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HEALTH***Chiropractic Practice: Allow Chiropractors to Recommend and Dispense Vitamins, Minerals, or Food Supplements***

CODE SECTION:	O.C.G.A. § 43-9-16 (amended)
BILL NUMBER:	HB 1243
ACT NUMBER:	1190
SUMMARY:	The Act permits chiropractors to recommend and dispense vitamins, minerals, or food supplements to their patients. The Act prohibits the sale of these substances at a profit. Generic names for any substance recommended or dispensed must be provided.
EFFECTIVE DATE:	July 1, 1988

History

Code section 43-9-16¹ defines the scope of practice for chiropractors and governs the practice of chiropractic as defined in Code section 43-9-1.² The definition of “chiropractic” as originally enacted, was “adjustment of the articulation of the human body, including ilium, sacrum, and coccyx, and the use of electric X-ray photography, provided that the X-ray shall not be used for therapeutical purposes.”³

In 1977, the definition was enlarged to recognize that the chiropractic “branch of the healing arts . . . utilize[s] the inherent recuperative powers of the body and the relationship between the musculoskeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health.”⁴ The 1977 Act further stated that “relationships between the spinal column and the nervous system are most significant, since the normal transmission and expression of nerve energy are essential to the restoration and maintenance of health. However, the term ‘chiropractic’ shall not include the use of drugs or surgery.”⁵ At the same time, chiropractic was recognized as a learned profession,⁶ and thus, “subject to regulation by the state under its

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1. O.C.G.A. § 43-9-16 (1988).
 2. O.C.G.A. § 43-9-1(2) (1988).
 3. 1921 Ga. Laws 166, 167.
 4. O.C.G.A. § 43-9-1(2) (1988), amended by 1977 Ga. Laws 232.
 5. *Id.*
 6. *Id.*

police powers for the protection of the public.”⁷

The scope of practice as set forth in the 1921 Chiropractic Practices Act initially included “the right to adjust patients . . . [and] sign death and health certificates . . . [but] not prescribe or administer medicine to patients, perform surgery, nor practice obstetrics nor osteopathy.”⁸ The term “adjust” refers to a chiropractic procedure used “to bring the parts of a thing to a true or more effective relative position.”⁹

The court of appeals, in *Metoyer v. Woodward*,¹⁰ determined that treatment modalities of galvanism and ultrasound diathermy were not within the scope of chiropractic. The court held that galvanism and ultrasound diathermy do not “involve the use of a mechanical device to facilitate the performance of a chiropractic adjustment but rather the introduction of electrical current and high frequency energy waves” which produce a chemical change in the tissues preparatory to chiropractic adjustment, and thus, are not within the authorized scope of chiropractic practice.¹¹

In 1986, the legislature expanded the scope of chiropractic to permit the use of electrical and mechanical devices in conjunction with patient adjustments.¹² A minimum of 120 instructional hours was established as a condition to utilization of such electric therapeutic modalities by chiropractors.¹³ The statute explicitly prohibited chiropractors from using any technique which was invasive to the body, such as acupuncture or the use of colonics.¹⁴ Further, the Act provided that the chiropractor is held to the same standard of care as licensed medical doctors.¹⁵

In *Foster v. Georgia Board of Chiropractic Examiners*,¹⁶ the supreme court held that a chiropractor’s conduct in prescribing vitamins, minerals, and food supplements constituted the unauthorized practice of medicine because such conduct exceeded the scope of chiropractic.¹⁷ The court noted that while the Georgia Drug and Cosmetic Act¹⁸ treats vitamins, minerals, and food supplements as foods and not drugs, the Drug and Cosmetic Act also describes drugs as “[a]rticles intended for use in the

7. 1984 Op. Att’y Gen. 114, 116.

8. 1921 Ga. Laws 166, 171.

9. 1984 Op. Att’y Gen. 114, 115.

10. 176 Ga. App. 826, 338 S.E.2d 286 (1985).

11. *Metoyer v. Woodward*, 176 Ga. App. at 829, 338 S.E.2d at 288.

12. O.C.G.A. § 43-9-16(b) (1988), enacted by 1986 Ga. Laws 1534. The statute specifically included galvanism and diathermy, treatments which the *Metoyer* court stated were outside the scope of chiropractic.

13. O.C.G.A. § 43-9-16(c) (1988).

14. O.C.G.A. § 43-9-16(f) (1988).

15. O.C.G.A. § 43-9-16(g) (1988).

16. 257 Ga. 409, 359 S.E.2d 877 (1987).

17. *Foster v. Georgia Bd. of Chiropractic Examiners*, 257 Ga. at 410, 359 S.E.2d at 878.

18. O.C.G.A. §§ 26-3-1 to -24 (1981).

diagnosis, cure, mitigation, treatment, or prevention of disease in man.”¹⁹ Thus, the court held that the use of vitamins, minerals, or food supplements by chiropractors was not within the scope of practice permitted by law.²⁰

The court distinguished between a chiropractor and the common merchant, friend, or relative who recommends vitamins for nutrition or for preventive purposes.²¹ The chiropractor, a professional and practitioner of the healing arts, in charging a fee “represents to a patient . . . that such vitamins will cure a disease or ailment.”²² The merchant, friend, or relative neither expects nor receives compensation for advice about nutritional supplements.²³

The court noted that regulation of health professions is an exercise of the state’s inherent police power “for the preservation and protection of public health,” and that such regulations should be measured by a rational basis standard of review.²⁴ Applying this standard, the court found no fourteenth amendment equal protection violation.²⁵ Finally, the court held that even if such legislation is unwise or improvident, the remedy is with the state legislature and not the court.²⁶

HB 1243 was proposed partly because of lobbying efforts by the Georgia Chiropractic Association which sought to expand the scope of practice under Code section 43-9-16 to include the recommendation of nutritional supplements to patients.²⁷ Since lay people can buy vitamins, minerals, and food supplements off the shelf, it was thought “ridiculous” that chiropractors could not recommend the use of such substances merely because such recommendation was not within their statutory scope of practice.²⁸ Operators of health food stores, vitamin counter clerks in grocery stores, and naturopaths all are permitted to recommend the use of nutrition with minimal or no training.²⁹ In comparison, chiropractors receive training in nutrition from qualified schools of chiropractic.³⁰

19. *Foster*, 257 Ga. at 417, 359 S.E.2d at 883—84 (citing O.C.G.A. § 26-3-2(6)(B)).

20. *Id.* at 417, 359 S.E.2d at 882.

21. *Id.* at 418, 359 S.E.2d at 883.

22. *Id.* (quoting *Norville v. Mississippi St. Med. Ass’n*, 364 So. 2d 1084, 1089 (Miss. 1978)).

23. *Id.*

24. *Id.* at 419, 359 S.E.2d at 884.

25. *Id.*

26. *Id.* at 420, 359 S.E.2d at 884.

27. Telephone interview with Representative Ward Edwards, House District No. 112 (Mar. 31, 1988) [hereinafter Edwards Interview].

28. *Id.*

29. *Id.*

30. Telephone interview with Representative Tom Wilder, House District No. 21 (Apr. 1, 1988) [hereinafter Wilder Interview].

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The Act permits chiropractors who have complied with Chapter 9 of Title 43 to recommend the use of vitamins, minerals, or food supplements.³¹ The Act prohibits chiropractors from selling vitamins, minerals, or food supplements at a profit.³² This provision addressed the concerns of physicians that the use of nutritional forms of therapy was a pretext by chiropractors to increase their own revenues at the expense of patient welfare.³³

The Act requires chiropractors to provide the generic names of any vitamins, minerals, or food supplements when recommending the use of such substances to their patients.³⁴ Providing generic names is required to permit patients the opportunity to obtain less expensive formulations of the recommended nutritional supplements.³⁵ Another reason for the provision of generic names is to permit patients to obtain the recommended nutritional supplements from independent sources rather than solely from the chiropractor recommending the substances.³⁶ The prohibition against selling at a profit is based upon the same principle which prevents physicians from prescribing and filling prescriptions in their offices.³⁷

Prohibiting the sale of nutritional supplements at a profit together with providing generic names to patients is a compromise between the competing medical and chiropractic professions. The compromise attempts to ensure that patients benefit and that chiropractors' revenue-increasing motives are minimized.³⁸

When HB 1243 initially was introduced, it provided only that chiropractors were permitted to "utilize nutrition . . . as an ancillary procedure in the care of the patient."³⁹ The House Health and Ecology Committee substitute deleted that language and provided that chiropractors "may recommend the use of vitamins, minerals, or food supplements."⁴⁰ The House committee substitute further limited the authority to recommend nutritional supplements by providing that such recommendation "shall not be construed to allow chiropractors to treat patients for conditions or diseases not within the purview of the practice of chiropractic as set forth in this chapter."⁴¹

Some physicians still consider chiropractors who utilize or who recom-

31. O.C.G.A. § 43-9-16(i) (1988).

32. *Id.*

33. Telephone interview with Scott Mall, Director, Governmental Affairs, Medical Association of Georgia (Mar. 31, 1988) [hereinafter Mall Interview].

34. O.C.G.A. § 43-9-16(i) (1988).

35. Edwards Interview, *supra* note 27.

36. Wilder Interview, *supra* note 30.

37. *Id.*

38. Mall Interview, *supra* note 33.

39. HB 1243, as introduced, 1988 Ga. Gen. Assem.

40. HB 1243 (HCS), 1988 Ga. Gen. Assem.

41. *Id.*

mend nutritional supplements to be practicing beyond the scope of chiropractic because chiropractors have not had training in total body function and in the interaction of nutritional supplements with the patient's medications, diet, or food allergies.⁴² Therefore, these physicians contend that chiropractic should be limited to its traditional scope, that is, to the manipulation of the spine and body articulations.⁴³

When using nutrition within the scope of chiropractic and as an adjunct to the manipulation of the spine and body articulations, chiropractors essentially are employing nutrition as a preventive method of health care.⁴⁴ If the nutritional supplement is recommended in response to a patient's complaint about a condition or disease outside the scope of chiropractic, then the chiropractor has exceeded the scope of practice.⁴⁵ Thus, chiropractors may recommend nutritional supplements only in response to a patient complaint regarding the spinal column, musculoskeletal system, or body articulations.⁴⁶

The Senate Human Resources Committee substitute added the prohibition against selling nutritional substances at a profit and required that generic names be provided if vitamins or food supplements are recommended.⁴⁷ The Senate Human Resources Committee substitute became the final version of HB 1243.⁴⁸

The Act as passed is not without problems of vagueness. The scope of practice for chiropractors prohibits the use of drugs,⁴⁹ and the prescription or administration of medication to patients.⁵⁰ The Act permits the recommendation of nutritional supplements only for purposes of preventive health care or treatment of specific musculoskeletal complaints.⁵¹ Any treatment falling outside of these narrow constraints may be beyond the scope of practice of chiropractors.⁵²

Although the Act prohibits chiropractors from selling the nutritional supplements at a profit, the Act might be construed to permit chiropractors to sell formulations of vitamins, minerals, or food supplements so long as the generic names of ingredients are given to the patient and the formulations are sold at cost.⁵³ Furthermore, the chiropractor is not spe-

42. Mall Interview, *supra* note 33.

43. *Id.*

44. *Id.*

45. *Id.*

46. Wilder Interview, *supra* note 30. The Senate Committee on Human Resources agreed that the recommendation of nutritional supplements should be limited to the traditional scope of chiropractic. However, the committee reworded the subsection slightly. HB 1243 (SCS), 1988 Ga. Gen. Assem.

47. HB 1243 (SCS), 1988 Ga. Gen. Assem.

48. O.C.G.A. § 43-9-16 (1988).

49. O.C.G.A. § 43-9-1 (1988).

50. O.C.G.A. § 43-9-16(e) (1988).

51. O.C.G.A. § 43-9-16(i) (1988).

52. Mall Interview, *supra* note 33.

53. Edwards Interview, *supra* note 27; Mall Interview, *supra* note 33.

cifically precluded from increasing the office fee charged to the patient in order to recover profit lost when nutritional supplements are sold to the patient at cost.⁵⁴ However, HB 1243 was not intended to permit the sale of nutritional supplements from the offices of chiropractors, even if sold at cost and upon disclosure of the generic names of ingredients.⁵⁵

The sponsors of HB 1243 believe the Act successfully clarifies the scope of chiropractic in three respects. First, the Act permits chiropractors to recommend the use of vitamins, minerals, and food supplements to patients so long as the recommendation is within the scope of chiropractic. Second, the Act prohibits the sale of such substances at a profit. And third, generic names of the nutritional substances must be provided.

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54. Edwards Interview, *supra* note 27.

55. Telephone interview with Senator Frank Albert, Senate District No. 23 (Mar. 31, 1988).