

Opinion No. 50-5275

January 17, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Dr. L. C. Boatman, Chairman Basic Science Board Marcy Street Santa Fe, New Mexico

{*121} We are in receipt of your letter requesting an official opinion as to whether a "masseur" practicing in New Mexico is required to {*122} have a license.

Section 51-102 of New Mexico Statutes Annotated, 1941 Compilation, defining "healing art," states:

"For the purpose of this act, the healing art includes any system, treatment, occupation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity injury, or unhealthy or abnormal physical or mental condition."

In *Rubin v. United States*, 59 App. D.C. 37 F.2d 991, the Court on page 992 quotes Websters' definition of "massage" as follows:

"Massage: 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 hand or an instrument: med., to treat by means of massage; to rub or knead as to **massage** a patient with ointment."

In *Dunlap v. United States*, 165 U.S. 486, 41 L. Ed. 799, 17 S. Ct. 375, the Court defines massage at page 498 as follows: "A rubbing or kneading of the body."

In *Springer v. District of Columbia*, 23 App.D.C. 59, the Court defines the term "practicing medicine" as follows: "The practice of medicine is a pursuit very generally known and understood and so also is that of surgery. The former includes the application and use of medicines and drugs for the purpose of curing, mitigating or alleviating bodily diseases * * *". *Smith v. Lane*, 24 Hun.(N.Y.) 632; *Nelson v. State Board of Health*, 108 Ky. 769, 57 S.W. 501.

In *Ex Parte Maki*, 56 Cal.App.2d 635, 133 P.2d 64, at page 69, the Court states:

"Neither the operation of a massage parlor nor the administering of a massage for remedial or hygienic purposes is the practice of medicine. The massage, that is the rubbing or stroking the body for remedial benefits, is practiced by every mother in the land in the normal care of her children. Because it puts the infant to sleep or relaxes the fatigued laborer does not place it in the category of the arts of the physician any more

than does applying hot towels to an aching body or an ice pack to a bruised body. There is no law that classifies the application of homely remedies as a practice of medicine."

But, in the case of Milling v. State, 67 Tex. Cr. 551, 150 S.W. 434, the Court held as follows:

"If, notwithstanding he so represents himself as a masseur, he undertakes to cure diseases for pay, and represents himself as able to cure diseases in that manner, he could not do so legally without the proper certificate."

Further, in State v. Lawson, 65 Atl. 593, the Court state:

"Personal treatment of one person by another by hypnotism or massage, unaccompanied by any direction as to the use of drugs or medicines or other remedies to be used by the patient, would not come within the term 'prescribing remedies' used in the statute. When accompanied, however, by such direction as to the use of drugs, medicines, or other remedies, by the patient, it would come within the terms of the statute and be a violation thereof."

It is my opinion that a "masseur" is not within the purview of Section 51-102 of the New Mexico Statutes Annotated, 1941 Compilation, or any of the succeeding sections of said act pertaining to practice of medicine, { *123 } and chiropractics, so long as he does not bring himself within the scope of the last two above quoted cases and invades the field of medicine, chiropractics and the practice of the healing arts as defined in Section 51-102.

I trust this sufficiently answers your inquiry.