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October 25, 1986

The Honorable Thomas W. Athey
County Attorney for York County
P. O. Box 532
Yorktown, Virginia 23690

My dear Mr. Athey:

You ask three questions regarding the meaning of the physical examination and immunization requirements for admission of students to public schools as set forth in §§ 22.1-270 and 22.1-271.2 of the Code of Virginia. More specifically, you ask:

(1) whether an individual licensed to practice chiropractic by the Virginia State Board of Medicine is a "qualified licensed physician" for purposes of performing a physical examination within the meaning of § 22.1-270(A)(i);

(2) whether such an individual is a "licensed physician" who may give a written certification that "one or more of the required immunizations may be detrimental to the student's health" as contemplated by § 22.1-271.2(C)(ii); and

(3) whether a general statement to the effect that the vaccines used for preschool immunization are contraindicated because each of the vaccines is accompanied by a listing of certain potentially harmful side effects, where the statement does not relate the general potential for harmful side effects to specific medical conditions or circumstances of the child, satisfies the requirements for an exemption from immunization which are set forth in § 22.1-271.2(C)(ii).

I. Chiropractor Is Not "Qualified Licensed Physician" for Purposes of § 22.1-270(A)(i)

Section 22.1-270(A) provides, in pertinent part:

"No pupil shall be admitted for the first time to any public kindergarten or elementary school in a school division unless such pupil shall furnish, prior to admission, (i) a report

from a qualified licensed physician of a comprehensive physical examination of a scope prescribed by the State Health Commissioner performed no earlier than twelve months prior to the date such pupil first enters such public kindergarten or elementary school or (ii) records establishing that such pupil furnished such report upon prior admission to another school or school division and providing the information contained in such report." (Emphasis added.)

No definition of the term "physician" is found in Title 22.1; however, the term is defined in § 4-2(19) as "any person duly authorized to practice medicine pursuant to the laws of Virginia," and in § 8.01-581.1 as "a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 12 (§ 54-273 et seq.) of Title 54." Section 54-273(3) defines the "practice of medicine or osteopathy" as "the prevention, diagnosis and treatment of human physical or mental ailments, conditions, diseases, pain or infirmities by any means or method."

The "practice of chiropractic" is distinguished from the practice of medicine or osteopathy in § 54-273(6) and is therein defined to mean "the adjustment of the twenty-four movable vertebrae of the spinal column, and assisting nature for the purpose of normalizing the transmission of nerve energy. It does not include the use of surgery, obstetrics, osteopathy, nor the administration nor prescribing of any drugs, medicines, serums or vaccines."

A prior Opinion holds that diagnosis is contemplated as an element of the healing arts, including chiropractic. See 1981-1982 Report of the Attorney General at 193. The extent of the examination necessary to make a diagnosis, however, was not addressed. The physical examination required by § 22.1-270 is "comprehensive" and is to be of a scope prescribed by the State Health Commissioner. The standard School Entrance Physical Examination and Immunization Certification Form MCH 213B prescribes the scope of that examination to include laboratory testing, such as urinalysis, hemoglobin and tuberculin tests, as well as the certification of the immunizations about which you inquire.

I am not aware whether the training the chiropractor in question has received would enable him to interpret the required laboratory tests. I note, however, that the second portion of the form requires the examiner to certify that the child has received a proper immunization. Because chiropractors are specifically forbidden to prescribe or administer serums or vaccines

under § 54-273(6), it is my opinion that it would be contrary to the intent of the General Assembly to allow chiropractors to certify to the administration of immunizations which they themselves are not authorized to administer.[1]

In summary, because the scope of the preschool physical examination, including the certification of immunization, exceeds those areas to which a chiropractor's scope of practice is limited by § 54-273(6), I am of the opinion that a chiropractor is not a "qualified licensed physician" as contemplated by § 22.1-270.

II. Chiropractor Is Not "Licensed Physician" as Contemplated by § 22.1-271.2(C)(ii)

Section 22.1-271.2(C)(ii) provides an exception to the immunization requirements of Art. II of Ch. 14 of Title 22.1, if "the school has written certification from a licensed physician or a local health department that one or more of the required immunizations may be detrimental to the student's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization." (Emphasis added.)

Because, as noted above, the administration or prescription of any drugs, medicines, serums or vaccines is specifically excluded from the definition of the practice of chiropractic in § 54-273(6), it is my opinion that a chiropractor may not render a professional opinion on the possible effects of such drugs, medicines, vaccines or serums. Furthermore, because a chiropractor may testify as an expert witness in a court of law only with respect to matters within the scope of practice of chiropractic as defined in § 54-273,[2] I am also of the opinion that a chiro-

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[1]This interpretation is consistent with the language of § 8.01-401.2, which authorizes chiropractors to testify as expert witnesses in a court of law as to "etiology, diagnosis, prognosis, and disability, including anatomical, physiological, and pathological considerations within the scope of the practice of chiropractic as defined in § 54-273," but not as to other subjects of medicine. Reading §§ 8.01-401.2 and 54-273 together, the General Assembly has specifically limited the authority of chiropractors to render opinions in a court of law to matters involving the spinal column and the transmission of nerve energy.

[2]See supra note 1.

practor may not render an opinion to the State Health Department on a subject about which he may not render an opinion in a court of law. As a result, it is my opinion that the certification required by § 22.1-271.2(C)(ii) is outside the scope of the practice of chiropractic and that the "licensed physician" to which the statute refers does not include a doctor of chiropractic.

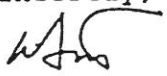
III. Statement that Specific Vaccines Are Contraindicated Because of Potential Side Effects Does Not Satisfy Requirements of § 22.1-271.2(C)(ii)

Your third question asks whether a statement by a "licensed physician" that "[t]he vaccines are specifically contraindicated because of potential allergic reactions including fever, convulsion, brain damage, encephalopathy, ataxia, hyperactivity, seizure, retardation, aseptic meningitis, hemiparesis, and death and the condition is permanent" (emphasis in original) satisfies the requirement of § 22.1-271.2(C)(ii). Because § 22.1-271(C)(ii) requires that the statement indicate "the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization" (emphasis added), a statement of potential side effects, without more, is, in my opinion, insufficient to satisfy the statutory requirement.

The obvious purpose of § 22.1-271.2(C)(ii) is to exempt children from the immunization requirement when it has been demonstrated that immunization poses a higher risk to the student's health than the risk of contracting one of the diseases against which the immunization is directed. The statement proffered above is a generalization not meeting the purpose or intent of the certification requirement set forth in the statute. Accordingly, I am of the opinion that the statement is not legally sufficient.

With kindest regards, I am

Sincerely,



Mary Sue Terry
Attorney General

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