



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

Opinion No. 2014-131

January 5, 2015

The Honorable Stephen Magie  
State Representative  
Post Office Box 1506  
Conway, Arkansas 72033-1506

Dear Representative Magie:

This is in response to your request for my opinion on a question about the permissibility of physical therapists' being certified as medical examiners by the United States Department of Transportation's Federal Motor Carrier Safety Administration ("FMCSA") and consequently being authorized to perform physical examinations of commercial motor vehicle operators:

[Does] ACA 17-93-102 authorize[] physical therapists to perform physical examinations of the type necessary to comply with CFR 390.103, or does ACA 17-93-102 limit physical therapists to performing only those physical examinations necessary to "determine a physical therapy diagnosis, prognosis, and planned therapeutic intervention?"

**RESPONSE**

I must decline to offer an opinion on your question because the answer depends on interpretation of a federal law that is interpreted and applied by a federal agency.

**DISCUSSION**

Rules of FMCSA establish a national registry of persons certified to perform physical examinations of commercial motor vehicle operators.<sup>1</sup> The rule you cite

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<sup>1</sup> 49 CFR §§ 390.101 *et seq.*

provides that, in order to receive medical examiner certification, a person must be authorized by applicable state law “to perform physical examinations.”<sup>2</sup> The rule also requires a person wishing to be certified to complete a training program and pass a certification test.<sup>3</sup>

You state that some physical therapists licensed by the Arkansas State Board of Physical Therapy<sup>4</sup> (the “Board”) have been certified as medical examiners by FMCSA. As you note, the Arkansas Physical Therapy Act<sup>5</sup> (the “Act”) defines the “[p]ractice of physical therapy” to mean, among other things, “[e]xamining and evaluating patients with mechanical, physiological, and developmental impairments, functional limitations, and disability or other health-related conditions in order to determine a physical therapy diagnosis, prognosis, and planned therapeutic intervention.”<sup>6</sup> You assert in essence that the examination dictated by FMCSA for commercial motor vehicle operators is broader in scope than the examination described in the Act.<sup>7</sup> You also note that, according to minutes of its meeting of July 31, 2014, the Board declined, in response to a complaint from the Arkansas Medical Society, to take action to prevent physical therapists’ becoming FMCSA-certified as medical examiners.

The answer to your question ultimately depends on the meaning of the phrase “physical examinations” in the FMCSA rule. Whether the examinations Arkansas-licensed physical therapists are authorized to perform are “of the type” contemplated by FMCSA’s rule is a question for FMCSA to answer – one it apparently has answered in the affirmative. On questions of the proper interpretation of federal law, this office has traditionally deferred to the federal officials charged with applying and enforcing that law.<sup>8</sup> You may wish to inform FMCSA of your concerns.

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<sup>2</sup> 49 CFR § 390.103(a)(1).

<sup>3</sup> 49 CFR § 390.103(a)(2), (3).

<sup>4</sup> See A.C.A. § 17-93-301(a)(1) (Repl. 2010).

<sup>5</sup> A.C.A. §§ 17-93-101 to -314 (Repl. 2010, Supp. 2013).

<sup>6</sup> A.C.A. § 17-93-102(7)(A) (Repl. 2010).

<sup>7</sup> Obviously, the extent – if any – to which the examinations differ in scope is a question of fact this office is neither qualified nor charged to determine. See, e.g., Op. Att’y Gen. 97-224.

<sup>8</sup> See, e.g., Op. Att’y Gen. 201-066 and authorities cited therein.

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Assistant Attorney General J.M. Barker prepared this opinion, which I approve.

Sincerely,



DUSTIN MCDANIEL  
Attorney General

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