

OPINION NO. 79-009

Syllabus:

Podiatrists render a "professional service" for purposes of R.C. 1785.01(A), and therefore may form a professional corporation pursuant to R.C. 1785.02.

To: Anthony J. Celebrezze, Secretary of State, Columbus, Ohio
By: William J. Brown, Attorney General, March 12, 1979

I have before me your predecessor's request for my opinion which may be summarized as follows:

1. May podiatrists licensed in this state be permitted to form a professional association pursuant to R.C. Chapter 1785?
2. If the answer to the above question is no, may the practice of podiatry be regarded as an occupation, rather than a profession, thus allowing podiatrists to incorporate under the provisions of R.C. Chapter 1701, irrespective of R.C. 1701.03, which prohibits the formation of a corporation for the purpose of practicing a profession?

R.C. 1701.03 forbids the formation of a corporation for the purpose of carrying on a profession. However, R.C. Chapter 1785, enacted by the General Assembly in 1961, carves out certain exceptions to this prohibition. R.C. 1785.02 provides, in pertinent part, as follows:

An individual or group of individuals each of whom is licensed or otherwise authorized to render the same kind of professional service within this state . . . may organize and become a shareholder, or shareholders, of a professional corporation. (emphasis added)

"Professional service," as used in R.C. Chapter 1785, is defined in R.C. 1785.01(A) as follows:

(A) "Professional service" means any type of professional service which may be performed only pursuant to a license, certificate, or other legal authorization, as provided by Chapters 4701., 4703., 4705., 4715., 4725., 4729., 4731., 4732., 4733., 4734., and 4741. of the Revised Code to certified public accountants, licensed public accountants, architects, attorneys, chiropractors, dentists, pharmacists, optometrists, physicians and surgeons, and practitioners of limited branches of medicine or surgery as defined in section 4731.15 of the Revised Code, psychologists, professional engineers, and veterinarians.

Therefore, only if podiatrists render a "professional service," as that term is defined in R.C. 1785.01(A), are they permitted to incorporate. Podiatrists are not specifically listed in R.C. 1785.01(A) among those "professionals" who receive a "license, certificate, or other legal authorization . . . [under] Chapters 4701., 4703., 4705., 4715., 4725., 4729., 4731., 4732., 4733., 4734., and 4741. of the Revised Code" Moreover, podiatrists are specifically excluded from the list of practitioners of

"limited branches of medicine or surgery," set forth in R.C. 4731.15. Accordingly, it might appear that under the doctrine of expressio unius est exclusio alterius, podiatry is not a "professional service." However, consideration of the history of the regulation of podiatrists reveals that podiatry has consistently been treated as a profession in this state.

Prior to 1959, podiatry (then called "chiroprody") was included as a limited branch of medicine under R.C. 4735.15. In 1959 that section was amended so as to specifically exclude podiatry. See generally, Matthews v. Walker, 34 Ohio App. 2d 128, 133-34 (1973). Podiatrists are now regulated by the State Medical Board under R.C. 4731.51 through 4731.61. They are required to attend a liberal arts college for at least one year, R.C. 4731.53, and then complete a full course of study at an approved college of podiatry. R.C. 4731.54 and 4731.55. R.C. 4731.51 defines the practice of "podiatry" as follows:

The practice of podiatry consists of the medical, mechanical, and surgical treatment of ailments of the foot, the muscles and tendons of the leg governing the functions of the foot; and superficial lesions of the hand other than those associated with trauma. Podiatrists are permitted the use of such preparations, medicines, and drugs as may be necessary for the treatment of such ailments. The podiatrist may treat the local manifestations of systemic diseases as they appear in the hand and foot, but the patient shall be concurrently referred to a doctor of medicine or a doctor of osteopathic medicine and surgery for the treatment of the systemic disease itself. General anaesthetics may be used under this section only in colleges of podiatry approved by the medical board pursuant to section 4731.53 of the Revised Code and in hospitals approved by the joint commission on the accreditation of hospitals, or the American osteopathic association. The use of x-ray or radium for therapeutic purposes is not permitted.

Based upon these sections of the Revised Code, Matthews v. Walker, supra, held that podiatrists are medical practitioners for purposes of the one year statute of limitations for malpractice actions set forth in R.C. 2305.11. In reaching that conclusion the court stated:

It would seem clear that the Legislature, having removed the podiatrist from that section of law dealing with "limited branches of medicine," and having enacted specific sections governing the admittance to, and the practice of podiatry, did thereby establish a class of medical professionals who have taken upon themselves by law certain independent professional responsibilities that may be

likened to some extent to those that are inherent within the practices of physicians and surgeons.

The fact that a podiatrist is limited in his diagnosis and treatment to two parts of the body, should, for purposes of the statute of limitations, render, for malpractice actions, the podiatrist no less a professional medical practitioner than would be the dentist who limits his practice to the teeth.

Matthews v. Walker, supra at 136.

It would be anomalous to conclude that podiatrists are medical practitioners for purposes R.C. 2305.11, yet do not render a "professional service" of the type contemplated by R.C. 1785.01(A).

It thus appears that podiatrists are to be considered as "physicians and surgeons" for purposes of R.C. 1785.01(A), particularly since they are required to obtain a license pursuant to R.C. Chapter 4731 in order to carry on a practice. Such an interpretation of "physician" or "surgeon" does not appear to me to be unreasonable. Under R.C. 1.42, words are to construed according to their "common usage." The dictionary defines the words "physician" and "surgeon" as follows:

physician: a person skilled in the art of healing; one duly authorized to treat disease.

surgeon: a medical specialist who performs surgery; a physician qualified to treat those diseases that are amenable to or require surgery.

Webster's Third New International Dictionary
(1961)

In light of these definitions, it is not at all unreasonable to conclude that podiatrists are "physicians and surgeons" for purposes of R.C. 1785.01(A), and that they therefore render a "professional service." Conversely, it would be highly unreasonable to interpret that section in such a way as to exclude podiatrists from the list of professionals who may incorporate. Indeed, in light of R.C. 4731.15, which, by virtue of its incorporation into R.C. 1705.01(A) includes practitioners of ". . . magnetic healing, Swedish movements, [and] massage . . ." as those who render a "professional service," it would be, in my view, pedantic in the extreme to exclude podiatrists from that group without clear language to indicate that such a result was intended by the General Assembly.

Accordingly, it is my opinion, and you are so advised that podiatrists render a "professional service" for purposes of R.C. 1785.01(A), and therefore may form a professional corporation pursuant to R.C. 1785.02.