

OPINION NO. 83-002

Syllabus:

A chiropractor may conduct physical examinations of public school students for the purpose of determining their physical suitability to

participate in public school athletic events, unless the board of education requires the examining physician to conduct specific tests that are not within the scope of the chiropractor's education, training and experience.

To: Ralph H. Berry, Jr., B.A., D.C., Executive Secretary, State Board of Chiropractic Examiners, Columbus, Ohio
 By: William J. Brown, Attorney General, January 3, 1983

I have before me your request concerning whether a licensed doctor of chiropractic is authorized to conduct physical examinations of public school students for the purpose of determining their physical suitability to participate in public school athletic events.

In resolving the above stated question, it is necessary to examine R.C. Chapter 4734, which regulates the practice of chiropractic in Ohio, and also Chapter 4734-1 of the Ohio Administrative Code, which sets forth the licensure requirements of chiropractors as established by the State Board of Chiropractic Examiners.

The General Assembly, through the provisions found in R.C. Chapter 4734, has set forth the permissible extent of the practice of chiropractic. More specifically, R.C. 4734.09 enumerates various functions that a chiropractor may perform and defines the practice of chiropractic as follows:

For the purpose of this chapter "practice of chiropractic" or "practice as a chiropractor" means utilization of the relationship between the musculoskeletal 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. (Emphasis added.)

The diagnostic and examining authority of a chiropractor is further defined by Chapter 4734-1 of the Ohio Administrative Code. The State Board of Chiropractic Examiners has the power to mandate certain educational standards for chiropractic colleges that must be adhered to for accreditation to take place. 6 Ohio Admin. Code 4734-1-06(F). The objective of a chiropractic college is to prepare "the doctor of chiropractic as a primary health care provider, as a portal of entry to the health delivery system, well-educated to examine, diagnose, and assume responsibility for the care of patients and to care for the human body in health and disease and to consult with or refer to, other health care providers. . ." 6 Ohio Admin. Code 4734-1-06(A) (emphasis added). Further, under the rules of the State Board of Chiropractic Examiners, doctors of chiropractic must complete certain courses in their study which deal exclusively with the examination and diagnosis of patients. A chiropractic college must include in its curriculum courses in public health and in clinical, laboratory and physical diagnosis. 6 Ohio Admin. Code 4734-1-06(B)(12)(a) and (b). Other requirements include practical experience in physical examinations (including evaluations of vital signs), urinalysis and blood work, and also "clinical training in the use of modern acceptable diagnostic procedures and diagnostic equipment." 6 Ohio Admin. Code 4734-1-06(B)(13)(a).²

¹I note that administrative rules which have been promulgated pursuant to proper statutory authority have the force and effect of law unless they are unreasonable or in clear conflict with a statutory enactment governing the same subject matter. Kroger Grocery and Baking Co. v. Glander, 149 Ohio St. 120, 77 N.E.2d 921 (1948).

²For a comprehensive listing of all requirements and courses that a chiropractic college must provide, see 6 Ohio Admin. Code 4734-1-06.

Thus, pursuant to R.C. 4734.09 and 6 Ohio Admin. Code 4734-1-06(B)(12)(a) and (b), (B)(13)(a) and (F), it would appear that, having completed study at an approved chiropractic college, a doctor of chiropractic has unqualified authority to examine and diagnose and assume responsibility for the care of his patients. However, the State Board of Chiropractic Examiners, in regulating the practice of chiropractic, has set some limitations on the authority to examine and diagnose. The State Board has stated generally that the services which a chiropractor may provide may not exceed the scope of his education, training, and experience. 6 Ohio Admin. Code 4734-1-15(A) and (B) reads as follows:

(A) In the conduct of the practice of chiropractic no chiropractor shall perform any service that is beyond the scope of his education, training, and experience.

(B) The practice of chiropractic will include and permit the use of such diagnostic and treatment procedures as are taught by Board approved chiropractic colleges except as prohibited by law and/or the Rules and Regulations of this Board.

Therefore, services which are examinational or diagnostic in nature may be provided by the doctor of chiropractic if they are within the scope of his education, training and experience and he is not prohibited by statute or rule from performing the services. 6 Ohio Admin. Code 4734-1-15(A) and (B).

Of interest on this point is the case of Ohio State Medical Board v. Laubach, No. 679 CV-12-6029 (Ct. C.P. Franklin County 1981). In the Laubach case, the Ohio State Medical Board challenged the scope of the lawful authority of a chiropractor to diagnose and treat patients. The defendant and the Ohio State Medical Board entered a consent judgment³ which contained restrictions on various areas of treatment, including prescribing or dispensing Darcotabs, treating contagious colds, and prescribing or fitting corrective lenses or eyeglasses, but no restrictions on examinations and diagnosis other than examining the eyes for the purposes of prescribing or fitting corrective lenses or eyeglasses. The decision of the court was based, in part, on the prohibitions found in R.C. 4734.09, as follows:

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.

It is clear that the intent of the General Assembly in enacting this language was to limit a doctor of chiropractic so that he could not treat infectious, contagious or venereal disease, perform surgery, acupuncture or abortions or prescribe or administer drugs. However, as illustrated by the Laubach case, the doctor of chiropractic is, subject to the above statutory limitations, permitted to practice chiropractic in its entirety in accordance with R.C. 4734.09 and Chapter 4734-1 of the Ohio Administrative Code. As stated earlier, both R.C. 4734.09 and 6 Ohio Admin. Code 4734-1-15(A) and (B) provide that a doctor of chiropractic has the authority to examine and diagnose patients within the scope of his education, training and experience. He may not examine or diagnose beyond the scope of his education, training and experience, and he may not undertake any of the activities expressly prohibited by R.C. 4734.09. Thus, while a doctor of chiropractic may perform any examinational or diagnostic service within the scope of his education, training and experience for a patient, he may not treat the patient if such treatment would be prohibited by R.C. 4734.09 or 6 Ohio Admin. Code Chapter 4734-1. It appears, therefore, that a doctor of chiropractic's authority to examine, diagnose and assume responsibility for the care of patients is broader than the authority to treat.

³ A consent judgment, entered with prejudice, has the same legal effect as a final judgment entered after a full trial on the merits. Horne v. Woolever, 170 Ohio St. 178, 163 N.E.2d 378 (1959).

Your specific question is whether a licensed doctor of chiropractic is authorized to conduct physical examinations of public school students for the purpose of determining their physical suitability to participate in public school athletic events. I am aware of no statute or rule which governs physical examinations for public school students who desire to participate in athletic events. Rather, it appears that a school board is authorized to require such examinations under its general authority to make "rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon the school grounds or premises." R.C. 3313.02. See Cordova v. Chonko, 315 F.Supp 953 (N.D. Ohio, W.D., 1970) (board of education is required, pursuant to R.C. 3313.20, to make rules and regulations as are deemed necessary for the government of its pupils); Jacobs v. Benedict, 64 Ohio Op. 2d 355, 301 N.E.2d 723 (1973); 1982 Op. Att'y Gen. No. 82-014; 1982 Op. Att'y Gen. No. 82-029; 1982 Op. Att'y Gen. No. 82-030.

A doctor of chiropractic is not expressly prohibited by statute or rule from performing this particular type of examination. A chiropractor may perform specific tests and procedures only if such tests and procedures fall within the scope of his education, training and experience. However, if a school board merely requires a statement that a student is physically able to participate in an athletic program, then, since a chiropractor has the authority to assume responsibility for the care of his patients, the chiropractor may give his opinion as to the student's ability to participate in public school athletic events. Thus, since this is an exclusively examinational service, it may be performed by the chiropractor if the type of examination required falls within the scope of his education, training and experience.

Based on the foregoing, it is my opinion, and you are so advised, that a chiropractor may conduct physical examinations of public school students for the purpose of determining their physical suitability to participate in public school athletic events, unless the board of education requires the examining physician to conduct specific tests that are not within the scope of the chiropractor's education, training and experience.