1350

RELIEF AREA, LOCAL—MAY NOT EMPLOY SERVICES OF CHIROPRACTOR OR OTHER LIMITED PRACTITIONER FOR POOR RELIEF.

SYLLABUS:

A local relief area may not employ the services of a chiropractor or other limited practitioner for the poor relief cases in its jurisdiction.

Columbus, Ohio, November 13, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I am in receipt of a letter signed by Henry J. Robison, Chief of the Division of Social Administration, requesting my opinion as follows:

> "Question has arisen as to whether the services of a chiropractor could be ordered and paid for from poor relief funds by a local relief area. As you are aware, Section 3391 defines 'medical care' as 'medicines and the services, wherever rendered, of a physician or surgeon or the emergency service of a dentist, furnished at public expense'.
>
> It is our understanding that, under Ohio laws, a chiropractor is not a physician or surgeon, but is classified by the state as a practitioner of a limited branch of medicine or surgery under General Code 1274-1.
>
> Will you please advise your opinion as to whether a relief area may, in its discretion, employ the services of a chiropractor or other limited practitioner for the poor relief cases in its care. If your answer is in the affirmative, would such services fall in the category of medical care as defined above, or would they be available under some other classification in General Code 3391?"

An examination of the Medical Practice Act (Sections 1262 to 1294, General Code) as last amended in 1943 discloses that the legislature has provided for the establishment of three main branches of practice. One branch is referred to as "medicine or surgery," another as "osteopathic medicine and surgery," and a third as "limited branches of medicine or surgery."

Under the present statutes a Doctor of Osteopathy must possess substantially the same qualifications and pass substantially the same examination as a Doctor of Medicine, and once having passed the examination, can practice medicine or surgery without limitation so that as a practical matter these two branches may be classified as one single unlimited branch under the amended statutes.

The limited branches of medicine and surgery are set forth in Section 1274-1, General Code, which section provides in part:

> "The state medical board shall also examine and register persons desiring to practice any limited branch or branches of medicine or surgery, and shall establish rules and regulations governing such limited practice. Such limited branches of medicine or surgery shall include chiropractic, * * *."

Acting under the authority of this section, the State Medical Board has formally adopted certain rules and regulations governing the practice of chiropractic, and has defined chiropractic as follows:

> "Chiropractic is hereby understood to be the detecting and adjusting by hand only, of vertebral subluxations."

The term "limited branch or branches of medicine or surgery," as used in the statute, has been defined by the Board to mean:

> "Those branches of medicine or surgery which provide for a single therapeutic system, appliance, application, operation or treatment for the relief or cure of a wound, fracture or bodily injury, infirmity or disease, which does not involve the use of drugs or major surgery."

Section 3391, General Code, is the definitive section of the Code dealing with poor relief. This section, in so far as pertinent to the question you present, provides:

> " 'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters. * * *
>
> 'Medical care' means medicines and the services, wherever rendered, of a physician or surgeon or the emergency services of a dentist, furnished at public expense."

In view of the definition of "medical care" as set forth above, the question then presented is whether or not a chiropractor is a "physician or surgeon" within the meaning of the statute.

It is difficult to lay down a rule to determine who is a physician or surgeon since this question depends to a large extent on the intent of the legislature. There is no question of the right of the legislature to determine what practitioners shall administer medical care to recipients of poor relief.

It is a well known fact that chiropractors specialize in certain classes of diseases or ailments; that ordinarily they do not treat certain classes of diseases very common to humanity, and legally they can not treat certain types of diseases, administer drugs or perform major surgery. In this connection, it is provided by Section 1274-3, General Code, in part:

> "* * * Such certificate shall authorize the holder thereof to practice such limited branch or branches of medicine or surgery as may be specified therein, but shall not permit him to practice any other branch or branches of medicine or surgery nor shall it permit him to treat infectious, contagious or venereal diseases, nor to prescribe or administer drugs, or to perform major surgery."

The Medical Practice Act provides for examinations in certain subjects for those who wish to become chiropractors, and in a wider range of subjects for those desiring to become physicians or surgeons.

The original act authorizing and regulating the examination and registration of physicians and surgeons in Ohio was passed by the Fifty-eighth General Assembly and became effective in 1868 (see 65 O. L., 146), and with numerous amendments and supplements has been in effect ever since. The act relating to the limited branches of medicine and surgery was passed by the Eightieth General Assembly and became effective in 1915 (see 106 O. L., 202). Prior to 1915 there was no statutory provision for the licensing or regulating of limited practitioners and the practice of those professions constituted the illegal practice of medicine and surgery. These limited practitioners were not recognized as physicians and surgeons under the original act and when the limited practice act (Sections 1274-1 to 1274-7, General Code) was passed a separate and distinct classification was created, entirely apart from the classification of physicians and surgeons.

The terms "physician or surgeon" and "chiropractor" are not defined anywhere in the statutes relating to medical practice. Neither does the act define what is meant by the practice of medicine or surgery, nor what is meant by the practice of chiropractic. As pointed out above, certain rules defining chiropractic and the other limited branches were adopted by the Medical Board. It would therefore appear that in using the term "physician or surgeon" as the same is used in Section 3391, General Code, the legislature used such term in its commonly accepted sense.

In the construction of a statute the first and most elementary rule is that it is to be assumed that the legislature used the terms contained therein in their ordinarily accepted meaning unless there is something in the context which would indicate that a different meaning was intended. Woodworth v. State, 26 O. S., 196; State v. Liffring, 61 O. S., 39; Eastman v. State, 131 O. S., 1.

In Webster's Unabridged Dictionary a physician is defined as:

> "A person skilled in physic or the art of healing; one duly authorized to treat diseases, esp. by medicines; a doctor of medicine."

The same authority defines surgeon as:

> "One who practices surgery. In the Middle Ages, it was customary to combine the professions of barber and surgeon. In modern times, the designation of surgeon is restricted to qualified, licensed medical practitioners who have specialized in operative technique."

In the case of New York Life Insurance Company v. Modzelewski, 267 Mich., 293, 255 N. W., 299, the court said in the opinion, relative to the term "physician" as used in an application for an insurance policy:

> "* * * the word 'physician' must be held to mean a legally licensed physician or doctor of medicine. Such is the meaning that a reading of the application would convey to the ordinary lay mind."

The second branch of the syllabus in Millsap v. Alderson, 63 Calif. App., 518, provides:

> "Physician and Surgeon—Definition of.—

> A physician and surgeon is one who holds an unrevoked unlimited certificate from the Board of Medical Examiners to treat the sick and afflicted."

In Isaacson v. Wisconsin Casualty Association, 187 Wis., 25, 203 N. W., 918, the court had under consideration the meaning of the term "physician" as used in an insurance policy. In that case it is stated in the opinion:

> "As stated in the briefs by both counsel, the term 'physician' is one of very wide significance and colloquially speaking includes the term 'surgeon' and many specialists within the field of medicine. It is the broadest term our language contains applicable to one who practices medicine, including both medicine and surgery in its original meaning. We therefore reach the conclusion that the trial court erred in holding that a chiropractor was a legally qualified physician within the meaning of the statute."

See also to the same effect Erdman v. Great Northern Life Insurance Company, 253 Mich., 579, 235 N. W., 260; S. H. Kress & Company v. Sharp, 126 So., 650 (Miss.), 68 A. L. R., 167.

In the case of Millsap v. Alderson, supra, the court had under consideration the revocation of a license of a naturopath who had attempted to practice as a general physician and surgeon, and in its opinion the court said:

> "Conceding that a naturopath has the right to prescribe herbs, electricity, and magnetism to the same extent as that exercised by a physician and surgeon, yet the possession of this right or privilege by the naturopath does not constitute him a physician or surgeon, in the absence of any right to excercise the other duties of a physician or surgeon. The optometrist may test the eyes for glasses in the same manner as a physician or surgeon may do, yet this right in no way constitutes him a physician or surgeon, or authorizes him to practice medicine or surgery. The chiropodist may perform certain surgical operations upon the feet, as now provided by statute, yet it would not be claimed that when this power was conferred upon him he was created a physician and surgeon."

Therefore, in view of the foregoing and by application of the fundamental rule of statutory construction set out above, the conclusion seems inescapable that when the legislature used the term "physician or surgeon" in Section 3391, General Code, without other qualifying description, it

meant one who was qualified and licensed to practice medicine and surgery in all its branches, and the term was not intended to include a practitioner licensed to administer body manipulations only. This conclusion is strengthened when it is noted that the statute refers to "medicines and the services" of a physician and surgeon. The legislature undoubtedly intended to authorize the payment for medicines at public expense when such medicines were dispensed lawfully by one having authority to do so. Physicians and surgeons who have been licensed by the state to practice medicine in all its branches by virtue of having complied with the Ohio statutes, are the only persons who may lawfully prescribe or administer medicines.

The question might conceivably be raised that if a chiropractor is not eligible to render "medical care" he might possibly be employed under some other provision of the act dealing with the administration of poor relief. For example, in the statutory definition of "poor relief" quoted supra, it is provided that poor relief includes "services necessary for subsistence." Could this provision be construed as including the services of a chiropractor? I believe not. The application of the principle "expressio unius est exclusio alterius" should of itself be decisive of the question. This maxim has application to any statute which in terms defines a thing to be done by a particular means and in such case it necessarily implies that the thing shall not be done otherwise. The maxim finds its chief use in ascertaining the whole scope of the law. Translated literally, it means that "that which is expressed makes that which is implied to cease." Black's Law Dictionary (2nd Ed.), page 468. In other words, by applying the maxim to the situation at hand, it will be presumed that the legislative intent as to "medical care" was exhausted in the specific definition thereof and it was not intended that the services of a limited practitioner should be included by implication under any general provision of the statute. See State, ex rel. Gibson, v. Board of Education, 2 O. C. C., 557, affirmed in 45 O. S., 555; Cincinnati v. Roettinger, 105 O. S., 145.

Therefore, in specific answer to your question, it is my opinion that a local relief area may not employ the services of a chiropractor or other limited practitioner for the poor relief cases in its jurisdiction.

Respectfully,

HUGH S. JENKINS

Attorney General