

Opinion No. 57-316

December 6, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell, New Mexico

QUESTION

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The meaning of "immediate personal supervision" as used in § 67-10-19, N.M.S.A., 1953 Compilation, in the light of the fact that an unlicensed individual practices physical therapy with little or no supervision by a physician?

CONCLUSION

The quoted language calls for a close, direct supervision by a licensed practitioner of the healing arts.

OPINION

ANALYSIS

Ordinarily this office does not engage in the abstract definition of words and phrases used in the statutes, but we believe there is enough factual background to undertake an opinion at this time.

You have stated the individual in question administers physical therapy ostensibly under the control of an orthopedic surgeon at a local hospital. He also takes work, on a prescription basis, from physicians in the community, which you say is unknown to the orthopedic surgeon in question. The individual claims he does not append any title or initials to his name implying he is a physical therapist. We assume the existence of these facts, and that you are prepared to prove the same.

If, as is claimed, the individual uses no title or initials indicating status as a physical therapist, still we do not believe such to be conclusive. Of significance in this respect is § 67-10-2, N.M.S.A., 1953 Compilation, providing:

"A person shall be deemed to be engaged in the practice of physio-therapy within the meaning of this act when such person professes publicly to be a physical therapist or physio-therapist, or who appends to his name any initials or title implying qualifications to so practice."

which is in the disjunctive. Hence, even without an appropriate title or set of initials, the individual could still publicly profess to be a physical therapist. We suggest you investigate further in this respect, unless you have already reached a conclusion.

Section 67-10-1, N.M.S.A., 1953 Compilation, is as follows:

"It shall be unlawful for any person to practice or to offer his services in the capacity of or purport to be a physical therapist, or physio-therapist without having a license therefor and without being registered as herein provided, unless such person is **particularly** exempt as provided in this act." (Emphasis ours)

and indicates that a clear case of exemption must be established, if in fact physical therapy is practiced.

The exemption provision, § 67-10-19, supra, provides:

"Nothing in this act shall apply to any practitioner of the healing arts licensed to practice under the laws of this state nor to any person or persons not holding themselves out as physical therapists or physio-therapists, who administer massage, heat-therapy or hydro-therapy under the immediate personal supervision of a licensed practitioner of the healing arts, or to such persons administering massage or rendering service as a masseuse or operating or giving mineral water, warm water or other therapeutic baths, when the rendering or administration of such service or baths is not represented as a cure or treatment for specific disease or injury."

Under the facts given by you, while there might not be unprofessional conduct within the meaning of § 67-10-13 (1), since work is done for physicians on a prescription basis, we believe the want of a license plus the lack of knowledge of the individual's activities by the orthopedic surgeon and lack of close, direct and personal supervision of such activities by a licensed practitioner of the healing arts, clearly indicates a lack of compliance with § 67-10-19, supra.