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July 22, 1991

Robert J. Miller, Ph.D.  
Board of Osteopathic Examiners in  
Medicine & Surgery  
1830 W. Colter, Suite 104  
Phoenix, Arizona 85014

RE: 191-029 (R91-034)

Dear Dr. Miller:

You have requested our opinion whether a rule proposed by the Board of Osteopathic Examiners in Medicine and Surgery conflicts with A.R.S. §§ 32-2001(A)(6) and -2001(A)(7) of the Physical Therapy Practice Act (A.R.S. §§ 32-2001 through -2049). Specifically, you have inquired whether the proposed regulation of Osteopathic medical assistants sanctions unauthorized practice as either a physical therapist or physical therapist assistant. We have concluded that it would not.

The legislature defined the duties of an osteopathic medical assistant in A.R.S. § 32-1800(13):

"Medical assistant" means an unlicensed person who has completed an educational program approved by the board, who assists in a medical practice under the supervision of a doctor of osteopathic medicine and who performs delegated procedures commensurate with the assistant's education and training but who does not diagnose, interpret, design or modify established treatment programs or violate any statute.

The Board is required by statute to "[a]dopt rules regarding the regulation and the qualifications of medical assistants." A.R.S. § 32-1803(A)(7). Additionally, "[n]othing in [Title 32, Chapter 17 of the Arizona Revised Statutes] shall be construed to prevent a medical assistant from assisting a doctor of osteopathic medicine pursuant to rules adopted by the board." A.R.S. § 32-1859.

The Board's proposed rule (tentatively numbered R4-22-105) would further detail permissible practices for medical assistants. According to R4-22-105(B)(3):

B. A medical assistant may do and perform the following acts and duties under the personal supervision of a licensed osteopathic physician, which licensed osteopathic physician shall be personally and professionally responsible and liable for any and all consequences or results arising from the performance of said acts and duties:

. . . . .  
3. A medical assistant may undertake or conduct physical therapy modalities including whirlpool treatments, the application of hot and cold packs, diathermy, electronic galvaton stimulation, ultrasound therapies, massage therapies, traction, and/or application of TENS units.

Where the legislature has declared the policies and fixed primary standards, it may confer on administrative officers the power to prescribe rules to promote the spirit and purpose of the legislation and its complete operation. Employment Security Commission v. Arizona Citrus Growers, 61 Ariz. 96, 144 P.2d 682 (1944). By defining a medical assistant's scope of practice, See A.R.S. § 32-1800(13), and by requiring that the Board adopt rules regarding the regulation and qualifications of medical assistants, See A.R.S. § 32-1803(A)(7), the legislature has afforded the Board sufficient direction by which to promulgate a rule such as R4-22-105.

A.R.S. § 32-2001(A)(6) (sets for the qualifications for a physical therapist assistant and generally describes the appropriate scope of an assistant's duties:

"Physical therapist assistant" means a person who is a graduate of an accredited physical therapy education program as determined by the board [of physical therapy examiners] and who assists under the on-site supervision of a physical therapist in the practice of physical therapy and who performs delegated procedures commensurate with the assistant's education and training but who does not evaluate, interpret, design or modify established treatment programs.

A.R.S. § 32-2001(A)(7) then defines physical therapy:

"Physical therapy" means the treatment of a bodily or mental condition by the use of physical, chemical or other properties of heat, cold, light, sound, water, or by massage and active and passive exercise, air, mechanical energy, electrical energy, electromagnetic energy and their necessary physical measures, activities and devices.

It is unlawful for any person not licensed as a physical therapist under the Physical Therapy Practice Act to practice physical therapy. A.R.S. § 32-2041(C)(1). Licensed health professionals other than physical therapists, however, are exempt from the Physical Therapy Practice Act while engaged in the practice for which they are licensed. A.R.S. § 32-2021(B). For example, a licensed osteopathic physician may diagnose or treat physical or mental diseases, injuries, ailments, infirmities and deformities by any means provided by Title 32, Chapter 17 of the Arizona Revised Statutes. A.R.S. § 32-1800(15). In the course of practicing medicine, then, an osteopathic physician may legitimately perform activities that might also be deemed the practice of physical therapy. See Sanfilippo v. State Farm Mutual Automobile Insurance Co., 24 Ariz. App. 10, 535 P.2d 38 (1975).

The legislature has expressly authorized an osteopathic physician to delegate procedures to a medical assistant, provided that the procedures are commensurate with the assistant's education and training. A.R.S. § 32-1800(13). Hence, an osteopathic physician may delegate to a medical assistant procedures legitimately within the physician's scope of practice, even though such procedures might also entail the practice of physical therapy. If medical assistants have the experience and training to perform delegated physical therapy duties and meet the other requirements in A.R.S. §§ 32-1800(13) and -1859, not permitting them to practice physical therapy would, in essence, be equivalent to interfering with the lawful practice of an osteopathic physician.

That R4-22-105(B)(3) does not purport to allow unauthorized practice as a physical therapist or physical therapist assistant is further demonstrated by other provisions of the proposed rule. For example, the rule, if enacted, would require that a medical assistant perform all authorized activities under the "personal supervision of an osteopathic physician." R4-22-105(B). The rule would define "personal supervision" to mean that the osteopathic physician "must be present in the office and must see the patient and assign the work to be done by the medical assistant." R4-22-105(A)(2). Neither a physical therapist nor a physical therapist assistant, however, need be personally supervised by a physician. In this respect, a medical assistant differs from a physical therapist or therapist's assistant. A medical assistant could not practice as a physical therapist or physical therapy assistant, because a medical assistant may perform therapy only under the supervision of an osteopathic physician.

Robert J. Miller  
July 22, 1991  
Page 4

In conclusion, R4-22-105(B)(3) as presently proposed does not conflict with A.R.S. §§ 32-2001(A)(6) and -2001(A)(7) nor does it sanction unauthorized practice as a physical therapist or physical therapist assistant.

Sincerely,



Grant Woods  
Attorney General

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