

Opinion No. 65-21—May 7, 1965

SUBJECT: PHYSICAL THERAPIST—Business and Professions Code section 2660 prohibiting a license physical therapist from making a diagnosis, but allowing him to conduct specified methods of treatment, is not so indefinite and uncertain as to be invalid or in need of legislative clarification.

Requested by: ASSEMBLYMAN, 1st DISTRICT

Opinion by: Thomas C. Lynch, Attorney General
Hubert O. Bower, Deputy

The honorable Frank C. Belotti, Assemblyman, First District, has requested an opinion on the following questions:

- (1) Is section 2660 of the Business and Professions Code so indefinite and uncertain as to be invalid?
- (2) Are the provisions of section 2660 of the Business and Professions Code so thoroughly in conflict that its meaning is unascertainable by those whose rights and duties are affected?
- (3) In view of court holdings, is it legally possible to “treat any bodily or mental condition of any person” without first ascertaining what the condition may be?
- (4) Should the legislature clarify the meaning of section 2660?

The conclusions are:

- (1) Section 2660 of the Business and Professions Code is not invalid as being uncertain or indefinite not is its meaning unascertainable. Legislative clarification does not appear necessary.
- (2) It is virtually impossible to treat a bodily or mental condition without it having been first ascertained what the condition may be. That fact, however, does not imply that the one rendering the treatment must also have performed the diagnosis. A licensed physical therapist may treat an ailment basing his treatment upon a physician’s diagnosis.

ANALYSIS

Section 2660 of the Business and Professions Code¹ provides as follows:
“The term ‘physical therapy’ shall mean the treatment of any bodily or mental condition of any person by the use of the physical, chemical and

¹ All section references are to the Business and Professions Code unless otherwise indicated.

other properties of heat, light, water, electricity, massage, and active, passive, and resistive exercise. The use of roentgen rays and radioactive materials for diagnostic and therapeutic purposes, and the use of the electricity for surgical purposes, including cauterization, are not authorized under the term 'physical therapy' as used herein and a license issued hereunder shall not authorize the diagnosis of disease."

This section is contained in Chapter 5.7 of Division 2 of the Business and Professions Code which regulates *license* physical therapists. Chapter 5.6 governs *registered* physical therapists who may only treat human ailments under the supervision and direction of a physician and surgeon. Bus. & Prof. Code § 2662.

We note, preliminarily, that the practice of medicine is composed of at least three consistent part: diagnosis, prescription, and treatment. *People v. T. Wah Hing*, 79 Cal. App. 286 (1926). License physical therapists are authorized, by section 2660, to practice on phase of healing art, namely treatment, but are specifically not authorized to diagnose. The third question presented asks in effect, whether it is possible to treat an abnormal condition without a prior determination of the nature and character of the abnormality. The answer is clearly in the negative. As stated in *People v. Willis*, 62 Cal. App. 717, 719-720 (1923), "Indeed, it is difficult to conceive of anyone trying to restore to a normal condition a person who is abnormal without a prior investigation and a determination, in a general way at least, of the character of the abnormality." As a method of treatment, then, the use of physical therapy assumes that the competent diagnosis of the condition has been previously made.

The question then arises as to who must make the diagnosis. In other words, does the statutory provision prohibiting a licensed physical therapist from making a diagnosis, but allowing him to conduct methods of treatment, constitute a conflict or render the code section indefinite or uncertain? We think not.

Although, as state above, diagnosis is a constituent part of the practice of medicine, it appears to be the more refined and important branch of medicine. The California Supreme Court in *People v. Jordan*, 172 Cal. 391 at 399, (1916), discussed this branch of the healing art in the following language:

"Diagnosis is as much a part of the practice of medicine as is the administration of remedies, and it is vastly more important branch thereof because, generally speaking, the treatment of disease is governed by the practitioner's theory regarding its cause. Intelligent treatment may only follow correct diagnosis. It is argued that diagnosing is merely 'guessing,' but that is only partially true. It is a matter of common knowledge that in the present development of microscopy, chemistry, bacteriology, radiography, and kindred sciences, there are some diseases which may be detected with absolute certainty by the accomplished diagnostician.

For example, it would be impossible for the educated medical man of today to be deceived into mistaking a case of diphtheria for some throat affection of a less virulent type for the reason that, which modern methods, the specific germ of diphtheria may be easily discovered and recognized. But even where it depends partly upon conjecture, real diagnosis is the produce of knowledge and experience....”

The court concluded, at 400:

“It is therefore competent for the legislature to permit only those persons who are proficient, and who have been found to be educated up to certain standards, to ‘diagnose ailments’.”

Similarly it is concluded that the Legislature, in adopting the language of section 2660, could have competently determined, and undoubtedly did determine, that although the educational requirements for licensure as a physical therapist are sufficient to permit the therapist to conduct certain specified treatments for human ailments, that educational standard is insufficient, with due regard to the public health and safety, to permit him to diagnose human ailments and disease.

The statute could not be more clear that a licensed physical therapist is not authorized to diagnose, and we perceive no conflicts, ambiguities, or uncertainties in limiting the practice of licensed physical therapists to treating ailments diagnosed by those found to be qualified and authorized by law to diagnose.

In summary, section 2660 is valid and no legislative clarification appears necessary.