



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

STEVE CLARK
ATTORNEY GENERAL

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OPINION NO. 86-39

February 7, 1986

Joe Verser, M.D., Secretary
Arkansas State Medical Board
P. O. Box 102
Harrisburg, AR 72432

Dear Dr. Verser:

You have requested an opinion on the following question:

Can the use of the term "Registered Therapist" by one who is not licensed by the State Examining Committee for Physical Therapists be enjoined as false, fraudulent or misleading?

According to your letter, persons who are registered by the Arkansas State Board of Therapy Technology pursuant to Ark. Stat. Ann. §72-1201 et seq are using the term "Registered Therapist" in connection with their practice.

The practice of physical therapy in Arkansas is regulated by the Arkansas State Medical Board pursuant to Ark. Stat. Ann. §72-1317. Physical therapy is defined as "the treatment of a human being by the use of exercise, massage, heat or cold, air, light, water, electricity, or sound, for the purpose of correcting or alleviating any physical or mental condition, or preventing the development of any physical or mental disability, or the performance of tests of neuromuscular function as an aid to the diagnosis or treatment of any human condition, provided, however, physical therapy does not include radiology or electro-surgery." Therapy technology is defined to include the use of massage techniques and other enumerated procedures for the purpose of "body reducing or contouring".

Therapy technologists may be registered to practice as 1) therapy technicians, 2) master technicians, or 3) therapy technology instructors. It is specifically unlawful in Arkansas for any person to "profess to be a physical therapist, physiotherapist, physical therapy technician, or to use the initials, "P.T.," "P.H.T.," or "R.P.T.," or any other letters, words, abbreviations or insignia indicating that he is a

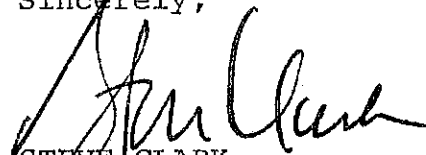
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physical therapist." It should also be noted that the practice of therapy technology is specifically excluded from the definition of the practice of medicine under the Medical Practices Act.

Statutes regulating various professional activities are designed to protect the public health and safety of the citizens of Arkansas. Misleading or false assertions by licensed and unlicensed individuals which are designed to or have the capacity to mislead the public appear to be contrary to any legislative intent. On the other hand, the individual's right to engage in commercial advertising under the First Amendment to the Constitution must be considered. Statutes which govern criminal activities or neglect, such as the Professional Licensing Laws, must be strictly construed. The terminology used in both the Physical Therapy Licensing Act, as well as the Therapy Technology Licensing Act, are quite similar and in some cases interchangeable. It would therefore not appear that the use of the term "Registered Therapist" by a therapy technologist is subject to prosecution under the criminal provisions of either act. It would also not appear that the use of the term would be sufficient criteria for injunctive relief under Arkansas law.

The foregoing opinion which I hereby approve was prepared by Special Assistant Attorney General George A. Harper.

Sincerely,



STEVE CLARK
Attorney General

JSC:GAH:jk