

## **N.D.A.G. Letter to Tennefos (July 14, 1987)**

July 14, 1987

Senator Jens Tennefos  
District 46  
714 19th Avenue South  
Fargo, ND 58103

Dear Senator Tennefos:

Thank you for your letter of May 27, 1987, requesting an Attorney General's opinion on the issue of whether psychology would fall within the meaning of "services ancillary thereto" specified in the statute pertaining to professional corporations, when the professional corporation is composed of those qualified or licensed to practice medicine and dentistry. I apologize for the delay in responding to you.

The portion of N.D.C.C. ch. 10-31 which delineates the purpose for which professional corporations are organized states, in pertinent part, as follows:

10-31-04. PURPOSE FOR WHICH INCORPORATED. A professional corporation may be organized pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service for which it was organized to render; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate mortgages, stocks, bonds, and any other type of investment.

(Emphasis supplied.)

N.D.C.C. § 43-17-01 defines the phrase "practice of medicine," in part, as follows:

### 43-17-01. DEFINITIONS.-

. . . .

2. "Practice of medicine" shall include the practice of medicine, surgery, and obstetrics. The following persons shall be regarded as practicing medicine:

. . . .

- b. One who suggests, recommends, or prescribes any form of treatment for the intended relief or cure of any physical or mental ailment of any person, with the intention of receiving, directly or indirectly, any fee, gift, or compensation.

(Emphasis supplied.)

N.D.C.C. ch. 43-32, which applies to psychologists, states, in pertinent part, as follows:

43-32-01. DEFINITIONS.-

....

2. "Psychologist" shall mean a person who holds himself out to the public by any title or description of services representing himself as a psychologist which incorporates the word "psychological," "psychologist," or "psychology," or a person who describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods, and procedures of the science and profession of psychology to persons for compensation or other personal gain.

(Emphasis supplied.)

43-32-32. DRUGS -- MEDICINE. -- Nothing in this chapter shall be construed as permitting psychologists licensed under this chapter to administer or prescribe drugs, or in any manner engage in the practice of medicine as defined by the laws of this state.

(Emphasis supplied.)

A psychologist, thus, does not practice medicine within the meaning of the statutory definition.

However, as defined in 61 Am. Jur. 2d Physicians, Surgeons, Etc. § 11 at 158 (1981), a psychologist uses scientific "methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes, and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive." Thus, although "psychologist" does not fall within the definition of practicing medicine, in view of the fact that he cannot prescribe medicines or perform surgery, a psychologist may perform the services ancillary thereto specified in N.D.C.C. § 10-31-04, because he professionally treats (among other things) emotional maladjustment in people.

Therefore, because the professional corporation to which your letter refers is composed of shareholders who are qualified or licensed to practice medicine and dentistry, and

because a psychologist serves to aid medical treatment, a psychologist's services may be ancillary to the purpose for which said corporation was organized (i.e., the practice of medicine).

The Attorney General and members of my staff are not authorized to give legal advice or assistance to private businesses or members of the general public. We may only serve as legal advisors to state officials, state's attorneys, and certain city officials. For this reason note that our response to your letter is generic to the possibility of a psychologist becoming a shareholder in a professional corporation. The individual's circumstances surrounding each case should be reviewed by a private attorney to ensure that the individual psychologist is qualified as a potential shareholder.

Sincerely,

Nicholas J. Spaeth

ja