STATE OF KANSAS

Office of the Attorney General

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February 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 41

The Honorable Richard B. Walker
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Public Health--Chiropractic Medicine--Surgery

Synopsis: K.S.A. 65-2872 prohibits licensed chiropractic physicians from "performing any surgery." This prohibition was correctly interpreted by Attorney General John Anderson, Jr., in 1960 to prohibit chiropractic physicians from the withdrawal of blood samples from a living human being by needles or other instruments in any procedure entailing the penetration of human tissue. Neither a chiropractic physician nor nurses, assistants or other employees thereof are authorized to perform surgery, for it is excluded from the practice of chiropractic medicine by the Kansas Healing Arts Act.

* * *

Dear Representative Walker:

In an opinion issued in 1960, Attorney General John Anderson, Jr., concluded that withdrawal of a blood sample from a living human being by a licensed chiropractor for the purpose of medical and chemical analysis, using procedures involving puncture of living human tissue by needles or other apparatus, constitutes the performance of surgery which is prohibited to chiropractors under K.S.A. 65-2871.

You inquire concerning Opinion No. 73-162, an opinion letter issued under date of May 2, 1973, to Dr. Brian Davis, then president of the Kansas Board of Healing Arts, signed by John Martin of this

office, in which it is concluded that the statutory prohibition against the performance of surgery by chiropractors is inapplicable to the performance of a procedure for the withdrawal of blood by one acting in the course of "professional services performed under the supervision of or by order of or referral from" a licensed chiropractor.

As you point out, the letter does not state the question to which it was addressed, and you inquire concerning the circumstances under which it was written. It was the result of several visits to this office by Dr. Davis, who repeatedly and insistently urged that the Attorney General issue a new opinion on the question, and, in effect, reverse the 1960 opinion of General Anderson. Each of these conversations was with John Martin, who refused to recommend a reversal of that opinion. Dr. Davis did not, to my knowledge, pursue his request personally with the Attorney General at that time. In the course of those conversations, however, Dr. Davis complained that the 1960 opinion was offered by various medical laboratories as one reason for refusal to withdraw blood samples from patients referred to them by chiropractors. Nothing in that opinion, of course, prohibits a licensed physician and surgeon from performing surgery upon patients referred by a chiropractor. Because the medical laboratories to which Dr. Davis referred were operated by licensed physicians and surgeons, Mr. Martin expressed the view that the 1960 opinion did not prohibit a licensed physician or surgeon operating such a laboratory from taking blood specimens from patients referred by a chiropractor. Dr. Davis asked that this view be confirmed in writing, and Opinion No. 73-162 was prepared accordingly. These are the circumstances under which that opinion was written, and the question it was intended to address.

Secondly, you ask whether the opinion supports the conclusion that "persons who assist chiropractors may withdraw blood from a living human body for purposes of chemical analysis or other purposes." It does not. I understand that some persons have represented the opinion letter as supporting the absurd proposition that although a chiropractor may not withdraw blood for diagnostic purposes from a living human body by the puncture of tissue through the use of needles or other apparatus, his or her nurses and assistants may do so. The argument ignores the plain language of the Act. Under K.S.A. 65-2871, chiropractors are expressly prohibited from "performing any surgery." This is a statutory limitation upon the practice of chiropractic medicine, and a licensed chiropractor who performs surgery or directs it to be performed in the course of his or her practice upon his or her patients by his or her nurses, assistants and other employees, violates the express limitations upon the practice of chiropractic medicine. K.S.A. 65-2872(g), cited in that opinion, exempts from the practice of the healing arts as defined in the act "[p]ersons whose professional services are performed under the supervision or by order of or referral from a

practitioner who is licensed under this act." A chiropractor is not licensed to perform surgery. Moreover, surgery is not within the lawful professional service of any person who is not licensed as a physician and surgeon or osteopathic physician under the act, or any person who is not acting at the direction, under the supervision or upon the order of a licensed physician or surgeon or osteopathic surgeon. The argument which is sought to be based on that opinion is both legally unsound and logically inconceivable.

Lastly, you ask whether, in my opinion, the 1960 opinion of General Anderson remains a valid interpretation of present statutory language. In responding to the question presented to him, he was called upon to formulate a definition of surgery. In doing so, he reviewed a number of cases, including two California decisions which were particularly pertinent, although not controlling. The pertinent section of the Medical Practice Act of California Business and Professional Code defined the scope of practice of drugless practitioners, including chiropractic physicians, thus:

> "The drugless practitioner's certificate authorizes the holder to treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs . . . and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord."

General Anderson properly regarded this statutory language as a prohibition against the performance of surgery by drugless practitioners, a prohibition squarely analogous to that found in our own Healing Arts Act, and finding no more satisfactory definition of the term "surgery" elsewhere, applied it to the term as found in the Kansas Act. I have reviewed the cases cited in that opinion, and cases decided since 1960, and have found no more adequate, clearly framed, and usefully applicable definition of the term for the administration of the Kansas Healing Arts Act. I believe that the 1960 opinion is well-reasoned and an entirely correct interpretation of the Kansas Healing Arts Act, and I adhere to that conclusion, that a chiropractic physician licensed under the Kansas Healing Arts Act is not authorized to withdraw blood from a living human body for the purpose of medical and/or chemical analysis or for any other diagnostic purpose, using procedures involving the puncture of human tissue by either needles or any other apparatus.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

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