

**LETTER OPINION
2001-L-16**

May 17, 2001

Jerry Blanchard, D.C.
Executive Director
State Board of Chiropractic Examiners
PO Box 185
Grafton, ND 58237-0185

Dear Dr. Blanchard:

Thank you for your letter asking whether a medical doctor and a chiropractor may create and own a professional organization under N.D.C.C. ch. 10-31.

N.D.C.C. ch. 10-31 is the Professional Organizations Act (the "Act"). It permits certain professionals to render professional services through certain types of professional organizations. The term "professional service" is defined in the Act as "personal service to the public which requires a license as a condition precedent to the rendering of such service and which before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership." N.D.C.C. § 10-31-01(10). Professional organizations include a professional corporation, professional limited liability company, and a professional limited liability partnership. See N.D.C.C. § 10-31-01(9). An owner of a professional organization means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership. N.D.C.C. § 10-31-01(5). The three individual types of professional organizations are each further defined to mean a professional entity formed under the Act "for the purpose of rendering professional service and which has as its [owners] only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service" N.D.C.C. § 10-31-01(6), (7), and (8).

N.D.C.C. § 10-31-04(1) provides that

A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. . . .

Neither N.D.C.C. ch. 43-06, dealing with licensing of chiropractors, or N.D.C.C. ch. 43-17, dealing with licensing of medical doctors, specifically authorizes the practice of medicine and chiropractic to be done in combination. Consequently, under N.D.C.C. § 10-31-04(1), such a professional organization could only be created if medical doctors and chiropractors are rendering “one specific type of professional service” or “services ancillary thereto.”

Neither the North Dakota Supreme Court nor this office has ever directly addressed whether a professional organization may be created under N.D.C.C. ch. 10-31 for the purpose of rendering professional services by medical doctors and chiropractors in combination and, in particular, whether these professionals were rendering one specific type of professional service within the meaning of N.D.C.C. § 10-31-04.

In another context, the North Dakota Supreme Court stated that the practice of chiropractic is recognized as one of the healing arts in this state and “[a] license to practice chiropractic is a limited license to ‘practice medicine,’” Klein v. Harper, 186 N.W.2d 426, 430 (N.D. 1971) (quotation omitted). The Court further noted the “practice of chiropractic is the practice of medicine, although in a restricted form.” Id. at 431. However, the Court in Klein was not presented with the issue of whether medical doctors and chiropractors may create and form a professional organization under N.D.C.C. ch. 10-31. Rather, the Court was ruling on whether a trial court properly permitted a chiropractor to base his opinion testimony on “medical certainty” as opposed to “chiropractic certainty” in a personal injury action arising out of an automobile accident. Id. at 429-430.

While the North Dakota Supreme Court recognized chiropractic as a restricted limited form of the practice of medicine in the context of giving opinion testimony in a personal injury action, this does not resolve the question of whether medical doctors and chiropractors are rendering “one specific type of professional service” within the meaning of N.D.C.C. § 10-31-04. N.D.C.C. § 43-06-01(2) provides that the “‘practice of chiropractic’ includes . . . examination, evaluation, and diagnosis . . . taught by chiropractic colleges” Further, “[t]he practice of chiropractic does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery . . . nor practicing obstetrics.” N.D.C.C. § 43-06-01. N.D.C.C. § 43-17-01(3) defines the significantly broader practice of medicine as including:

. . . the practice of medicine, surgery, and obstetrics. The following persons must be regarded as practicing medicine:

- a. One who holds out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings.
- b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.
- c. One who maintains an office for the examination or treatment of persons afflicted with disease or injury of the body or mind.
- d. One who attaches the title M.D., surgeon, doctor, D.O., osteopathic physician and surgeon, or any other similar word or words or abbreviation to the person's name, indicating that the person is engaged in the treatment or diagnosis of the diseases or injuries of human beings must be held to be engaged in the practice of medicine.

(Emphasis supplied.)

Thus, while a chiropractor may perform some acts which constitute the practice of medicine, such practice is not nearly as broad as that permitted for a medical doctor in that chiropractors are specifically excluded from prescribing medicine or performing surgery and are limited to examinations, evaluations, diagnoses, and procedures taught by accredited chiropractic colleges. N.D.C.C. § 43-06-01.

Prior opinions and correspondence from this office have also recognized the limited nature and scope of chiropractic practice. See 1995 N.D. Op. Att'y Gen. L-104, L-106 (chiropractor may make examination, evaluation, or diagnosis concerning any physical condition that may be evaluated by procedures and examinations taught by accredited chiropractic colleges, but would not encompass a general physical exam concerning any physical condition or disease not directly related to the practice of chiropractic); Letter from Attorney General Nicholas Spaeth to Wayne Sanstead (Apr. 28, 1989) (chiropractor may not perform physical examinations upon high school students to determine fitness to participate in athletic activities; "practice of chiropractic is limited to those procedures specifically permitted by statute. Expansion of . . . chiropractic beyond these statutory limitations must be based on explicit statutory language, not broad inferences."). Cf. Letter from Attorney General Nicholas Spaeth to Jens Tennefos (July 14, 1987) (while psychologists may treat mental ailments, such activities do not fall within the definition of

practicing medicine in view of the fact that psychologists cannot prescribe medicines or perform surgery).

Similarly, although a chiropractor may diagnose and treat certain physical conditions which might constitute the partial practice of medicine, such activities are limited in scope in that they may not prescribe medications or perform surgery and are limited to techniques and procedures taught by chiropractic colleges and which relate to the practice of chiropractic. N.D.C.C. § 43-06-01; 1995 N.D. Op. Att'y Gen. L-104, L-106 to L-107 ("no one including chiropractors 'believes that chiropractic treatment should be used for the treatment of diseases such as cancer, diabetes, heart disease, high blood pressure, and infections,'" quoting Wilk v. American Medical Association, 671 F.Supp. 1465, 1482 (N.D. Ill. 1987), aff'd, 895 F.2d 352 (7th Cir. 1990)). Because of the limited scope and nature of chiropractic practice in comparison to the broader practice of medicine, it is my opinion that although chiropractic is a limited and restricted form of the practice of medicine, for purposes of N.D.C.C. ch. 10-31 medicine and chiropractic do not constitute one specific type of professional service for which a professional organization may be created under N.D.C.C. § 10-31-04(1).

However, N.D.C.C. § 10-31-04 does permit professional organizations to be created if one specific type of professional service and "services ancillary thereto" are performed. The terms "ancillary" or "ancillary service" are not defined in N.D.C.C. ch. 10-31. However, the term "ancillary" has been defined as "[s]ubordinate . . . [h]elping; auxiliary." American Heritage Dictionary 107 (2d coll. ed. 1991). The term has been similarly defined as "[a]iding; attendant upon; . . . Auxiliary or subordinate." Black's Law Dictionary 85 (6th ed. 1990). Thus, for example, in the letter from Attorney General Nicholas Spaeth to Jens Tennefos (July 14, 1987), it was determined that although the practice of psychology did not fall within the definition of practicing medicine because a psychologist could not prescribe medicines or perform surgery, the letter did recognize that a psychologist may perform services ancillary to the practice of medicine because the psychologist serves to aid medical treatment. Consequently, it was determined that it may be possible for a psychologist to become a shareholder in a professional corporation practicing medicine. Id. Likewise, in the present case it could be said that a chiropractor serves to aid medical treatment and a chiropractor could be an owner of a professional organization practicing medicine. See also Letter from Attorney General Nicholas Spaeth to Ben Meier (Nov. 1, 1988) (practice of optometry may be considered to be ancillary to the practice of ophthalmology).

Based on the foregoing, it is my opinion that the practice of chiropractic may be considered ancillary to the practice of medicine and, consequently, a medical doctor and a chiropractor licensed in North Dakota may create and own a professional organization on

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the basis that the professional organization would be providing the professional service of medicine and services ancillary thereto.

Sincerely,

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Attorney General

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