

Opinion No. 72-58

October 20, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Jane E. Pendleton, Assistant Attorney General

TO: Mr. R. F. Apodaca, Superintendent of Insurance, Department of Insurance, PERA Building, Santa Fe, New Mexico 87501

QUESTIONS

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1. Are chiropractors included under the definition of practitioner of the healing arts?
2. Does the restriction of Section 58-11-19, N.M.S.A., 1953 Comp. (1971 P. S.), prohibiting restrictions on an insured in the choice of a practitioner of the healing arts, apply to chiropractors?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*92} ANALYSIS

Section 58-11-19, N.M.S.A., 1953 Comp. (1971 P.S.) provides for freedom of choice in the selection of any hospital or of any practitioner of the healing arts, optometrist, or podiatrist. This freedom of choice is not to be restricted under any policy of sickness or accident insurance issued after June 30, 1967. The definition in this section of "practitioner of the healing arts" refers to Section 67-1-3, N.M.S.A., 1953 Comp. Section 58-11-19, **supra**, was enacted in 1963 and amended to its present form in 1967. At these times, Section 67-1-3, **supra**, which determined what was included in "practitioner of the healing arts" was in effect, for it was not until 1968 that Section 67-1-3. **supra**, was repealed. The Legislature has not provided a definition of "practitioner of the healing arts" to replace the repealed definition and to supplement Section 58-11-19, **supra**. Therefore in determining legislative intent we can only look to Section 67-1-3, **supra**, to see if a chiropractor is a "practitioner of the healing arts."

Section 67-1-3, **supra**, stated:

"67-1-3. License to practice. -- For the purpose of this act [67-1-1 to 67-1-21], any license authorizing the licentiate to offer or undertake to diagnose, treat, operate on or prescribe for any human pain, injury, disease, deformity or physical or mental condition is a license to practice the healing art."

Now we must determine if a license to practice chiropractic authorizes the licentiate to perform one of the enumerated services. Section 67-3-17, N.M.S.A., 1953 Comp. (1971 P.S.), providing privileges and obligations of chiropractors, states:

"It is the purpose of the Chiropractic Practice Act [67-3-9 to 67-3-23] to grant to chiropractors the right to practice chiropractic as taught and practiced in standard colleges of chiropractic and to entitle the holder of a license the right to diagnose, palpate and treat injuries, deformities and other physical or mental conditions relating to the basic concepts of chiropractic, by use of any methods provided in the Chiropractic Practice Act, such as by application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and drugless appliances, but excluding operative surgery and prescription or use of drugs or medicine, except that X-ray, analytical instruments and routine laboratory procedures, not involving the penetration of human tissues except for blood testing, may be used for the purpose of examination."

Under this statute, a chiropractor may diagnose and treat human injuries and diseases; thus the practice of chiropractic falls within the definition of Section 67-1-3, **supra**. He may not perform surgery or prescribe drugs, but Section 67-1-3, **supra**, did not require that the license provide authorization to do these in order to be a license to practice the healing art.

{*93} More recent legislative intent that chiropractic should be included in the healing arts is evidenced by the title of the Chiropractic Practice Act passed in 1968. It refers to the act as, "An act relating to the healing arts." At the time this new Chiropractic Practice Act was passed, as Laws 1968, Chapter 3, Sections 1-15, the former statutes dealing with chiropractic **and** the statutes dealing with the practice of the healing arts were repealed in Laws 1968, Chapter 3, Section 16. This indicates a legislative practice of linking chiropractic with the healing arts.

A definitive case definition of "healing art" is found in **Steinback v. Metzger**, 63 F.2d 74 (3d Cir. 1933) which stated that "healing art," which is the art of relieving and curing human ills, is a generic expression and ordinarily embraces the whole art of healing and its many theories and practices. **England v. Louisiana State Bd. of Medical Examiners**, 246 F. Supp. 993 (D. C. La. 1965) held that chiropractic is a healing art designed to relieve human ailments by manipulation and adjustment of the spine.

There is no valid reason for not including chiropractors within this prohibition absent specific language by the Legislature that insurance policies may restrict the insured's choice of a chiropractor. Chiropractic must fall within the scope of healing arts.

Therefore, we are of the opinion that the restriction of Section 58-11-19, **supra**, prohibiting discrimination against an insured in the choice of a practitioner of the healing arts, applies to chiropractors.