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Chiropractors and school
sports physicals

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In April of 1989, the former director of the Division of Occupational Licensing asked for our advice on whether chiropractors may perform school sports physical examinations. Please excuse the long delay in responding to this request. The short answer to this question is that it does not appear that chiropractors are authorized to perform these exams.

DISCUSSION

Applicable Statutes

The occupational licensing statutes and the education statutes are applicable to our inquiry in this case. Starting with the licensing statutes applicable to chiropractors, AS 08.20.100(b) defines the limits of chiropractic practice as follows:

- (b) A person licensed under this chapter may
 - (1) analyze, diagnose, or treat the chiropractic condition of a patient by chiropractic core methodology or by ancillary methodology;
 - (2) accept referrals for chiropractic treatment;
 - (3) consult on chiropractic matters;
 - (4) refer patients to other health care professionals;

(5) sign

(A) within the scope of chiropractic practice, 1/ certificates of physical examinations for children before they enter school;

(B) reports for excuses from employment and from attendance at school or participation in sports activities; and

(C) authorizations for sick leave;

(6) perform preemployment and workplace health examinations;

(7) provide disability and physical impairment ratings; and

(8) provide retirement health and disability authorizations and recommendations.

(Emphasis added.)

The relevant education laws are set out in AS 14.30.070 and 14.30.120. 2/ AS 14.30.070 provides:

1/ AS 08.20.900 defines key terms set out in AS 08.20.100(b) that delineate the scope of chiropractic practice. AS 08.20.230 generally explains the practice of chiropractic.

2/ It is interesting to note that AS 14.30.065 provides:

The program of physical examination and immunizations prescribed by AS 14.30.065 --- 14.30.127 shall be under the general supervision and in accordance with regulations of the Department of Health and Social Services.

The Department of Health and Social Services (Department) has not adopted regulations concerning physical examination of school children under AS 14.30.070. Perhaps the Division should encourage the Department to adopt regulations clarifying the physical exam program and thereby assist in addressing the question presented in this memorandum.

(a) The governing body of each school district shall provide for and require a physical examination of every child attending school in the district. The examination shall be made when the child enters school or, in areas where no physician resides, as soon thereafter as is practicable, and thereafter at regular intervals considered advisable by the governing body of the district. For purposes of this subsection, physical examinations, within the scope of chiropractic practice, may be conducted by a chiropractor.

(b) The Department of Health and Social Services may require the district to conduct additional physical examinations which it considers necessary, and may reimburse the district for the additional examinations on the basis and to the extent the commissioner of health and social services prescribes by regulation.

(c) Examination shall be made by a competent physician or, within the scope of chiropractic practice, by a chiropractor, except that if the services of a physician or chiropractor cannot be obtained or if authorized by the commissioner of health and social services examinations may be made by a nurse.

AS 14.30.120 provides:

The school board, when physical examinations are made, shall deliver to the parent, guardian, or other person having the responsibility for or control of the child a report signed by the physician or nurse making the examination, specifying the findings with respect to the health and physical well-being of the child. For purposes of this subsection, physician examinations, within the scope of chiropractic practice, may be conducted by a chiropractor.

The chiropractor licensing statutes and education statutes were revised in 1988, and the substance of these revisions as well as the legislative history of the revisions is relevant to the question presented. Attached for your information is the bill review memorandum written by our office

concerning the 1988 revisions. As you can see from the bill review, the scope of chiropractors' authority to perform school physical exams under existing law is not clear. For example, there are questions regarding the scope of chiropractic practice and performance of physicals within the scope of this practice.
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AS 14.30.070 and 14.30.120 authorize chiropractors to perform school physicals for children before they enter school and at regular intervals considered advisable by the governing body of the school district. While authorizing chiropractors to perform physicals, these statutes recognize a limit on chiropractors' ability to conduct examinations. Chiropractors are limited to performing school physicals "within the scope of chiropractic practice." If school sports physicals are examinations "at regular intervals considered advisable by the governing body of the school district," there is an argument that AS 14.30.070 authorizes chiropractors to conduct these physicals within the scope of chiropractic practice.

AS 08.20.100(b)(5)(A) and (B) establish limits on the scope of chiropractic practice. Review of this statute is helpful in answering this question because AS 08.20.100(b)(5)(A) specifically allows chiropractors to perform physical exams for children before they enter school, and AS 08.20.100(b)(5)(B) is likewise very particular in allowing chiropractors to sign reports for excuses from attendance at school or participation in sports activities. However, neither of these very specific subsections explicitly allows chiropractors to perform school sports physical exams. One could argue that, because AS 08.20.100(b)(5)(B) allows chiropractors to sign excuses for students from participating in school sports activities, it impliedly authorizes chiropractors to perform the school sports physical exam. However, this argument requires us to imply that chiropractors derive this general power from a very carefully worded, specific statute. 4/

3/ We note that before enactment of these revisions our office issued a memorandum opinion that chiropractors were not authorized to perform school physicals because chiropractors are not physicians. 1978 Inf. Op. Att'y Gen. (663-78-0399; May 24) A copy of this memorandum is also attached for your information.

4/ The argument is further weakened by the difference between the type of exam required for an excuse from athletics as opposed

Rules of Statutory Interpretation

There are three rules of statutory interpretation applicable to this question. The first rule, "ejusdem generis," means that, had the legislature intended the general words to be used in their unrestricted sense, it would have had no need to mention the particular words. 2A N. Singer, Sutherland Statutory Construction • 47.17 (4th ed. 1984). Had the legislature intended that chiropractors be allowed to perform all school physicals, it would not have included the language in AS 08.20.100(b)(5)(A) limiting physicals to those exams children have before entering school and the language in AS 08.20.100(b)(5)(B) limiting physicals to excuses from school sports.

The second rule, known as "expressio unius est exclusio alterius," stands for the proposition that where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions.

2A N. Singer, supra, • 47.23. AS 08.20.100 designates that chiropractors may perform school physicals for children before they enter school and may sign reports excusing children from participating in sports activities. These specific designations of physical exams allow us to infer that all types of exams not set out are excluded from the authorized practice of chiropractors.

Finally, because the above two sets of laws relate to the same class of persons and have the same purpose or object, the chiropractor statutes should be read "in pari materia" with the education laws on related subjects. The two statutes were amended by the legislature in the same Act and it is therefore reasonable to assume that the legislature was aware of the provisions of each law and how the two statutes related to one another. Under these circumstances, the in pari materia rule has
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to the type required for participation in sports. A student may have an obvious chiropractic condition requiring an excuse from sports. However, this is very different from the comprehensive physical exam required to certify that a student is fit to participate in strenuous school athletic activities.

the greatest probative force. 2A N. Singer, supra, • 51.03. Under this rule of statutory interpretation, when one statute deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling. 2A N. Singer, supra, • 51.05.

The education statutes allow chiropractors to perform school physical examinations within the scope of chiropractic practice. The education statutes are thus general statutes on the same subject of the role of chiropractors in performing school physical examinations and should be construed in *pari materia* with the more specific statute defining the scope of chiropractic practice applicable to performance of school physical exams. As explained above, the more specific statute, AS 08.20.100, defines limitations on the ability of chiropractors to perform school physical exams. It is possible to harmonize the two statutes. Read together, these laws mean that chiropractors may perform school physicals within the scope of authorized chiropractic practice and this practice includes only examining students before they enter school and excusing students from participating in school sports. We would reach the same result were the statutes impossible to harmonize, because the more specific law, AS 08.20.100, prevails unless there is legislative intent that the more general statutes, AS 14.30.070 and 14.30.120, control.

Review of the legislative history of the above statutes reveals that AS 08.20.100, AS 14.30.070, and 14.30.120 were amended in 1988 by HCS SB 264(HESS) and that AS 14.30.070(c) was amended in 1989 through the revisor's bill for that year, SCS CSHB 148. This latter revision was necessary to reconcile the apparent inconsistency between AS 14.30.070(a) and 14.30.070(c) created by enactment of HCS SB 264(HESS). 5/ HCS SB 264(HESS)

5/ The explanation for this revision is set out in the Senate - House Joint Journal Supplement as follows:

Chapter 60, SLA 1988 (HCS SB 264(HESS)) amended AS 14.30.070(a) to allow chiropractors to conduct certain school examinations and AS 14.30.120 to allow chiropractors to conduct physicals and to sign the certificates of physical examinations

amended both the chiropractor licensing statutes in Title 8 and the education statutes in Title 14 to address, among other things, chiropractors' authority to conduct school physicals.

The legislative history of HCS SB 264(HESS) reveals that there was substantial debate over chiropractors' ability to conduct school physicals. 6/ The original language proposed for AS 08.20.100(b)(5)(A) allowed chiropractors to sign "reports of examinations of school children." This broad language was then replaced with the more limited language ultimately enacted in AS 08.20.100(b)(5)(A) allowing chiropractors to perform only examination of school children before they entered school. This part of the legislative history of HCS SB 264(HESS) indicates that the legislature intended to limit the scope of chiropractors' practice to administering only initial school physical exams.

CONCLUSION

Although it is a very close question, in balancing the arguments we conclude that chiropractors are not authorized by the applicable statutes to perform school sports physical exams.

In the process of preparing this memorandum, our office received information from representatives of the chiropractic profession purporting to show that chiropractors are competent to perform

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that are sent to the student's parent or guardian.

However, AS 14.30.070(c) was not amended, and without the amendment proposed by this section, conflicts with both AS 14.30.070(a) and 14.30.120.

The amendment was suggested by the Department of Law.

1989 Senate-House Joint Jour. Supp. No. 10 (May 5).

6/ The chiropractors' own lobbyist testified on April 27, 1988, before the House Health, Education and Social Services Standing Committee that the chiropractors' authority to administer school physicals would be limited to initial examinations. Mr. Gravo testified that the proposed language for AS 08.20.100 in the original version of SB 264 was much broader than intended by the chiropractors; he suggested adding limiting language on behalf of the chiropractors. April 27, 1988, House HESS Committee meeting discussion of SB 264, tape one, side two at tape numbers 204 and 1020.

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physical examinations required for childrens' participation in school sports programs and expressing their opinion that they should be allowed to perform these exams. We express no opinion on the issue of chiropractors' ability to perform school sports physicals, as this is a health care issue beyond the scope of this memorandum.

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cc: Marcia Bissell, Anchorage Regional Manager
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