

OPINION NO. 91-017**Syllabus:**

Chiropractors licensed under R.C. Chapter 4734 are not physicians for purposes of R.C. 4503.44. Pursuant to R.C. 4503.44, as amended by Am. Sub. H.B. 737, 118th Gen. A. (1990) (eff. April 11, 1991), chiropractors are authorized to certify an individual's handicap to the Registrar of Motor Vehicles for the issuance of handicapped parking cards and license plates.

To: Charles D. Shipley, Director, Department of Highway Safety, Columbus, Ohio

By: Lee Fisher, Attorney General, April 10, 1991

I have before me your predecessor's request for an opinion concerning the medical certification required in order for a person to obtain a handicapped parking card or license plate under R.C. 4503.44. In particular, the Department of Highway Safety wishes to know "whether a chiropractor licensed in Ohio under R.C. Chapter 4734, can qualify as an applicant's 'personal physician' for the purpose of certifying the applicant's handicap to the Registrar of Motor Vehicles for the issuance of a handicapped parking card or license plate pursuant to R.C. 4503.44."

R.C. 4503.44 sets forth provisions governing the registration and issuance of license plates and parking cards to handicapped persons.¹ Pursuant to division (B) of R.C. 4503.44,

[t]he application for a permanent parking card made by a handicapped person or for registration of a motor vehicle owned by a permanently handicapped person shall be accompanied by a signed statement from the applicant's personal physician certifying the applicant's handicap and that the handicap is expected to continue for twelve consecutive months or longer.

R.C. 4503.44(E), similarly, provides that, "[t]he application for a temporary parking card shall be accompanied by a signed statement from the applicant's personal physician certifying the applicant's handicap and that the handicap is expected to continue for less than twelve consecutive months."

In addition to the foregoing, R.C. 4503.44(C) also authorizes the Registrar of Motor Vehicles to issue license plates imprinted with the international wheelchair symbol to permanently handicapped persons:

¹ I note that for purposes of R.C. 4503.44, a "handicapped person" is

any person who has lost the use of one or both legs or one or both arms, who is blind, deaf, or so severely handicapped as to be unable to move about without the aid of crutches or a wheelchair, or whose mobility is restricted by a permanent cardiovascular, pulmonary, or other handicapping condition.

R.C. 4503.44(A)(1).

Upon receipt of an application for registration of a motor vehicle under this section, and presentation of a signed statement from the applicant's personal physician as provided in division (B) of this section, or documentary evidence of vehicle alterations when the vehicle is owned by someone other than a permanently handicapped person, the registrar shall issue to the applicant appropriate vehicle registration and a set of license plates and validation stickers, or validation stickers alone when required by section 4503.191 of the Revised Code.

It, thus, is apparent from these provisions that, in order to obtain handicapped parking cards or license plates, individuals must provide a signed statement from their personal "physician" certifying their handicap and that the handicap is expected to continue for either longer than or less than twelve consecutive months. See also 6 Ohio Admin. Code 4501:1-7-02.

I note as an initial matter that since I received your predecessor's request for an opinion as to whether chiropractors are "physicians" for purposes of R.C. 4503.44, the General Assembly has enacted legislation amending that section. Am. Sub. H.B. 737, 118th Gen. A. (1990) (eff. April 11, 1991) amends R.C. 4503.44 by adding thereto language specifically authorizing chiropractors licensed pursuant to R.C. Chapter 4734 to certify an individual's handicap to the Registrar of Motor Vehicles. Hence, as of April 11, 1991, both physicians and chiropractors are statutorily empowered to certify an individual's handicap to the Registrar of Motor Vehicles.

Turning now to the specific question posed by your predecessor, I note that currently the term "physician" is not statutorily defined within R.C. 4503.44. Where the General Assembly has not provided a specific meaning for a term, the common or plain meaning of the term is used. R.C. 1.42; e.g., *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983); *State ex rel. Carson v. Jones*, 24 Ohio St. 2d 70, 72, 263 N.E.2d 567, 568 (1970).

Black's Law Dictionary 1147 (6th ed. 1990) defines "physician" as follows: "A practitioner of medicine; a person duly authorized or licensed to treat diseases; one lawfully engaged in the practice of medicine." *Accord Webster's New World Dictionary* 1019 (3d college ed. 1988); see also R.C. 2305.11(D)(2) (defining "physician" for purposes of R.C. 2305.11, which concerns time limitations for bringing certain actions, as "any person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the state medical board"). See generally *Hessel v. Polen*, CA-1671, slip op. at 4 (Ct. App. Clark County Aug. 19, 1982) (unreported) ("a 'physician' under common law was one engaged in the general practice of medicine or surgery and one of its specialities as opposed to any practitioner of limited branches of medicine or surgery as designated by statute"); 1946 Op. Att'y Gen. No. 1350, p. 743, 747-48 (applying the rule of statutory construction that it is to be assumed that the legislature used the terms contained in a statute in their ordinarily accepted meaning unless there is something in the context which would indicate that a different meaning was intended; "the term 'physician or surgeon' in Section 3391, General Code, without other qualifying description, [means] one who [is] qualified and licensed to practice medicine and surgery in all its branches"). A "physician," for purposes of R.C. 4503.44, thus, is any individual licensed to practice medicine. Accordingly, your specific question requires that I determine whether or not a chiropractor is licensed to practice medicine so as to be considered a physician for purposes of R.C. 4503.44.

R.C. Chapter 4734 governs the licensing and practice of chiropractors in Ohio. The practice of chiropractic is defined in R.C. 4734.09, which states:

The license provided for in this chapter shall entitle the holder thereof to practice chiropractic in this state. For the purpose of this chapter "practice of chiropractic" or "practice as chiropractor" means utilization of the relationship between the musculo-skeletal structures of the body, the spinal column and the nervous system, in the restoration and maintenance of health, in connection with which patient care is conducted with due regard for first aid, hygienic, nutritional, and rehabilitative procedures and the specific vertebral

adjustment and manipulation of the articulations and adjacent tissues of the body. The chiropractor is authorized to examine, diagnose, and assume responsibility for the care of patients.

The practice of chiropractic does not permit the chiropractor to treat infectious, contagious, or venereal disease, to perform surgery or acupuncture, or to prescribe or administer drugs for treatment, and roentgen rays shall be used only for diagnostic purposes. The practice of chiropractic does not include the performance of abortions.

An individual holding a valid, current certificate of registration to practice chiropractic is entitled to use the title "doctor" or "doctor of chiropractic" and is a "physician" for the purposes of Chapter 4123. of the Revised Code, and the program established under section 5111.01 of the Revised Code.

In 1987 Op. Att'y Gen. No. 87-054, my predecessor examined the language of R.C. 4734.09 and concluded that, "[a] chiropractor, licensed under R.C. Chapter 4734, is not licensed to practice medicine for purposes of R.C. 4503.15," which provides for the issuance of special physician license plates to qualified individuals. Op. No. 87-054 (syllabus). In so concluding, my predecessor asserted:

[R.C. 4734.09] *clearly expresses a legislative intent that chiropractors are not engaged in the practice of medicine.* The first sentence expressly states that the holder of a license issued under R.C. Chapter 4734 is entitled "to practice chiropractic in this state." Manifestly, the practice of chiropractic is not the practice of medicine. The General Assembly, by choosing to separately refer to the practice of medicine and the practice of chiropractic, clearly does not consider the disciplines to be the same. Compare, R.C. 4731.34 (defining "practicing medicine"). Furthermore, the final paragraph of R.C. 4734.09 expressly provides that a chiropractor may be considered a "physician" for the purposes of R.C. Chapter 4123, which regulates worker's compensation, and for purposes of a medical assistance program provided by the department of human services pursuant to R.C. 5111.02. The Ohio Supreme Court has noted that according to the statutory construction doctrine *expressio unius est exclusio alterius*, where a statute lists a specific class, it may be implied that those not listed were not intended to be included in the class. *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 105 N.E.2d 643 (1952). This reasoning formed the basis for the court's later decision in *Fort Hamilton-Hughes Memorial Hospital Center v. Southard*, 12 Ohio St. 3d 263, 466 N.E.2d 903 (1984). In that case, the court held that R.C. 3701.351, which allows hospitals to grant privileges to medical physicians, osteopathic physicians, podiatrists and dentists, permits hospitals to deny those privileges to chiropractors. The court reasoned that by naming a specific class of medical professionals in R.C. 3701.351, the General Assembly intended to exclude those classes not mentioned. In the same way, because R.C. 4734.09 does not provide that chiropractors may be considered to be "physicians" for purposes of R.C. 4503.15, I must conclude that the General Assembly did not intend to group chiropractors among those entitled to receive physician license plates.

Op. No. 87-054, at 2-340 and 2-341 (emphasis added). Thus, relying on the plain language of R.C. 4734.09 and the rule of statutory construction, *expressio unius est exclusio alterius*, my predecessor determined that the language of R.C. 4734.09 "reflects a legislative intent to distinguish chiropractors from physicians." Op. No. 87-054, at 2-341.

In addition to the foregoing, my predecessor found further support for his conclusion that chiropractors are not licensed to practice medicine in R.C. Chapter 4731, which, in general, sets forth provisions regulating the practice of medicine, surgery, podiatry, and midwifery. Op. No. 87-054, at 2-341 through 2-343. Specifically, R.C. 4731.41 provides, in part, that, "[n]o person shall *practice medicine or surgery*, or any of its branches without a certificate from the state medical board." (Emphasis added.) Pursuant to R.C. 4731.14, the State Medical

Board is empowered to issue a certificate, stating that the holder of such certificate is authorized to practice medicine and surgery pursuant to the laws of this state, to any individual who has passed an examination and has paid the required fee. See generally R.C. 4731.08-.13 (setting forth provisions concerning examinations of applicants for certificates to practice medicine or surgery or osteopathic medicine and surgery). Moreover, R.C. 4731.34, *inter alia*, defines "practicing medicine," for purposes of R.C. 4731.01-.60, as follows:

A person shall be regarded as practicing medicine...who examines or diagnoses for compensation of any kind, or prescribes, advises, recommends, administers, or dispenses for compensation of any kind, direct or indirect, a drug or medicine, appliance, mold or cast, application, operation, or treatment, of whatever nature, for the cure or relief of a wound, fracture or bodily injury, infirmity, or disease....² (Footnote added.)

A review of the aforementioned sections of R.C. Chapter 4731 clearly reveals that an individual must possess a certificate, which states that the individual is authorized to practice medicine and surgery, from the State Medical Board in order to lawfully practice medicine in the State of Ohio. R.C. 4731.41. Chiropractors, as indicated above, however, are not licensed by the State Medical Board, pursuant to R.C. Chapter 4731, but rather, are licensed by the State Chiropractic Examining Board under R.C. Chapter 4734. See generally *Nesmith v. State*, 101 Ohio St. 158, 128 N.E. 57 (1920) (indicating that a licensed chiropractor requires a separate license to engage in the practice of medicine), *appeal dismissed mem. for want of jurisdiction*, 257 U.S. 622 (1922). Hence, since chiropractors do not receive their licenses from the State Medical Board, it must be concluded that they do not practice medicine. Op. No. 87-054, at 2-343 ("[s]ince chiropractors are licensed by the State Chiropractic Examining Board under the authority of a separate chapter of the Revised Code, I am drawn to the conclusion that the General Assembly did not intend to classify chiropractors among those persons licensed to 'practice medicine' as defined by R.C. [4731.34]").

In addition, R.C. 4731.34 specifically states that an individual shall be regarded as practicing medicine if he examines or diagnoses, or prescribes or administers medication for the cure of a disease. R.C. 4734.09, however, mandates that, "[t]he practice of chiropractic does not permit the chiropractor to treat infectious, contagious, or venereal disease,... or to prescribe or administer drugs for treatment." Accordingly, it is apparent that the General Assembly, through the inhibiting language set out in R.C. 4734.09, has indicated its intention that chiropractors are not to perform various functions which are performed by those licensed to practice medicine pursuant to R.C. Chapter 4731. See generally 1946 Op. No. 1350, at 748 ("[p]hysicians and surgeons who have been licensed by the state to practice medicine in all branches by virtue of having complied with the Ohio statutes, are the only persons who may lawfully prescribe or administer medicines"). In light of the foregoing, it is clear that chiropractors licensed under R.C. Chapter 4734 are not licensed to practice medicine, and, therefore, they cannot be construed as "physicians" for purposes of R.C. 4503.44.³

² Pursuant to R.C. 4731.36, certain classes of persons are exempted from the regulation of the practice of medicine under R.C. Chapter 4731. "Since chiropractors are not included in this list, it appears that a chiropractor must comply with the licensure requirements of R.C. Chapter 4731 before being permitted to practice medicine. Licensure under R.C. Chapter 4734 is insufficient to meet the licensing requirement of R.C. Chapter 4731." 1987 Op. Att'y Gen. No. 87-054, at 2-342 n.1.

³ I note that various courts from other jurisdictions have had the opportunity to examine whether or not the term "physician," as used in a statute, includes individuals engaged in the practice of chiropractic. Generally, these courts have concluded that chiropractors are not physicians. *Colorado Chiropractic Ass'n v. State of Colorado*, 171 Colo. 395, 467 P.2d 795 (1970); *Beverungen v. Briele*, 25 Md. App. 233, 333 A.2d

Moreover, R.C. 4734.09 expressly provides that a chiropractor may be considered a "physician" for purposes of R.C. Chapter 4123 and the program established under R.C. 5111.01. Pursuant to the rule of statutory construction, *expressio unius est exclusio alterius*, the General Assembly has indicated its intention that chiropractors are to be considered physicians only for the limited purposes of R.C. Chapter 4123 and programs established under R.C. 5111.01. I find, therefore, that a chiropractor licensed under R.C. Chapter 4734 is not a physician for purposes of R.C. 4503.44.

As additional support for the conclusion set forth above, I note that the General Assembly in a similar situation has conferred upon chiropractors the authority to provide medical certification of an impairment so as to relieve a person of the obligation of compliance with the Revised Code provisions concerning the use of occupant restraining devices. Pursuant to R.C. 4513.263(C), an individual may be exempted from the provisions of R.C. 4513.263(B)(1) and (3), if *inter alia*, he

has an affidavit signed by a physician licensed to practice in this state under Chapter 4731. of the Revised Code or a chiropractor licensed to practice in this state under Chapter 4734. of the Revised Code that states that the person has a physical impairment that makes use of an occupant restraining device impossible or impractical.

Hence, R.C. 4513.263(C) plainly illustrates that the General Assembly recognizes a distinction between physicians licensed under R.C. Chapter 4731 and chiropractors licensed under R.C. Chapter 4734. More importantly, however, R.C. 4513.263(C) indicates that where the General Assembly has intended to confer upon chiropractors the powers delegated to physicians, it has used language which expressly conveys such intention. See Am. Sub. H.B. 737.

Based upon the foregoing, it is my opinion, and you are hereby advised that, chiropractors licensed under R.C. Chapter 4734 are not physicians for purposes of R.C. 4503.44. Pursuant to R.C. 4503.44, as amended by Am. Sub. H.B. 737, 118th Gen. A. (1990) (eff. April 11, 1991), chiropractors are authorized to certify an individual's handicap to the Registrar of Motor Vehicles for the issuance of handicapped parking cards and license plates.

664 (1975); *Osborne v. Talbot*, 197 Md. 105, 78 A.2d 205 (Ct. App. 1951); *New York Life Ins. Co. v. Modzelewski*, 267 Mich. 293, 255 N.W. 299 (1934); *Underhill v. Knox*, 355 N.W.2d 742 (Minn. Ct. App. 1984); *S. H. Kress & Co. v. Sharp*, 156 Miss. 693, 126 So. 650 (1930); *Corsten v. State Industrial Comm.*, 207 Wis. 147, 240 N.W. 834 (1932); *Isaacson v. Wisconsin Casualty Ass'n*, 187 Wis. 25, 203 N.W. 918 (1925). *Contra State of Indiana v. Jagers*, 506 N.E.2d 832 (Ind. Ct. App. 1987); *Thomas v. Carlton Hosiery Mills*, 14 N.J. Super. 44, 81 A.2d 365 (1951); *City of St. Ann v. Crump*, 607 S.W.2d 706 (Mo. Ct. App. 1980).