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ARIZONA ATTORNEY GENERAL

February 3, 1954  
Opinion No. 54-18

TO: Dr. Thomas D. Fridena  
Vice President  
Naturopathic Board of Examiners  
717 North 6th Avenue  
Tucson, Arizona

RE: Rule #4, Board of Naturopathic  
Examiners.

QUESTION: (1) Interpretation of rule #4  
of the Board of Naturopathic  
Examiners as it pertains to  
advertising.

(2) Are certain exhibits proper  
advertising under the interpreta-  
tion of the Department of Law of  
such rule and regulation?

Rule #4 of the Naturopathic Board of Examiners reads as follows:

"Constructive educational publicity is encouraged. Applicants must take an oath to refrain from using or causing to be used, advertising matter which contains misstatements, falsehoods, misrepresentations, distorted or fabulous statements as to cures, etc. Advertising is to be limited to business cards, descriptive of the applicant's profession."

The exhibits appended to your request of January 23, 1954 are, from all indications, newspaper advertisements which we assume were published in a newspaper of general circulation in the Tucson area. Our first consideration, therefore, is aimed at the form of such advertisements, rather than their content.

As will be observed from a reading of rule #4, supra, advertising by a naturopathic physician is "limited to business cards, descriptive of the applicant's profession".

Are newspaper insertions to be considered as a "business card"?

It is our opinion that the words and phrases adopted by the board as a part of their rules and regulations should be given their ordinary and usual meaning. The usual meaning of the term "business card" according to Webster's International Unabridged Dictionary is:

"A card bearing the name of a business concern and one of its representatives and often some descriptive or advertising matter."

"A piece of cardboard bearing a person's name or name and address; a business card."

Therefore, the use of newspaper advertisements by a naturopathic physician does not comply with the rule above quoted.

The first and second sentences of rule #4, supra, (dealing with the content of advertising matter, rather than with its form) are somewhat more difficult of application for the reason that a violation thereof is dependent upon actual proof of misstatement, falsity, misrepresentation, etc.

An inspection of the exhibits provided by your board reveals that in some instances the representations appear to be set forth in detail. Consider, for example, the statements made by the Phoenix Diagnostic Clinic:

"Disorders such as indigestion, gas, bloat, constipation, abdominal pain, backache, burning, belching, biliousness, vomiting, headaches, dizziness, fatigue, heartburn, palpitation, colitis, ulcers, bleeding, insomnia and nervousness many (may) be warning symptoms of some serious condition which can be prevented by proper examination, diagnosis and treatment."

Undoubtedly this statement is true. The clinic further states that "great suffering, loss of time from work, hospitalization and surgery can be avoided by special treatment and care." Again such a representation is a true one, although the casual reader might,

under some circumstances, be misled by the statements.

Examining the advertisement of North Towne Clinic, the following statements are made "We treat the cause as well as the symptoms." Such a representation may or may not be true, according to the actual facts of each case. They further state, "many patients enjoy relief after first painless treatment". Perhaps the Clinic is within its rights in so stating but, again, the application of rule #4 would depend upon actual facts.

From the foregoing discussion it is apparent, in the absence of definite evidence that the statements fall within the prohibitions of rule #4, supra, the Department of Law is in no position to judicially determine the propriety or validity of allowing the publication of such advertisements as concerns the content thereof.

In the case of FOREMAN vs. STATE BOARD OF HEALTH (Ky. 1914) 162 S.W. 796, Chief Justice Hobson makes the following observations at Page 799.

"\* \* \* Many diseases which a few years ago were regarded incurable are now regarded curable, and many methods of treating diseases which were unknown a few years ago are now in daily use. New discoveries are constantly being made. The physician who advertises that he can cure a certain disease by a new method may be perfectly sincere in believing that he can do so. On the other hand, the quack and the charlatan who frequently advertise that they can effect cures, when they know the advertisement to be false, and thus deceive and defraud the public, are guilty of fraudulent, dishonorable, and unprofessional conduct involving moral turpitude. Whether the physician's acts were sincere or fraudulent and done for the purpose of defrauding the public is a question to be decided by the board on all the facts." \* \* \*"  
(Emphasis supplied.)

We believe that the position adopted by the Kentucky Court is a sound approach to the present problem.

In conclusion, it is the opinion of the Department of Law that:

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1. Advertising by a naturopathic physician must be limited to business cards; newspaper insertions are not business cards.
2. That whether a naturopathic physician's acts concerning advertising are sincere or whether such advertising contains misstatements, falsehoods, etc., is a question to be decided by the Board of Naturopathic Examiners on all of the facts presented.

ROSS F. JONES  
The Attorney General

JAMES P. BARTLETT  
Assistant to the  
Attorney General

JPB:BT