S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
500 CHARLOTTE AVENUE
NASHVILLE, TENNESSEE 37243

August 15, 2000

Opinion No. 00-131

Diagnostic Testing Under the Chiropractic Practice Act

QUESTION

Does the Chiropractic Practice Act, as amended in 1999, permit doctors of chiropractic to order and receive the results of diagnostic testing from licensed medical laboratories, including urinalysis, arthritis panel, urine count, glucose tolerance test, male-female endocrine profile, standard blood profile (CBC with differential) and pregnancy testing?

OPINION

Decisions of the Tennessee appellate courts and an opinion of this Office have previously established that a chiropractor would exceed the scope of the statutory definition of "chiropractic" by collecting and examining human specimens, and, implicitly, by ordering the examination of such specimens. Several of the statutes relied upon in the above decisions and opinion have been subsequently amended; however, the amendments do not explicitly overrule the established principle. Therefore, we think additional legislation is required before chiropractors may order and receive from licensed medical laboratories the results of the diagnostic tests about which you have inquired.

ANALYSIS

The Chiropractic Practice Act defines "chiropractic" as "a system of healing based on the premise that the relationship between the structural integrity of the spinal column and function in the human body is a significant health factor and the normal transmission of nerve energy is essential to the restoration and maintenance of health." Tenn. Code Ann. § 63-4-101(a). Tenn. Code Ann. § 63-4-101(b) provides that "[t]he practice and procedures used by the doctor of chiropractic shall include the procedures of palpation, examination of the spine and chiropractic clinical findings accepted by the board of chiropractic examiners as a basis for the adjustment of the spinal column and adjacent tissues for the correction of nerve interference and articular dysfunction."

Specifically excluded from the practice of chiropractic are, *inter alia*, "[p]enetrating the skin with a needle or any other instrument," "[p]racticing any branch of medicine or osteopathy," "[x]ray of any organ other than the skeletal system," "[t]reating or attempting to prevent, cure or relieve a human disease, ailment, defect, complaint or other condition in any manner other than as authorized by the [Chiropractic Practice Act]," and "[i]nvasive diagnostic tests or analysis of body fluids." Tenn. Code Ann. § 63-4-101(d)(3), (4), (6), (7), (8). "Invasive" is statutorily defined as "any procedure involving penetration of the skin or any bodily orifice whether by hand or by any device." Tenn. Code Ann. § 63-4-101(d)(8). The use of superficial visual examination is not precluded. *Id*.

The regulations promulgated by the Board of Chiropractic Examiners interpret Tenn. Code Ann. § 63-4-101(d)(8) as "exclud[ing] any procedure involving penetration of the vaginal or anal orifice, by hand or any other device or to perform diagnostic tests or analysis of body fluids, however, shall not prohibit superficial examination and access to results of test [sic] when ordered, if done by other health professionals authorized to perform these test [sic]." Tenn. Comp. Adm. R. & Regs. 0260-2-.02(2)(c).[1]

In 1999, the Legislature enacted a new subsection under Tenn. Code Ann. § 63-4-101. Codified as Tenn. Code Ann. § 63-4-101(e)(1), it provides, in pertinent part:

> No person licensed under this title may perform a spinal manipulation or spinal adjustment without first having the legal authority to differentially diagnose, and having received a minimum of four hundred (400) hours of classroom instruction in spinal manipulation or spinal adjustment, and a minimum of eight hundred (800) hours of supervised clinical training at a facility where spinal manipulation or spinal adjustment is a primary method of treatment. "Spinal manipulation" and "spinal adjustment" are interchangeable terms that identify a method of skillful and beneficial treatment where a person uses direct thrust to move a joint of the patient's spine beyond its normal range of motion, but without exceeding the limits of anatomical integrity. A violation of this section is an unlawful practice of chiropractic and is grounds for the offending health care provider's licensing board to suspend, revoke or refuse to renew such provider's

---

[1]We also take note of the fact that the Tennessee Board for Licensing Health Care Facilities (the agency which licenses and regulates health care facilities, including hospitals) issued a declaratory order in 1990 which interpreted its regulations to permit:

> Doctors of chiropractic may order diagnostic evaluations on an outpatient basis for all purposes <u>within the scope of their practice</u> and in accordance with all hospital policies and procedures.

(Emphasis added).

> license or take other disciplinary action allowed by law.

You ask whether the 1999 amendment would now permit doctors of chiropractic to order and receive the results of diagnostic testing, some of which may involve invasive procedures or analysis of body fluids, in order to "differentially diagnose."

In an earlier opinion, we opined that a licensed medical laboratory could not accept a written request for examination of human specimens which had been collected and/or requested by a chiropractor. Tenn. Op. Atty. Gen. No. 81-153 (3/10/81)[2]. We reached this conclusion upon several grounds. First, in 1981, Section 53-4121 of the Tennessee Medical Laboratory Act[3] provided that human specimens could not be examined except upon written request of a "physician. . . dentist. . . or law-enforcement officer. . .." The term "physician" was defined in Tenn. Code Ann. § 53-4103(o)[4] as "any doctor of medicine or doctor of osteopathy duly licensed to practice his profession in Tennessee." We thus concluded that the Medical Laboratory Act did not permit a licensed medical laboratory to accept a written request for examination of human specimens from a chiropractor. Second, we relied upon the Tennessee Court of Appeals' decisions in *Spunt v. Fowinkle*, 572 S.W.2d 259 (Tenn. App. 1978) and *Ison v. McFall*, 55 Tenn. App. 326, 400 S.W.2d 243 (1964). In *Spunt*, the Court held that a chiropractor had exceeded the scope of the definition of chiropractic, then found at Tenn. Code Ann. § 63-401, by collecting and examining human specimens.[5] We stated in our opinion: "Implicit in this holding is the holding that a chiropractor cannot himself order the specimen's examination, *i.e.*, he was not a 'physician' within the meaning of [Tenn. Code Ann.] § 53-4103(o)." Tenn. Op. Atty. Gen. No. 81-153, *supra*. We also noted that the *Spunt* decision was based upon the Court of Appeals' holding, in accordance with its earlier decision in *Ison v. McFall*, that:

> the field of chiropractic [is] limited to the treatment of those illnesses and diseases of the human body which doctors of chiropractic reasonably believe can be aided by the manual manipulation of the spine. On the other hand, the field of doctors of medicine covers all human illnesses and diseases and their diagnosis, treatment and prevention.

---

[2]A copy of this opinion is attached.

[3]This section is now codified at Tenn. Code Ann. § 68-29-121.

[4]This section is now codified at Tenn. Code Ann. § 68-29-103(18).

[5]Dr. Spunt had conducted general physical examinations which included making pap smears and taking blood for analysis. He argued that he performed such procedures "only for the purpose of making a differential diagnosis to determine whether or not an individual patient had a condition for which chiropractic treatment would be appropriate and safe." 572 S.W.2d at 261, 263.

Spunt, 572 S.W.2d at 264, citing *Ison v. McFall*, *supra*, 400 S.W.2d at 257. We concluded that these appellate decisions made a clear distinction between doctors of medicine and doctors of chiropractic. Finally, we noted that the then-newly-enacted definition of chiropractic, codified at Tenn. Code Ann. § 63-401[6], included nothing that would abolish this distinction. "Under the new definition, emphasis is placed upon the 'structural integrity of the spinal column' and 'the adjustment of the spinal column and adjacent tissues.'" Tenn. Op. Atty. Gen. No. 81-153, *supra*.

Several of the statutes relied upon in our 1981 opinion have been subsequently amended. Tenn. Code Ann. § 68-29-121 (then codified at Section 53-4121) now provides, in pertinent part:

> (a) No person, except patients who are performing tests on themselves by order of their physician, shall examine human specimens without the written request of a physician or an intern or resident in an American Medical Association approved training program or a duly licensed optometrist or a duly licensed dentist or other health care professional legally permitted to submit to a medical laboratory a written request for tests appropriate to that professional's practice, or the written request of a law enforcement officer. . ..
>
> (b) The results of a test shall be reported directly to the physician, optometrist, dentist or other health care professional who requested it. . ..

(Emphasis added). Additionally, Tenn. Code Ann. § 63-4-101, entitled "'Chiropractic' defined — Mandatory practices" (formerly codified as Tenn. Code Ann. § 63-401), was amended in 1999 by the addition of subsection (e). See p. 2, *supra*. We must thus answer the question of whether or not these statutory changes have altered the conclusion reached by our 1981 opinion.

As is described below, we conclude that they have not. While the amendment to Section 68-29-101(a) of the Medical Laboratory Act has removed the formerly exclusive list of health care practitioners who may examine human specimens, and, impliedly, order examination of such specimens, the amendment still does not include chiropractors in the list of practitioners who are specifically authorized to do so. Moreover, the legislative addition of the phrase, "other health care professional[s] legally permitted to submit to a medical laboratory a written request for tests appropriate to that professional's practice," continues to require, in the present context, inquiry into the questions of whether a chiropractic physician is so "legally permit[ted]" and whether the ordering of such tests is "appropriate to [chiropractic] practice." In short, the amendment merely requires that such questions be asked; it does not answer them.

---

[6]This section is now codified at Tenn. Code Ann. § 63-4-101.

With the exception of the 1999 addition of subsection (e), Tenn. Code Ann. § 63-4-101, which establishes the legal and appropriate scope of chiropractic practice in Tennessee, has not changed since 1981, when we issued our previous opinion. As is set out below, we do not believe that the new language of the 1999 amendment, *i.e.*, "[n]o person licensed under this title may perform a spinal manipulation or spinal adjustment without first having the legal authority to differentially diagnose. . .," has, without more, changed the legal scope of chiropractic practice in the area of diagnostic testing.

The Legislature did not define the term, "differential diagnosis." Webster's New Twentieth Century Dictionary (2nd ed.) defines "differential diagnosis" as: "in medicine, the way and method of determining which of several related diseases or disorders is causing a particular illness, done by observing and comparing symptoms and test data." This definition provides that, in the practice of medicine, "test data" may be used to make a differential diagnosis. However, it falls far short of constituting authority for Tennessee chiropractors to order and receive the results of diagnostic testing from licensed medical laboratories, including urinalysis, arthritis panel, urine count, glucose tolerance test, male-female endocrine profile, standard blood profile (CBC with differential) and pregnancy testing. Nor does the legislative history surrounding passage of Tenn. Code Ann. § 63-4-101(e) provide any support for the conclusion that the general assembly intended to expand the chiropractic scope of practice in the area of diagnostic testing. To the contrary, neither of the terms "differential diagnosis" nor "diagnostic testing" was raised or addressed during the legislative discussions. Rather, the house and senate sponsors stated that the purpose of the legislation was to "define spinal manipulation as being a procedure that is within the domain of chiropractics," to "amend the Chiropractic Practice Act by defining the minimum training requirements necessary to perform spinal manipulation in Tennessee," and to "address who can perform spinal manipulations." House Health & Human Resources Committee, Hearing on House Bill 1622 (March 16, 1999) (statement of Representative Odom); House Session (House Bill 1622) (March 22, 1999) (statement of Representative Odom); Senate Session (Senate Bill 1652) (May 20, 1999) (statement of Senator Cooper).

The fundamental rule of statutory construction is to ascertain and, if possible, give effect to the intention or purpose of the Legislature as expressed in the statute. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). A statute's meaning is to be determined, not from special words in a single sentence or section, but from the act taken as a whole, and viewing the legislation in the light of its general purpose. *Cummings v. Sharp*, 173 Tenn. 637, 642, 122 S.W.2d 423 (1938). Statutes *in pari materia* (upon the same matter) should be construed together. *Westinghouse Elect. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984). The Legislature is presumed to know the state of the law on the subject under consideration. *Equitable Life Assurance Co. v. Odle*, 547 S.W.2d 939 (Tenn. 1977). This presumed knowledge includes judicial interpretations of laws, *Hamby v. McDaniel*, 559 S.W.2d 774 (Tenn. 1977), and the existing regulatory scheme, *Brown-Forman Distillers Corp. v. Olsen*, 676 S.W.2d 567 (Tenn. App. 1984).

We conclude that, in 1999, the Legislature was presumed to know that prior decisions of the Tennessee appellate courts and a prior opinion of this Office had established that a chiropractor would

exceed the scope of the statutory definition of "chiropractic" by collecting and examining human specimens, and, implicitly, by ordering the examination of such specimens. Yet when it amended the statute governing the legal scope of chiropractic practice in 1999, the Legislature included no language which explicitly overruled the established principle. Moreover, it left in place the statutory prohibitions against such activities as "[p]racticing any branch of medicine or osteopathy" and "[i]nvasive diagnostic tests or analysis of body fluids" (Tenn. Code Ann. § 63-4-101(d)(4), (8)). Therefore, we conclude that the 1999 amendment to Tenn. Code Ann. § 63-4-101 did not change the established principles regarding the scope of chiropractic practice with regard to diagnostic testing so as to permit doctors of chiropractic to order and receive the results of diagnostic testing from licensed medical laboratories, including urinalysis, arthritis panel, urine count, glucose tolerance test, male-female endocrine profile, standard blood profile (CBC with differential) and pregnancy testing. We think additional legislation is required before chiropractors may order and receive from licensed medical laboratories the results of the diagnostic tests about which you have inquired.

PAUL G. SUMMERS
Attorney General & Reporter

MICHAEL E. MOORE
Solicitor General

SUE A. SHELDON
Senior Counsel

Requested by:

Chairman, Tennessee Board of Chiropractic Examiners
c/o Peggy D. DePriest
General Counsel
Tennessee Department of health
26th Floor, Tennessee Tower
312 Eighth Avenue North
Nashville, TN 37247-0120