Opinion No. 41-3956

November 25, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Dr. John D. Clark President Basic Science Board University of New Mexico Albuquerque, New Mexico

*{*129}* Receipt is acknowledged of your letter dated November 21, 1941, enclosing the letter to you from Mr. J. W. Howell dated November 19, 1941, in which he asks for information relative to establishing a massage department at the Y. M. C. A. in Albuquerque as a part of the physical department of said organization. You also intimate that persons unlicensed by the Basic Science Board may be avoiding prosecution by announcing themselves to be masseurs, and ask for an opinion from this office regarding this matter.

A good statement of the law distinguishing masseurs from physicians appears in 48 C. J., Section 23, at page 1076, as follows:

"A masseur without a license or certificate to practice medicine does not violate the statutes requiring such a license or certificate where he confines himself to the particular sphere of labor of a masseur and merely massages other persons without reference to any pains or diseases which such persons may profess to have; but the rule is otherwise where he undertakes to treat diseases for pay, and in doing so uses means not customarily used by a masseur in his particular sphere of labor."

Section 2, Chapter 189, Laws of 1941, defines "healing arts" as follows:

"For the purpose of this act, the healing art includes any system, treatment, operation, 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."

A question similar to this was *{*130}* considered in the case of Neyman v. State, 124 S. W., 956 58 Texas Criminal Reports 223, in which the statute exempted masseurs in their particular sphere of labor. The court held that a masseur was practicing medicine when he held himself out as a physician who treated and cured diseases. To the same effect is the case reported at 150 S. W. 434, in which the court uses this language:

"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."

In the case of People v. Brown, 202 Ill. App. 530, the court stated:

"Evidence showing that the defendant treated her patients by rubbing, giving advice as to diet and breathing, and collected fees therefor, held sufficient to sustain judgment against her, to recover penalty for practicing medicine without a license."

And in the case of People v. Jones 92 Ill. App. 447, under a statute defining the practice of medicine and exempting treatment by "mental and spiritual means", the court held that one giving massage treatment was not within the exception and was practicing medicine.

I believe all of these authorities are more or less in accord with the general statement found in Corpus Juris, above quoted, and as long as a masseur confines himself to the particular sphere of labor as a masseur, and merely massages other persons without reference to any pains or diseases which they may profess to have, then I do not believe such a masseur would come under the provisions of Chapter 189, or would be engaged in practicing any of the healing arts. However, the moment such a masseur begins to diagnose cases coming to him, and to hold himself out as being able to treat or cure diseases, or conditions in violation of Section 2, 189, Laws of 1941, then such masseur would be subject to prosecution under the terms of said law.

I assume that the Y. M. C. A. merely contemplates a massage department, and does not intend in any manner to violate the Basic Science Law. If that is the case, I know of nothing to prevent from installing such a department and do not believe any sort of license to do so is required.

C. C. McCULLOH,

Asst. Atty. General