CHIROPRACTIC:
RULES AND REGULATIONS: That part of Rule 16.4(b) of the Personnel Advisory Board which provides that only physicians may verify certificates of sick leave for state employees is invalid, and to carry out the intention of the legislature the rule should also provide that a chiropractor is legally qualified to verify the certificate required for sick leave resulting from an illness he is legally authorized to treat.

OPINION NO. 55

March 18, 1969

FILED
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Honorable Joe D. Holt
State Representative
District 102
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Holt:

This is in response to your request for an official opinion concerning the validity of that part of Rule 16.4(b) of the State Personnel Division and State Advisory Board which reads as follows:

> "'In all cases where an employee has been absent on sick leave he shall immediately upon return to work submit a statement that such absence was due to illness and, in cases where such absence exceeds five working days, such statement shall be verified by a written certificate executed by a physician.'"

You question the validity of this rule inasmuch as it precludes verification of the certificate by a chiropractor. A chiropractor is not a physician, Opinion Attorney General No. 148, Akers, 5-2-68, a copy of which is enclosed.

The legislature has recognized the status of both physicians and chiropractors. Section 334.010, RSMo, is as follows:

> "It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its department, or to profess to cure and attempt to treat the sick and other afflicted with bodily or mental infirmities, or engage in the practice of midwifery in this state, except as herein provided."

The practice of chiropractic is defined in Section 331.010, RSMo, as follows:

> "The practice of chiropractic is hereby defined to be the science and art of palpating and adjusting by hand the movable articulations of the human spinal column, for the correction of the cause of abnormalities and deformities of the body. It shall not include the use of operative surgery, obstetrics, osteopathy, nor the administration or prescribing of any drug or medicine. The practice of chiropractic is hereby declared not to be the practice of medicine and surgery or osteopathy within the meaning of chapter 337, RSMo, and not subject to the provisions of said chapter."

The manner in which the legislature regards chiropractic practitioners is stated in Section 331.040, RSMo, as follows:

> "Chiropractic practitioners shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying of deaths, and all matters pertaining to public health, and such reports shall be accepted by the officer or department to whom such report is made."

The legislature, therefore, has recognized two distinct healing professions or procedures for the cure and treatment of illnesses. One deals with the administration of drugs and the performance of surgery, while the other is limited to the science and art of palpating and adjusting by hand the movable articulations of the spinal column. The statutes do not distinguish between chiropractors and physicians as to their competency with respect to matters falling within the purview of subjects with which the statutes require physicians and chiropractors to be informed.

In Harder vs. Thrift Construction Company, 53 S.W.2d 34, loc. cit. page 37, the St. Louis Court of Appeals stated:

> "Appellants complain of the competency of the testimony of the chiropractor, but we see no merit to the point. His testimony went only to matters falling within the purview of subjects with which the statute (section 13549, R. S. 1929, Mo. St. Ann. § 13549) requires a chiropractor to be informed, and therefore he was a competent witness upon the matters covered by his testimony. * * *"

The power of the Board to prescribe rules and regulations is not the power to make law, for no such power can be delegated by the legislature, but the power to carry into effect the will of the legislature as expressed in the statutes. A regulation which does not do this but operates to create a rule out of harmony with the statute is a mere nullity. In Northern Natural Gas Company v. O'Malley, 277 F.2d 128, the court stated:

> "* * * A right clearly created by statute cannot be taken away by regulation. * * *"

The effect of the denial of certification by a chiropractor is that the person who is treated by a chiropractor could not be granted sick leave until he has consulted a physician. The annoyance and expense of such a consultation naturally would prevent many persons from employing a doctor of chiropractic even if they prefer that method of treatment.

It is true that chiropractors cannot administer drugs or perform surgery with the use of instruments. Assuming that they cannot administer antitoxin, for example, in the treatment of diphtheria or amputate an arm hopelessly crushed, such patients as they do treat by permitted methods should not be denied their sick leave without undue annoyance and expense when the practitioner is competent to treat the illness in question.

Clearly, a licensed chiropractor who practices with the sanction of law practices "for the correction of the cause of abnormalities and deformities of the body" within the meaning of Section 331.010. A patient who employs a person licensed to practice should not be subjected to the additional annoyance and expense of employing a physician when the law does not require it.

The Board cannot, by regulation, alter or amend the law. All it can do is to regulate the mode of proceeding to carry into effect what the legislature has enacted. The statutes clearly include both physicians and chiropractors as members of the healing arts. The regulation seeks to confine the operation of the statutes to physicians only. This is manifestly an attempt to put into the body of the statute a limitation which the legislature did not think it necessary to prescribe. Therefore, the Personnel Board is acting arbitrarily, beyond the scope of its authority, in distinguishing between the healing professions recognized by the legislature and is in effect prescribing the kind of health care permissible for state employees.

The justisfication for Rule 16.4(b) is to screen out malingerers, not to put the Personnel Board in the business of making qualitative distinctions between types of healing arts. In order that the rule may carry into effect the will of the legislature as expressed in the statutes, the rule must be expanded to permit a chiropractor

to verify the required certificate when the absence was due to an illness for which the legislature has authorized treatment by a licensed chiropractor.

CONCLUSION

It is the opinion of this office that that part of Rule 16.4 (b) of the Personnel Advisory Board which provides that only physicians may verify certificates of sick leave for state employees is invalid, and to carry out the intention of the legislature the rule should also provide that a chiropractor is legally qualified to verify the certificate required for sick leave resulting from an illness he is legally authorized to treat.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 148
5-2-68, Akers