

CHIROPODIST:
UNPROFESSIONAL
CONDUCT:
ADVERTISING:

As used in the statutes concerning revocation of licenses "unprofessional conduct" is convertible with "dishonorable."
The State Board of Chiropractic may revoke for immoral or dishonorable advertising only.



November 21, 1955

L. A. Hansen, D.S.C.
Secretary
Missouri State Board of Chiropractic
800 Professional Building
Kansas City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"As Secretary of the Missouri State Board of Chiropractic, I should like to get an official opinion as to whether or not the Missouri State Board of Chiropractic can revoke or suspend a chiropractor's license for unprofessional conduct."

We fail to find any instances in the Missouri cases in which the term "unprofessional conduct" alone has been defined. It has arisen in association with other words as "unprofessional and dishonorable conduct," "unprofessional or dishonorable conduct," and "other unprofessional conduct," etc. Your question seems to be predicated upon a doubt as to the clarity and the definition of the term. Is it too vague, ambiguous and indefinite? It is noted that the chapter on Chiropractors is the only one among the chapters regulating the professions, such as law, medicine and medicine's allied professions, that uses such a term by itself as grounds for the revocation of a license.

In all the cases that we have found in which "unprofessional conduct" has been used along with other words or phrases, the courts have held that the terms were not too indefinite; that it is within the police power of the state to specify the grounds for revocation in such broad terms; that the legislature is not required to define with particularity the acts which constitute "unprofessional conduct."

In the case of Hughes v. State Board of Health, 159 S.W. (2d) 277, the court said:

L. A. Hansen, D.S.C.

"We have held such specific enumeration does not thereby exclude other acts indicative of unprofessional or dishonorable conduct not mentioned in the statute. Any conduct, although not specified, which by common opinion and fair judgment is determined to be unprofessional or dishonorable, may constitute grounds of revocation. State ex rel. Lentine v. State Board of Health, 334 Mo. 220, 65 S. W. 2d 943."

In the Lentine case the court had further said:

"Reference should be had to the policy adopted by the legislature in reference to the subject-matter, the object of the statute, and the mischief it strikes at or seeks to prevent, as well as the remedy provided. Looking to the policy and object of our Medical Practice Act as a whole, we find it to be an exercise of the inherent police power of the state in the protection of its people attempting to secure to the people the services of competent practitioners learned and skilled in the science of medicine, of good moral character and honorable and reputable in professional conduct. * * *"

The court further said:

"It would not be practicable to the carrying out of the wholesome purpose of the statute to undertake to catalogue, list, or specify each and every act or course of conduct which would, or under what circumstances, constitute bad moral character or unprofessional and dishonorable conduct, and we do not think the Legislature intended to do so. * * *"

In the case of Pierstorff v. Board of Embalmers, etc.,

L. A. Hansen, D.S.D.

an Ohio case, in 41 N. E. (2d) 889, the court said:

"The great weight of authority, and what we consider the better reasoned discussions bearing directly upon the question here involved, support the view that the statute involved in this case is not void and ineffective because it does not define the term 'unprofessional conduct,' nor is the board without power to revoke a license because it has not set up standards with reference to that term."

In the latter case the statute provided that a license might be revoked, "if the holder thereof has been guilty of immoral or unprofessional conduct."

In the Colorado case of Sapero v. State Board of Medical Examiners, 11 P. (2d) 555, a statute which used the words as a grounds for revocation, "immoral, unprofessional or dishonorable conduct," was in question. The court said:

"A physician's license cannot be revoked merely for violating professional ethics or the rules of a board of health; to be actionable, it must amount to a breach of law. (State Board of Dental Examiners v. Savelle, 8 P.(2d) 693; Chenoweth v. State Board of Medical Examiners, 141 P. 132; Aiton v. Board of Medical Examiners, 114 P.962.) The term 'unprofessional' is convertible with 'dishonorable,' in the common use of the word, and considered as dishonorable in the common judgment of mankind. Id. Comparing law with medicine, we know of no reported case where an attorney has been disbarred or disciplined by the court that its action would not be approved by an enlightened public conscience."

The court had earlier in the Sapero case stated:

L. A. Hansen, D.S.C.

"Manifestly, it was impossible as well as unnecessary for the General Assembly to anticipate all evil deeds that the words 'immoral, unprofessional or dishonorable' were intended to cover; hence the wisdom of looking to the usual definition of such words, or 'the common judgment of mankind', for a standard of construction. It crystallizes the statute into a definite meaning that all who read should be able to comprehend. * * * "

Thus, we see in practically all of the cases that the courts have used "unprofessional" along with the words immoral, unlawful, or dishonorable, they seemingly have categorized unprofessional with such other adjectives.

We do find, in a few cases, as in the case of Board of Education of City of Los Angeles v. Swan, 261 P. (2d) 261, the court saying that "unprofessional conduct" is that which violates the rules or ethical code of a profession, or such conduct which is unbecoming a member of a profession in good standing. However, in none of the cases we have found, which indicate that unprofessional conduct might be a mere violation of an ethical code of a profession, was the question of a complete revocation of a license invalid. In the Swan case, for instance, the question was merely one regarding the dismissal of a teacher from a public school system. It is submitted that there is a tremendous difference between one being "fired" from a job and one having his license to practice or teach any place else in the state completely revoked.

We therefore conclude that the courts of Missouri would not hold the term "unprofessional conduct" too indefinite, even though this is apparently the only instance in which it is used by itself. In view of the fact that the purpose of the Chiropractist statute is approximately the same as the purpose of the statute governing the practice of medicine and surgery, we are impelled to the belief that the courts would hold the term "unprofessional conduct" to be synonymous with dishonorable, even when the statute does not specifically associate the two words.

L. A. Hansen, D.S.C.

We come now to your oral question which, on your recent visit to the Attorney General's office, you stated as follows: "If the Board, in its rules and regulations defines advertising as unprofessional instead of as merely unethical as it has previously done, can the Board revoke a chiropodist's license when one is found guilty of advertising."

In addition to that we will consider another matter about which you do not specifically ask. Enclosed with your recent inquiry was a proposed change in your "Standard of Proficiency and your Rules and Regulations." After enumerating in Article III the grounds for revocation by a verbatim quotation of the statute, which is Section 330.160 as amended by Laws of 1951, page 730, you list numerous examples of unprofessional conduct, one of which is the following:

"It is unprofessional to advertise directly or indirectly by radio, in newspapers, telephone directory, magazines, or periodicals, in bold face type in any printed matter, or by electric display signs, or advertising directly or indirectly prices for professional service in any printed matter or on any signs used. All listing in directories of any sort shall be uniform. No practitioner may have any part of his listing printed in any manner that will make such listing distinct from that of his fellow practitioners and under any other listing than chiropodist."

It is our understanding you desire to know if such a definition will stand a test in court following an action of revocation.

These questions arise because of the Attorney General's opinion of the 14th of December, 1954, to you, holding that the fact that since advertising was only a violation of the Board's code of ethics a license could not be revoked on the grounds of unprofessional conduct.

As pointed out above, the courts have adopted a statutory definition for unprofessional (as it applies to sus-

L. A. Hansen, D.S.C.

pensions and revocations) different from the dictionary definition. They have made it synonymous or convertible with dishonorable.

Because of the language of the cases, we are of the opinion that the courts have not used "unprofessional" conduct as convertible with "dishonorable" conduct merely because of the statutory associations of such terms.

The courts have always maintained their over-riding conviction that so serious an action as the withdrawal of one's best means of earning his livelihood should not be taken for some vague, light or airy reason, but for only some cogent, strong and compelling reason. It is believed that the courts would not permit a state board of some profession to declare something to be unprofessional that the legislature had not and the courts in their interpretation of legislation had not.

Since the Board has not been granted, nor can it be granted, legislative authority, any advertising which could justify a revocation would have to be of a kind that tends to deceive, or to mislead, or in some manner carry the stigma of unprofessional because of being immoral or dishonorable.

CONCLUSION

We conclude, therefore, that the State Board of Chiropody can revoke or suspend a chiropodist's license for "unprofessional conduct" even though the statute does not define the term.

We further conclude that the State Board of Chiropody has no authority to declare all advertising to be unprofessional conduct nor authority to revoke a chiropodist's license on such grounds except for such advertising as can be deemed to be unprofessional because it is immoral or dishonorable.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General