

Opinion No. 41-3972

December 11, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Quincy D. Adams Acting District Attorney Second Judicial District Albuquerque, New Mexico

{*137} In your letter dated December 5, 1941, you request an opinion upon two questions, the second question has already been answered by Mr. Chase in Opinion No. 3971.

Your first question is as follows:

"(1) May a school child be exempted from the requirement of vaccination against smallpox upon the certificate of a chiropractor that such vaccination would be injurious to the health of the child?"

This question involves a construction of Section 14, subsection 10, Chapter 39, Laws of 1937, which is as follows:

"(10) Any minor child, through its parent or guardian, may file with the health authority charged with the duty of enforcing the vaccination laws, the certificate of a duly licensed and practicing physician stating that the physical condition of such child is, at the time, such that vaccination would seriously endanger the life or health of such child, and thereupon such child shall be exempt from the provisions of subsections 8 and 9 of this section but shall not be exempt from the quarantine laws, rules and regulations."

This office, in construing the original section before amendment as well as the section quoted above, in two opinions, being No. 294 written October 14, 1931, and No. 3327, written November 8, 1939, has held that the words "duly licensed and practicing physician" do not include chiropractors. However, in Opinion No. 3441, written February 23, 1941, former Attorney General Filo M. Sedillo has held otherwise without referring to the two previous {*138} opinions. The only case which I am able to find dealing directly with a definition of the words "legally qualified physician," insofar as the same relates to chiropractors, is the case of *Isaacson v. Wisconsin Casualty Association*, 187 Wis. 24, 203 N. W. 918, and in that case it was held that a chiropractor is not within the meaning of the words "legally qualified physician." There are several other authorities dealing with other types of practitioners, mainly osteopaths in which the courts have held that under a broad definition the term "physician" is broad enough to cover any person whose occupation is the treatment of diseases for the purpose of curing them.

In Section 14, subsection 9 of Chapter 39, Laws of 1936, we find this language:

"The vaccination required in the next preceding subsection may be done by any licensed physician or under his direction."

Since chiropractors are not authorized under the law to in any manner sever or penetrate any of the tissues of the human body, in treating diseases, etc., Section 23-104 of the 1929 Code, they would be excluded from performing a vaccination except under the direction of a physician. Thus it is apparent that in using the term "licensed physician" in subsection 9, the Legislature did not intend the same to include chiropractors. It is reasonable to suppose that the same definition was intended under subsection 10 when the term "duly licensed and practicing physician" was used. For these reasons, this office feels that the two former opinions above mentioned correctly construe this section of the law, and, therefore, Opinion 3441 is hereby overruled.

By C. C. McCULLOH,

Asst. Atty. General