



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES

60 HUDSON STREET, NEW YORK, N. Y. 10013

CHARLES M. SMITH, Jr., R.A., *Commissioner*

CHARLES R. FOY, Esq.
General Counsel

August 4, 1988

Mr. Jay A. Segal
Rosenman & Colin
575 Madison Avenue
New York, NY 10022-2585

Dear Mr. Segal:

This letter is in response to your recent inquiry regarding whether offices in multiple dwellings located in residential districts utilized by "Doctors of Psychology, Optometry and Podiatry" is a permissible use under Section 22-14 of the Zoning Resolution.

At the outset, as you correctly indicated, use of offices in residential districts by Doctors of Podiatry are permitted as community facility, Use Group 4, medical offices. As is detailed below, the practice of podiatry stands apart from the practice of psychology and optometry and is illustrative of the distinction amongst permissible uses.

Prior to 1948, the Zoning Resolution only permitted the practice of medicine in residential districts as an accessory use to the residence of a physician. The Zoning Resolution was amended in 1948 to permit nonresident doctors to practice medicine in residential buildings. The amendment stated, in part, that such use was limited to "doctor's offices for the practice of medicine, including group medical centers, dentistry and osteopathy..." The clear intent, then, was to permit only doctors practicing medicine, and not all doctors, to have offices in residential buildings.

The practice of medicine is defined under the state Education Law §6521:

"The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition."

As defined by the Education Law, optometry and psychology are not considered to be the practice of medicine. The Education Law allows these professionals to use the term "doctor" but they are not medical doctors.

The profession of psychology is not defined under the New York State Education Law. Rather, the professional practice of psychology is defined in the New York Codes Rules and Regulation, Title 8, §72.6:

72.6 Definition of professional practice of psychology.
(a) The practice of psychology includes rendering to individuals, organizations, or the public, any service involving the application of principles, [SIC], methods or procedures or understanding, predicting or influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, or interpersonal relationships, or the methods or procedures for interviewing, counseling or psychotherapy; or of constructing, administering or interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions or motivations; or of assessing public opinion. The application of said principles and methods includes but is not restricted to: the psychological evaluation, prevention, diagnosis and amelioration of personality and behavior disorders and adjustment problems of individuals and groups; educational and vocational planning; personnel selection and management; the arrangement of effective work and learning situations; advertising and market research; the resolution of interpersonal and social conflicts; lecturing on or teaching of psychology; and the design and conduct of applied psychological research.

Nowhere in this definition does one find the healing or treating of the physical condition of human beings.

Similarly while doctors of optometry treat human conditions of the eye, they use means which are external, i.e., lenses. They are not medical doctors by definition and courts have so held.

In Goldstein et. al., v. Board of Zoning Appeals of Town of Hempstead, 113 Misc. 2d 756 (1982), the court was confronted with a question similar to the one posed by your letter. The town zoning ordinance allowed for nonresident physicians and dentists to practice in residential areas by special exception. The plaintiff sought a ruling declaring an optometrist to be a "physician" for purposes of the special zoning exception. The court did not so rule citing to the Education Law's definition of optometry and stating:

"An optometrist may not use or prescribe drugs. The optometrist performs no medical function. He does not treat disease and provides corrective therapy by external mechanical means.

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In the court's view the practice of optometry is not the practice of medicine..."Goldstein supra at 758.

Similarly, in Silver v. Lansburgh & Bro. et al., 111 F. 2d 518, the Court commented upon the practice of optometry in the District of Columbia and stated:

"...optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviations from the normal found in the human eye, but is not a learned profession comparable to law, medicine, and theology, and that though certain standards of education are prescribed by the statute and by rules of the board created under it, optometry is not a part of medicine". Silver, supra at 518.

In contrast to psychology and optometry, the practice of podiatry fits well within the definition of the practice of medicine. Section 7001 of the Education Law defines the practice of podiatry:

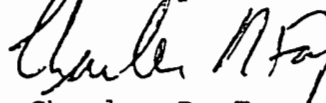
"The practice of the profession of podiatry is defined as diagnosing, treating, operating and prescribing for any disease, injury, deformity or other condition of the foot or operating on the bones, muscles or tendons of the feet for the correction of minor deficiencies and deformities of a mechanical and functional nature..."

In addition, podiatrists may prescribe and administer drugs.

As you can see, this definition of podiatry is encompassed and fits within the Education Law's definition of "medicine." Doctors of Podiatry have been allowed to practice in Use Group 4, Medical Offices since 1968.

Thus, it is this Department's determination that doctors of optometry and psychology, are not within the permissible uses of the Zoning Resolution 22-14, Use Group 4, Medical offices.

Sincerely,


Charles R. Foy
General Counsel

CRF:ngm

cc: Cornelius F. Dennis, Deputy Commissioner
George E. Berger, Assistant Commissioner
Lenore Norman, Director Intergovernmental Affairs
Charles G. Sturcken, Deputy General Counsel