

OPINION NO. 72-101

Syllabus:

The practice of massage is a limited practice of medicine, as defined in Section 4731.15, Revised Code, and those who give massages in sauna baths or for physical therapists are subject to examination and registration under that Section.

To: Henry G. Cramblett, Sec., State Medical Board, Columbus, Ohio
By: William J. Brown, Attorney General, November 3, 1972

Your request for my opinion poses the following question:

"The question has arisen as to whether persons who give massage in sauna baths or who give massage for physical therapists, or persons who perform similar functions, have to have a massage license under the Medical Practice Act."

Section 4731.15, Revised Code, which authorizes the State Medical Board to examine persons in various limited branches of medicine or surgery, reads as follows:

"The state medical board shall also examine and register persons desiring to practice any limited branch of medicine or surgery, and shall establish rules and regulations governing such limited practice. Such limited branches of medicine or surgery shall include chiropractic, naprapathy, spondylotherapy, mechanotherapy, neuropathy, electrotherapy, hydrotherapy, suggestive therapy, psychotherapy, magnetic healing, Swedish movements, massage, cosmetic therapy, and such other branches of medicine or surgery * * *."
(Emphasis added.)

It is clear, therefore, that the General Assembly considered the practice of giving massages a limited branch of medicine which should be the subject of regulation.

I see no reason why the regulation of a limited branch of medicine should depend on where, or under whose direction, it is practiced.

The practice of massage has been defined in Rubin v. U.S., 37 F. 2d 991 (CADC, 1930), as a "method of treating the superficial soft parts of the body for remedial or hygienic purposes, consisting in rubbing, stroking, kneading, tapping, etc., with the hands or an instrument * * *." See also 17 A.L.R. 2d 1181-1191. I assume that this is the method of treatment used by those who give massages in sauna baths or under the direction of physical therapists. The statute requires examination and registration of all who practice this limited branch of medicine. And the legislature has also provided the standards with which one who practices massage must comply. Section 4731.16, Revised Code, reads:

"The examination of all applicants shall be conducted under rules prescribed by the state medical board and at such times and places as the board may determine. Such examination shall be given in anatomy, physiology, chemistry, bacteriology, pathology, hygiene, diagnosis, and in such other subjects appropriate to the limited branches of medicine or surgery, certificate to practice which is applied for, as the board may require. Applicants for certificates to practice massage or Swedish movements shall not be examined in pathology and diagnosis." (Emphasis added.)

There can be no question of the constitutionality of regulation of the practice of medicine and its various branches. The courts of Ohio have repeatedly upheld Section 4731.15. See Mesmith v. State, 101 Ohio St. 158 (1920); Williams v. Scudder, 102 Ohio St. 305 (1921); Meeker v. Scudder, 108 Ohio St. 423 (1923); also O'Dell v. Ohio State Medical Board, 57 Ohio Op. 2d 261 (1970). And it is well settled that the right to practice one's trade, occupation or profession is subordinate to the security, morals, safety and welfare of the public. Section 4731.15 has for its basis, not only the public health, but also the right to regulate those occupations or professions which most intimately and vitally affect the public morals, safety and welfare. See Dent v. West Virginia, 129 U.S. 114 (1889); Hawkes v. New York, 170 U.S. 189 (1898). The license is a recommendation of the licensee, and serves as a protection to the public who often have no means of making intelligent inquiry. State ex rel. Copeland v. State Medical Board, 107 Ohio St. 20, 26-28 (1923).

In specific answer to your question it is my opinion, and you are so advised, that the practice of massage is a limited practice of medicine, as defined in Section 4731.15, Revised Code, and that those who give massages in sauna baths or for physical therapists are subject to examination and registration under that Section.