the practice of medicine, is limited to those procedures specifically permitted by statute. See Klein v. Harper, 186 N.W.2d 426, 430 (N.D. 1971).

Those procedures doctors of chiropractic may lawfully perform are described in the statutory definition of the term "practice of chiropractic." See N.D.C.C. § 43-06-01(1). The 1989 Legislature recently amended that definition. H.B. No. 1207, 51st Leg. (1989). An

examination of both the current statutory definition and the new definition demonstrates that the performance of physical examinations like those required by HSAA is not included within either statutory definition.

Before the 1989 amendment, section 43-06-01(1) defined the "practice of chiropractic" as follows:

"The practice of chiropractic" shall mean the practice of physiotherapy, electrotherapy, and hydrotherapy as taught by chiropractic schools and colleges, and the adjustment of any displaced tissue of any kind or nature, but shall not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

N.D.C.C. § 43-06-01(1) (1978).

I assume that the purpose of the physical examination required by HSAA is to evaluate the fitness of high school students to participate in athletic activities. This type of evaluation or diagnostic procedure does not fall within the definition quoted above; that is, it does not involve the practice of any of the therapies or adjustments described in section 43-06-01(1) as it currently reads.

The amended definition of the term "practice of chiropractic," effective July 6, 1989, provides:

"The practice of chiropractic" means the examination, evaluation, and diagnosis, by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor, preparatory to the treatment of patients, and the treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature, and includes the practice of physiotherapy, electrotherapy, hydrotherapy, and all other procedures taught by chiropractic colleges, accredited by the council on chiropractic education or its successor, but does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.

H.B. No. 1207, § 1, 51st Leg. (1989).

Under this amended definition, the "treatment" that doctors of chiropractic are authorized to provide encompasses a range of manipulation and adjustment procedures and therapies, including "all . . . procedures taught by [accredited] chiropractic colleges." The

amended definition also states that doctors of chiropractic may provide examination, evaluation, and diagnostic procedures. However, the definition qualifies that authority, stating that the practice of chiropractic includes such procedures only when they are "preparatory to the treatment of patients." Accordingly, if the physical examination HSAA requires falls into the category of an "examination, evaluation, [or] diagnosis," the purpose for the examination, i.e., whether it is "preparatory to treatment," determines whether it may be done by a doctor of chiropractic.

The primary objective in interpreting a statute is to ascertain and give meaning to the intent of the Legislature. Huntley v. Timm, 435 N.W.2d 683, 684 (N.D. 1989). When the wording of a statute is clear and free of all ambiguity, the letter of the statute is not to be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05.

Reading the definition given in House Bill No. 1207 for the "practice of chiropractic" as a whole, it is apparent that the provision authorizes doctors of chiropractic to conduct examinations, evaluations, and diagnoses only when those procedures are preparatory to providing chiropractic treatment to a patient.

The physical examination required by HSAA is not intended as a means of preparing students for chiropractic treatment. Rather, the examination is done for the specific purpose of evaluating the student's general fitness. During the course of the examination a doctor of chiropractic could determine that a particular child required chiropractic treatment. However, the possibility that such a determination may occur does not convert HSAA's required physical examination into an activity "preparatory to the treatment of patients." Consequently, because HSAA's required physical examination is not done "preparatory to the treatment of patients," doctors of chiropractic are not authorized to perform the examination required by HSAA.

Case law from several jurisdictions supports the conclusion that doctors of chiropractic are not authorized to perform general diagnosis, but may only diagnose for the limited purpose of determining whether chiropractic treatment is proper for a patient's condition. See Attorney General v. Beno, 422 Mich. 293, 373 N.W.2d 544 (1985) (performing general physical examinations outside the scope of chiropractic practice); Commonwealth v. Pennsylvania Chiropractic Society, 22 Pa. Cmwlth. 483, 349 A.2d 509 (1976) (chiropractors not authorized to perform physical examinations of applicants for operator's licenses); Spunt v. Fowinkle, 572 S.W.2d 259 (Tenn. App. 1978) (cert. denied July 31, 1978) (procedures for the purpose of diagnosing conditions that are unrelated to chiropractic practice are beyond the practice of chiropractic).

Finally, the Legislative Assembly's decision to require doctors of chiropractic to sign birth and death certificates, as well as certificates pertaining to public health, does not change this result. See N.D.C.C. § 43-06-16. The physical examination form that is completed during HSAA's required examination is not a certificate pertaining to public health. Consequently, statutory authority to sign certificates pertaining to public health does not include authority to sign HSAA's physical examination form.

Furthermore, the authority to sign certificates of public health does not provide a broad inference that doctors of chiropractic may engage in the general diagnosis of disease. As previously stated, the practice of chiropractic is limited to those procedures specifically permitted by statute. Expansions of the practice of chiropractic beyond these statutory limitations must be based on explicit statutory language, not broad inferences.

Based on the foregoing discussion, it is my opinion that doctors of chiropractic may not perform physical examinations upon high school students to determine their fitness to participate in athletic activities.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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