

Opinion of
the Alabama Board of Medical Examiners
Concerning Ear Stapling

In §34-24-50 of the *Code of Alabama* (2002), the “practice of medicine or osteopathy” is defined as the following:

The "practice of medicine or osteopathy" means:

- (1) To diagnose, treat, correct, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;
- (2) To maintain an office or place of business for the purpose of doing acts described in subdivision (1), whether for compensation or not;
- (3) To use, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions, the designation "doctor," "doctor of medicine," "doctor of osteopathy," "physician," "surgeon," "physician and surgeon," "Dr.," "M.D." or any combination thereof unless such a designation additionally contains the description of another branch of the healing arts for which a person has a license.

Section 34-24-51 of the *Code of Alabama* (2002), which provides a penalty for practicing medicine without a license and which excludes certain practitioners of the healing arts from the penalty, states, in pertinent part, the following:

Any person who practices medicine or osteopathy or offers to do so in this state without a certificate of qualification having been issued in his behalf by the State Board of Medical Examiners and without a license and certificate of registration from the State Licensing Board for the Healing Arts¹ shall be guilty of a misdemeanor Nothing in this section shall be construed as applying to any person practicing chiropractic, dentistry, podiatry, optometry or any other branch of the healing arts, except medicine and osteopathy, pursuant to a license which has been issued, or which may hereafter be issued, by any state licensing board and who are practicing within the scope of such license.

Based upon Ala. Code §§34-24-50 and 34-24-51 and the holding in *Williams v. State, ex. rel. Medical Licensure Commission*, 453 So. 2d 1051 (Ala. Civ. App. 1984), it is the opinion of the Alabama Board of Medical Examiners that ear stapling for the purpose of effecting weight loss or for the purpose of treating, managing or otherwise affecting a medical condition is undertaking to treat or correct a human disease or physical condition by any means or instrumentality. Ear stapling for the purpose of effecting weight loss or for the purpose of treating, managing or otherwise affecting a medical condition is, therefore, the practice of medicine or osteopathy. Any person who engages in the practice of ear stapling for the purpose of effecting weight loss or for the purpose of treating, managing or otherwise affecting a medical condition is engaging in the practice of medicine. Any person who engages in ear stapling for the purpose of effecting weight loss or for the purpose of treating, managing or otherwise affecting a medical condition and who does not have a current certificate of qualification issued by the Alabama Board of Medical Examiners and a license issued by the Medical Licensure Commission of Alabama is engaging in the unlicensed practice of medicine in Alabama in violation of Ala. Code §34-24-51.

¹The State Licensing Board for the Healing Arts is now the Medical Licensure Commission of Alabama