

Attorney General Opinion January 7, 1985

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Gentlemen:



Each of you has requested an opinion from this office on an identical issue under Nevada law. For this reason, each of your opinion requests will be responded to by this opinion letter jointly given by the undersigned, your assigned respective counsel in our office.

QUESTION

Under what circumstances, if any, may a licensed homeopathic physician prescribe, administer, dispense or possess a controlled substance or dangerous drug?

ANALYSIS

NRS 453.226(1) provides that:

"Every practitioner or other person who dispenses any controlled substance within this state or who proposes to engage in the dispensing of any controlled substance within this state shall obtain biennially a registration issued by the board in accordance with its regulations." (Emphasis added.)

NRS 639.235(1) additionally provides that:

"No person other than a practitioner holding a currently valid license to practice his profession in this state may prescribe or write a prescription, except that a prescription written by a physician not licensed to practice in this state but authorized by the laws of another state to prescribe shall be considered to be a legal prescription." (Emphasis added.)

Further, a "practitioner" is authorized to possess, administer, and dispense

controlled substances by NRS 453.375(1)(a) and 453.377(3). Similarly, a "practitioner" is authorized to possess, administer, and dispense dangerous drugs by NRS 454.213(1) and 454.215(3). Also, NRS 454.221 provides that dangerous drugs may only be furnished upon the prescription of a "practitioner," or by a "practitioner" without a prescription to his own patients as provided in NRS 454.301. NRS 453.061 defines a "dispenser" as a "practitioner" who dispenses.

Clearly, then, unless a homeopathic physician is considered a "practitioner" under Nevada law, he may not prescribe, administer, dispense or possess a controlled substance or a dangerous drug.

Both NRS 639.0125(1) and 454.00958 define a "practitioner" as a physician, dentist, veterinarian or podiatrist who holds a valid license to practice their respective professions in this state. NRS 453.126(1) similarly defines a "practitioner" to be:

"[a] physician, dentist, veterinarian or podiatrist who holds a valid license to practice his profession in this state and is registered pursuant to this chapter."

Thus, it is equally clear that if a homeopathic physician is considered to be a "physician" for the purposes of Chapters 453, 454, and 639 of NRS and as that term is used in the above definitions, then a homeopathic physician would constitute a "practitioner."

Both NRS 453.371(2) and 454.0095 define a "physician" to be a person authorized by a currently valid license to practice his respective profession in this state, with NRS 453.371(2) adding the language "who are registered with the board" thereafter. At first glance, these definitions would seem to resolve the issue in favor of homeopathic physicians constituting "physicians" and hence "practitioners" for the purposes of Chapters 453, 454, and 639 of NRS.

However, NRS 0.040 provides as follows:

"1. Except as otherwise provided in subsection 2, as used in Nevada Revised Statutes, 'physician' means a person who engages in the practice of medicine, including osteopathy.

"2. The terms 'physician,' 'osteopathic physician,' 'homeopathic physician' and 'chiropractic physician' are used in chapters 630, 630A, 633, and 634 of NRS in the limited senses prescribed by those chapters respectively."

NRS 0.010 further provides that:

"This chapter provides definitions and declarations of legislative intent which apply to Nevada Revised Statutes as a whole."

It is a general and long recognized rule of statutory construction that statutes relating to the same subject matter are to be construed so as to give each a reasonable effect in accordance with the intention behind them. *State ex rel. Flack v. Rogers*, 10 Nev. 319 (1875); *In the Matter of Ah Pah*, 34 Nev. 283, 119 P. 770 (1911); *State ex rel. Abel v. Eggers*, 36 Nev. 372, 136 P. 100 (1913); *City of Reno v. Stoddard*, 40 Nev. 537, 167 P. 317 (1917).

In NRS 0.040 and 0.010, the Nevada legislature has specifically set forth its definition of "physician" and declared its intent that such definition is to apply to NRS as a whole. Thus, "physician" means a person who engages in the practice of medicine, including osteopathy. However, the legislature did not include the practice of homeopathy therein. Further, NRS 0.040(2) specifically provides that the term "homeopathic physician" is used in Chapter 630A of NRS in the limited sense prescribed by that chapter. The clear meaning of NRS 0.040(2), when compared with 0.040(1), is that while a "homeopathic physician" may be a "physician" for purposes of Chapter 630A, they are not "physicians" for the purposes of the rest of NRS wherein the term "physician" is used. If the legislature had intended otherwise, it would have expressly included homeopathy as it did with osteopathy. It is important to note that when the legislature amended NRS 0.040(2) to include "homeopathic physician" and a reference to the new Chapter 630A, it did not amend subsection 1 of the same statute, even though it clearly had the opportunity to do so. Further, our review of the legislative history behind said amendment to NRS 0.040(2) and the enactment of Chapter 630A of NRS in general revealed no expression of legislative intent contrary to that explicitly stated in NRS 0.010 and 0.040.

Expression of one thing in a statute excludes all others. *State v. Baker*, 8 Nev. 141 (1872); *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967). In construing the language of a statute, the words therein must be given the meaning intended by the legislature. *Phillips v. Eureka County*, 19 Nev. 438, 11 P.32 (1886). In the absence of any reason to the contrary, it must be presumed that the legislature used the words in the statute according to their usual meaning. *Comstock Mill & Mining Co. v. Allen*, 21 Nev. 325, 31 P. 434 (1892). Thus, these words must be given their plain, common meaning. *In re: Filippini*, 66 Nev. 17, 202 P.2d 535 (1949); *Orr Ditch Co. v. Dist. Ct.*, 64 Nev. 138, 178 P.2d 558 (1947); *In the Matter of Zwiss*; 42 Nev. 360, 178 P. 20 (1919).

Hence, a "homeopathic physician" is such only for the purposes of Chapter 630A of NRS and is not a "physician" for the purposes of Chapters 453, 454, and 639 of NRS.

Therefore, a "homeopathic physician" is not a "practitioner" for the purposes of these chapters and may not prescribe, administer, dispense or possess a controlled substance or dangerous drug as a "homeopathic physician."

This result under NRS 0.040 is not nullified by any federal drug law. Federal drug control and enforcement law specifically provides that:

"No provision of this title shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this title and that State law so that the two cannot consistently stand together." 21 U.S.C. § 903.

It is clear that concurrent jurisdiction with the state in the control of narcotics and dangerous drugs is intended by this statute. *Ledcke v. State*, 296 N.E.2d 412, (Ind. 1973). There is no federal preemption of the field of narcotics control by virtue of 21 U.S.C. §§ 801, et seq. *State v. McHorse*, 517 P.2d 75, (N.M. 1973). Moreover, the United States Supreme Court has consistently recognized the broad power of a state to regulate the narcotic drug traffic within its borders notwithstanding these federal laws on the same subject matter. *Whipple v. Martinson*, 256 U.S. 41, 41 S.Ct. 425, 65 L.Ed. 819 (1921); *Robinson v. State of California*, 370 U.S. 660, 664, 82 S.Ct. 1417, 1419, 8 L.Ed.2d 758 (1962). Further, the federal regulations on these drug laws define an "individual practitioner" as "a physician . . . licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices, to dispense a controlled substance in the course of professional practice . . ." 21 C.F.R. § 1304.02(d). (Emphasis added.)

At this point in the analysis it must also be pointed out that, under present Nevada law, a licensed homeopathic physician must also be licensed to practice allopathic or osteopathic medicine. NRS 630A.230. Clearly under the above statutes and analysis, if one is licensed in this state to practice allopathic or osteopathic medicine, he would be a "physician," and therefore a "practitioner," for the purposes of Chapters 453, 454, and 639 and qualified to be registered to prescribe, administer, dispense or possess controlled substances or dangerous drugs as an allopath or osteopath.

However, NRS 453.381(1) provides that a physician may prescribe, administer or dispense controlled substances only for a legitimate medical purpose and in the usual course of his professional practice. Thus, while conceivably a physician licensed to practice allopathic or osteopathic medicine in this state could also be licensed as a homeopathic physician, any lawful prescribing, administering, dispensing, or possessing of controlled substances must be for a legitimate allopathic or osteopathic medical purpose and in the usual course of such professional practice, and not for any homeopathic purpose or practice.

CONCLUSION

Since under present Nevada law a homeopathic physician is not deemed to be a "physician" for the purposes of Chapters 453, 454, and 639 of NRS, a homeopathic physician may not be registered pursuant to said chapters to prescribe, administer, dispense or possess a controlled substance or dangerous drug. However, a homeopathic physician also licensed in Nevada as an allopathic or osteopathic physician may be

registered pursuant to said chapters to prescribe, administer, dispense and possess controlled substances and dangerous drugs, but he may do so only for a legitimate allopathic or osteopathic medical purpose and only in the usual course of his allopathic or osteopathic professional practice.

Very truly yours,

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