



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

*See
WW-10215
H-1295*

December 21, 1962

Hon. M. H. Crabb, M.D.
Secretary
Texas State Board of Medical Examiners
1714 Medical Arts Building
Fort Worth, Texas

Opinion No. WW-1511

Re: Whether the operation of certain
clinical laboratories constitutes
the practice of medicine.

Dear Dr. Crabb:

You have requested an opinion from this office upon the question of whether the operation of certain clinical laboratories constitutes the practice of medicine as defined by Article 4510, Vernon's Civil Statutes.

It is our understanding that the clinical laboratories in question are performing various tests for the purpose of obtaining scientific data which is used by licensed physicians as an aid in ascertaining the presence, progress and/or source of disease in human beings, or in ascertaining the state of health of human beings. It is our further understanding that these tests being performed by the clinical laboratories in question frequently involve blood, urine, tissue and other like specimen studies. The findings of the various tests and studies are then forwarded to the physician requesting such studies or tests. Charges are made by the clinical laboratories for the tests and studies made.

Article 741 of Vernon's Penal Code provides in part that:

"Any person shall be regarded as practicing medicine within the meaning of this Chapter:

". . .

"2. Who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; . . ." (Emphasis added)

In Websters' New International Dictionary (Second Edition, 1938) the word "diagnose" is defined as:

"Determination of a type or condition through case or specimen study."

In 70 C.J.S. 833, Physicians and Surgeons, Sec. 10, it is stated that:

"It is not necessary for a person to practice generally either as a physician or surgeon to bring him within the operation of a statute requiring a license or certificate; it is sufficient if he engages in the practice of a distinct department of either profession. . . ." (Emphasis added)

The practice of medicine has progressed to the point that today the diagnosis of human diseases has become a highly complicated and specialized field of the practice of medicine. Numerous physicians have specialized in the practice of pathology, which concerns in the words of 70 C.J.S. 813, Physicians and Surgeons, Sec. 1:

"That part of medicine which explains the nature of diseases and their causes and symptoms; the science treating of diseases, their nature, causes, progress, manifestations, and results." (Emphasis Added)

In view of the fact that the various tests and studies being performed, as well as the results or information obtained from such tests or studies by the clinical laboratories in question, constitute such an integral part of the diagnosis, if not in many cases the final diagnosis, we are of the opinion that the definition of the practice of medicine in Article 741 includes the activities engaged in by the clinical laboratories in question. Consequently, unless these activities are performed by one licensed to practice medicine by the Texas State Board of Medical Examiners or are under the direct control and supervision of one licensed to practice medicine by the Texas State Board of Medical Examiners, such activities are in violation of Article 741 of the Penal Code.

You have further asked that we take into consideration our Opinion WW-1045 (1961). That opinion considered the constitutionality of House Bill 828, then pending before the 57th Legislature and which was never enacted. Therefore, the provisions of that bill are not involved in a consideration of the present

Dr. M. H. Crabb, page 3 (WW-1511)

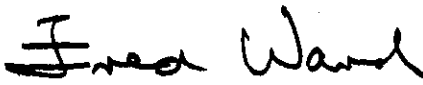
opinion. Even if House Bill 828 had been enacted, it was specifically pointed out that the clinical laboratories licensed pursuant thereto would still not be allowed to perform any acts which constitute the practice of medicine.

SUMMARY

The tests and studies performed by clinical laboratories upon various forms of human specimens constitute the practice of medicine as defined by Article 741, Vernon's Penal Code.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Fred D. Ward
Assistant

FDW:mkh:wb

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Pat Bailey
Ben Harrison
Jack Goodman
J. Arthur Sandlin
John Reeves

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore