

Opinion No. 33

MEDICINE; Chiropodist; prescription of drugs—CHIROPODIST; May prescribe drugs—PHARMACY; Chiropodist may prescribe drugs for the treatment of the human foot—Sections 66-601, 66-602, 66-604, 66-606, and 66-1007, Revised Codes of Montana, 1947—Chapter 2, Laws of 1923—Chapter 218, Laws of 1939.

Held: Chiropodists licensed under the laws of this state may legally prescribe drugs as a part of their professional treatment. However, the right to administer or prescribe drugs is limited to the direct treatment of an ailment of the human foot.

December 28, 1961

Mr. Emil Schoenholzer, Secretary
Montana State Board of Pharmacy
P. O. Box 2034
Billings, Montana

Dear Mr. Schoenholzer:

You have requested my opinion on the following question: May a licensed practitioner of chiropody legally prescribe drugs as a part of his professional treatment?

This question has never been decided by our Supreme Court and the decisions from other jurisdictions shed little light on the interpretation of the Montana law because of a diversity of statutory definitions, requirements and prohibitions. In many jurisdictions, by statute or de-

cision, the practice of chiropody is classified or defined as a field of "drugless healing" similar to our statutory definition of the practices of osteopathy, chiropractic and optometry. The practice of chiropody has not been so restricted by our statutes.

Regulation of chiropody or podiatry, as a branch of the healing arts, commenced in Montana with the enactment of Chapter 2, Laws of 1923. That Act was revised by Chapter 218, Laws of 1939, codified as Sections 66-601 through 66-611, RCM, 1947. Section 66-601, RCM, 1947, defines chiropody as:

"Chiropody (sometimes called podiatry) shall, for the purpose of this act, mean the diagnosis, **medical**, surgical, mechanical, manipulative and electrical treatment of ailments of the human foot. A chiropodist shall mean one practicing chiropody." (Emphasis added.)

The practice of chiropody is further defined by these statutory provisions: Section 66-602, RCM, 1947, provides in part:

". . . No chiropodist shall amputate the human foot or toe or toes, or administer any anesthetic other than local."

Section 66-605, RCM, 1947, provides in part:

"Every license issued hereunder shall be designated as registered chiropodist's license and shall not contain any abbreviations thereof, nor any other designation nor title except that a statement of limitation shall be contained in said license referring to the licensee as **registered chiropodist — practice limited to the foot**, so as not to mislead the public in regard to their right to treat other portions of the body . . ." (Emphasis added.)

Collectively these statutory provisions limit the scope of the practice of chiropody. Chiropodists may prescribe medical treatment. However, such treatment is expressly limited to the human foot and excludes amputation or the administration of general anesthetics. The question then is whether the term "medical treatment" includes the right to prescribe drugs. When construing statutes to determine legislative intent our Supreme Court, in the case of *Great Northern Utilities Co. v. Public Service Commission*, 88 Mont. 180, 206, 293 Pac. 294, said:

"The intention of the Legislature must be inferred from the plain meaning of the words. This rule must be first resorted to before resort should be had to other rules."

The plain meaning of the word "medical" as stated in "The New Century Dictionary" is "pertaining or relating to the science of medicine or to the practice or study of medicine." "Medicine" is defined by the same reference as:

"The art of science of restoring or preserving health or due physical condition, as by means of drugs, surgical operations or appliances manipulations, etc.; esp., the art or science of treating disease with drugs or curative substances; . . ."

It is evident then, that the statutes authorize chiroprodists to use and prescribe drugs for the treatment of the human foot. This interpretation is also, supported by Section 66-606, RCM, 1947, which presupposes the legal use of drugs by chiroprodists in that it provides a penalty for their illegal use.

If there is a prohibition against the prescription of drugs by chiroprodists, it must come from a statute not codified under Chapter 6, Title 66, Revised Codes of Montana, 1947. The prohibition against the practice of medicine is contained in Section 66-1007, RCM, 1947, which provides in part:

"(1) Any person practicing medicine or surgery within this state without first having obtained a certificate to practice, as provided by law, and after his certificate to practice has been revoked, or contrary to the provisions of this article, shall . . . be guilty of a misdemeanor, . . .

"(2) Any person shall be regarded as practicing within the meaning of this article who shall . . . recommend, prescribe, or direct, for the use of any person, any drug, medicine, appliance, apparatus, or other agency, . . . for the cure, relief, or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture, or bodily injury, or other deformity, after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation; . . ."

In the case of *State v. Bain*, 130 Mont. 90, 97, 295 Pac. 2d 241, our Supreme Court held that this statute precluded the practice of physiotherapy in Montana, as physiotherapists, at that time, were not authorized by statute to practice their profession and as a consequence did not possess the required certificate. As the statute prohibits certain acts **only** when the individual performing those acts is doing so without a certificate to practice, and as chiroprodists when licensed have a certificate to practice, the statute has no application to the question here under consideration.

Therefore, it is my opinion that chiroprodists licensed under the laws of this state may legally prescribe drugs as a part of their professional treatment. However, the right to administer or prescribe drugs is limited to the direct treatment of an ailment of the human foot.

Very truly yours,
FORREST H. ANDERSON
Attorney General