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ATTORNEY GENERAL OPINION NO. 89- 91

Lawrence T. Buening, Jr.
General Counsel
Kansas Board of Healing Arts
Landon State Office Building, Suite 553
Topeka, Kansas 66612-1256

Re: Public Health--Healing Arts; Kansas Healing Arts
Act--Persons Deemed Engaged in Practice of
Chiropractic

Synopsis: A surgical operation includes severing tissue and penetrating the human body for treatment, replacement, or removal of afflicted parts. Surgical operations must be performed by those individuals who are licensed to practice medicine and surgery. An individual licensed to practice chiropractic may treat a stress fracture if the treatment does not involve a surgical operation, and so long as the treatment is within chiropractic methodology. Such methodology may include the use of a plaster cast. Cited herein: K.S.A. 65-2802, 65-2803; K.S.A. 1988 Supp. 65-2836, as amended by 1989 Senate Bill No. 182; K.S.A. 1988 Supp. 65-2869; K.S.A. 65-2871; R.S. 1923, 65-1005.

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Dear Mr. Buening:

As general counsel to the Kansas board of healing arts, you request our opinion regarding the authorized scope of practice for a chiropractic licensee. Specifically, you ask:

"a. Is an individual who has been issued a license to practice chiropractic by the State Board of Healing Arts in

violation of the Healing Arts Act (K.S.A. 65-2801, et seq.) by treating a possible stress fracture?

"b. Does an individual who has been issued a license to practice chiropractic by the State Board of Healing Arts unlawfully engage in the practice of medicine and surgery by applying a cast for any purpose whatsoever?"

Treatment of a fracture is included in the practice of the healing arts, which is defined in K.S.A. 65-2802(a) as:

"any system, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic."

Any person engaging in the practice of any branch of the healing arts must first obtain a license to do so. K.S.A. 65-2803. A person who is licensed by the board is subject to disciplinary action for unlawfully invading the field of practice of another branch of the healing arts in which that individual is not licensed to practice. K.S.A. 1988 Supp. 65-2836(g), as amended by 1989 Senate Bill No. 182.

The scope of practice of chiropractic is established by K.S.A. 65-2871. Individuals are deemed to engage in the practice of chiropractic if they are:

"(a) Persons who examine, analyze and diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any accredited chiropractic school or college and (b) persons who adjust any misplaced tissue of any kind or nature, manipulate or treat the human body by manual, mechanical, electrical or natural methods or by the use of physical means, physiotherapy (including light, heat, water or exercise), or by the use of foods, food concentrates, or food extract, or who apply first aid and hygiene, but chiropractors are expressly prohibited

from prescribing or administering to any person medicine or drugs in materia medica, or from performing any surgery, as hereinabove stated, or from practicing obstetrics." K.S.A. 65-2871.

The statute is broader than other definitions associated with the practice of chiropractic. For example, chiropractic is defined elsewhere as

"a method of detecting and correcting by manual or mechanical means structural imbalance, distortion or subluxations in the human body to remove nerve interferences where such is the result of or related to distortion, misalignment or subluxations of or in the vertebral column. [citation omitted.] A system of therapeutic treatment, through adjustment of articulations of human body, particularly those of the spine. [citation omitted.] The specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae." Black's Law Dictionary 218 (5th ed. 1979).

Reference to treating the human body through manipulation of the spine summarizes the scope of practice of chiropractic in other states.

"'Chiropractic' is a limited science which deals with the relationships between the articulations of the vertebral column as well as other articulations and the nervous system and the role of these relationships in the restoration and maintenance of health.

"The practice of chiropractic embraces diagnosis, including spinal analysis to determine the existence of spinal subluxations or misalignments that produce nerve interference, indicating the necessity for chiropractic care, the adjustment of spinal subluxations and misalignments and related bones and tissues for the establishment of neural integrity, and the furnishing of the necessary patient care for the restoration

of health. The practice of chiropractic does not include the performance of incisive surgical procedures, the performance of an invasive procedure requiring instrumentation, the reduction of fractures, or major dislocations, or the dispensing or prescribing of drugs or medicines. 70 C.J.S., Physicians and Surgeons, §5 (1987).

This narrower scope of practice appears to be what was understood as chiropractic in the earlier days in Kansas. In State v. Johnson, 84 Kan. 411 (1911), the Kansas Supreme Court held that the laws regulating the practice of medicine, surgery and osteopathy embrace one who practices chiropractic. At that time, the practice involved manipulation of the spinal column to treat disease. 84 Kan. at 415-16.

As indicated, the current statute does not limit the practice of chiropractic to manipulation of the spinal column. A chiropractic licensee may treat the human body by the listed methods, but may not perform any surgery. The statutes address "how" something is treated, not "what" is treated. Therefore, it appears that the scope of chiropractic does not exclude treatment of a fracture, so long as such treatment does not amount to surgery.

The prohibition against performing any surgery limits the method of treating a fracture. The term "surgery" in the context of the scope of chiropractic was construed in Acupuncture Society of Kansas v. Kansas State Bd. of Healing Arts, 226 Kan. 639 (1979). In that case, the Kansas Supreme Court held that acupuncture is not surgery, and is not prohibited in the practice of chiropractic. The trial court had stated that "'[s]urgery' is a broad term employed to cover the work surgeons do. 'Surgery' covers procedures in which no incision or entering of the skin is involved; for example, a closed reduction of a fracture. The traditional chiropractic theory involves external manipulation, applying heat to the exterior, etc." 226 Kan. at 642. The trial court was therefore applying a broad concept of surgery and a narrow concept of chiropractic. The Kansas Supreme Court reversed, applying a narrower definition of "surgery," stating "'[s]urgery is what surgeons do' -- sever the tissues of the body for the purpose of penetration for treatment, replacement or removal of afflicted parts." 226 Kan. at 646.

In so construing the healing arts act the Supreme Court did not address previous definitions of surgery. In The State,

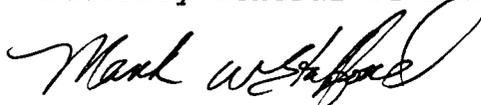
ex rel. v. Eustace, 117 Kan. 746 (1925), the Court had applied the dictionary definition of surgery in construing R.S. 1923, 65-1005, the previous law which is similar to K.S.A. 1988 Supp. 65-2869. Surgery was defined by Webster's dictionary as "the art or practice of healing by manual operation; that branch of medical science which treats of mechanical or operative measures for healing diseases, deformities, or injuries." 117 Kan. at 748. In State, ex rel. v. Gleason, 148 Kan. 1 (1938), the Court distinguished the practice of medicine and surgery from the practice of osteopathy. Osteopaths had been prohibited from performing operations in surgery. This phrase was later deleted from the statute. The court held that this did not confer unrestricted authority to perform surgery. Surgery, in a "broadest sense includes adjustment of bones, muscles, ligaments and nerves by manual operation. . . ." 148 Kan. at 11. These decisions appear to be limited by Acupuncture Society.

In summary, we believe that a chiropractic licensee may treat a stress fracture, unless the treatment involves a surgical operation. A surgical operation involves severing tissue and penetrating the human body for treatment, replacement or removal of afflicted parts. A surgical operation to diagnose, cure, or treat a fracture must be conducted by a person licensed to practice medicine and surgery. See K.S.A. 1988 Supp. 65-2869(b). Obviously, the chiropractic licensee is limited to treating the stress fracture through the use of chiropractic methods. In our opinion, such methods may include the use of a plaster cast.

Very truly yours,



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Attorney General of Kansas



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