

REPORT OF THE ATTORNEY GENERAL

PHYSICIANS: Acupuncture.

CHIROPRACTORS: Acupuncture.

Osteopathy is a broadly based profession which has as its concern the complete physical and mental condition of the patient and acupuncture as a system of diagnosis and treatment is within the compass of osteopathic medicine and surgery.

Acupuncture is outside the scope of the practice of chiropractic.

Opinion No. 4832

February 13, 1975.

Honorable Joyce Symons
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

"1. Is the practice of acupuncture considered to be the practice of medicine and is the Medical Practice Board therefore responsible for regulating such practice?

"2. Do Michigan statutes allow Doctors of Osteopathy to practice acupuncture, and if so would such practice be regulated by the Board of Osteopathic Registration and Examination?

"3. Do Michigan statutes allow chiropractors to practice acupuncture, and if so under which board would they be regulated?"

In connection to these particular questions, I am attaching as an appendix to this opinion a letter sent to Dr. John R. Champagne, Executive Secretary, State Board of Dentistry, relevant to the practice of acupuncture.

Responding specifically to your first question, it is obvious from the discussion in the Champagne letter that the practice of acupuncture clearly falls within the statutory definition of the practice of medicine and is, therefore, under the jurisdiction of the Medical Practice Board.

In response to your second and third questions, it should be noted that the Michigan Medical Practice Act of 1973 PA 185; MCLA 338.1801 *et seq*; MSA 14.542(1) *et seq*, excludes under section 16(1)(g):

"A person licensed under other laws of this state to the extent authorized by his license."

and under section 16(1)(h):

"Osteopathic physicians licensed under the provisions of Act No. 162 of the Public Acts of 1903, as amended, being sections 338.101 to 338.109 of the Michigan Compiled Laws." MCLA 338.1816; MSA 14.542(16)

Do these exclusions permit osteopathic physicians or chiropractors licensed in the State of Michigan to practice acupuncture? Or rephrasing the question, does the osteopathic act, 1903 PA 162; MCLA 338.101 *et seq*; MSA 14.571 *et seq*, or the chiropractic act, 1933 PA 145; MCLA

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338.151 *et seq*; MSA 14.591 *et seq*, include within the statutory limits of the scope of practice of said professions the practice of acupuncture?

The Michigan osteopathic act, *supra*, defines the practice of osteopathy in sections 1a(c) and 4 in pertinent part as follows:

"Sec. 1a. As used in this act:

"* * *

"(c) 'Osteopathic medicine and surgery' means a separate, complete, and independent school of medicine and surgery utilizing full methods of diagnosis and treatment in physical and mental health and disease, including the prescribing and administration of drugs and biologicals of all kinds, operative surgery, obstetrics, radiological and other electromagnetic emissions, and placing special emphasis on the interrelationship of the musculoskeletal system to all other body systems." MCLA 338.101; MSA 14.571 [Emphasis added]

"Sec. 4. The license provided for in section 2 shall entitle the holder thereof to practice osteopathic medicine and surgery in the state of Michigan in all of its branches. Osteopathic physicians and surgeons shall observe and be subject to all laws and rules relating to the public health in the state of Michigan." MCLA 338.104; MSA 14.574

As indicated by the definition contained in section 1a(c), quoted above, osteopathy may be correctly regarded as a broadly based profession which has as its concern the complete physical and mental condition of the patient. The statute allows osteopathic physicians to utilize "full methods of diagnosis and treatment." Taking the plain meaning of this language, it is apparent that acupuncture, as a system of diagnosis and treatment, is contained within the statutory definition of osteopathic medicine and surgery. See 2 OAG, 1956, No 2754, p 642 (November 7, 1956), and 1 OAG 1959-1960, No 3346, p 7 (January 26, 1959).

It should be noted, however, relative to the practice of osteopathy, acupuncture is regulated by the Board of Osteopathic Registration and Examination. In a statement that appears to be in the nature of a guideline dated December 6, 1972, the Board has determined:

"That acupuncture is presently in the experimental stages and that the Board does not condone its use at this time."¹

¹The Michigan State Board of Registration in Medicine (now entitled the Medical Practice Board) on December 27, 1972, also issued a statement regarding the practice of acupuncture which concluded by stating:

"***

"The Board of Registration in Medicine regards the practice of acupuncture as a treatment method requiring further investigation. Such investigation should be carried out only in medical centers, hospitals or other institutions capable of pursuing human medical research and having suitable committees who provide the necessary peer review of protocols and appropriate monitoring of the studies."

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Section 6 of the chiropractic act, *supra*, defines chiropractic in pertinent part as:

" . . . 'the locating of misaligned or displaced vertebrae of the human spine, the procedure preparatory to and the adjustment by hand of such misaligned or displaced vertebrae and surrounding bones or tissues, for the restoration and maintenance of health.' A licensed doctor of chiropractic under this act may use x-ray and such analytical instruments as are approved by the Michigan board of chiropractic examiners in the examination of patients solely for the purpose of locating misaligned or displaced vertebrae of the human spine and for the procedures preparatory thereto." MCLA 338.156; MSA 14.596

In OAG, 1947-1948, No 586, p 440 (June 30, 1948), it is stated in part:

"This statute, namely, Act 145, P.A. 1933, brings within its terms the chiropractor only and excludes or leaves out any reference to other systems of treatment as set forth in the medical practice act. . . .

" . . . The licensing of persons desirous of practicing other systems of drugless healing is not affected thereby, such persons being still under the terms of the medical practice act." (p 441)

In 1 OAG, 1955-1956, No 1894, p 2 (January 7, 1955), the attorney general, in quoting with approval OAG, 1951-1952, No 1247, p 12 (July 19, 1950), stated:

"In practicing their profession in public hospitals and elsewhere chiropractors are, of course, limited to the practice of chiropractic as defined by law and may not invade medical fields reserved to the practitioners of other schools of medicine.

"* * *

"Such limitation upon the scope of the field of practice of a chiropractor is based upon the statute which provides:

"The license provided for in this act shall entitle the holder thereof to practice chiropractic in the state of Michigan, and for the purpose of this act chiropractic is defined as "the locating of misaligned or displaced vertebrae of the human spine, the procedure preparatory to and the adjustment by hand of such misaligned or displaced vertebrae and surrounding bones or tissues." (p 3)

See also 1 OAG, 1959-1960, No 3346, p 7 (January 26, 1959).

Accepting the statutory definition of chiropractic, it is my opinion that the practice of acupuncture, with its attendant diagnosis and therapy by means of needle stimulation, is outside the scope of the practice of chiropractic.

FRANK J. KELLEY,
Attorney General.

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October 25, 1974.

Dr. John R. Champagne, D.D.S.
Executive Secretary
State Board of Dentistry
11165 Washington Avenue
Lansing, Michigan 48926

Dear Dr. Champagne:

I am responding to recent inquiries which have been posed relative to the ability of dentists to practice acupuncture. Specifically, the question has been phrased to read as follows:

"Do Michigan statutes allow dentists to practice acupuncture, and if so would such practice be regulated by the State Board of Dentistry?"

In responding to the aforementioned question, it is necessary to first define acupuncture and then to examine the relevant state statutes to determine if the legislature has authorized dentists to practice acupuncture in the State of Michigan.

In the western world the information currently available on acupuncture is limited. In *People v Amber*, 349 NWS2d 604, 610-611; 76 Misc 2d 187 (1973), the court traced the history, philosophy and techniques of acupuncture, stating:

"The earliest accounts of Chinese acupuncture date back to the third or fourth century B.C. The word 'acupuncture' is derived from the Latin words 'acus', the needle, and 'puncture', a pricking, and means 'a puncturing of bodily tissue'. Acupuncture is based on an energy concept. Traditionally, Chinese medicine is based on the concept that man is a microcosmic image of the universe and subject to identical laws. The immutable course of nature is thought to be guided by Tao, the Way. The two forces through which Tao acts were named Yin and Yang. Yin, also called the female element, possesses all the 'negative' energy qualities, and Yang, the male element, possesses the 'positive' energy qualities.

"In the human body the vital essence termed 'ch'i', consisting of a harmonious mixture of Yin and Yang is believed to be conveyed through twelve pairs of main ducts, plus two trunk ducts which run in the front and back midline of the body. These ducts, known as organ or median vessel meridians, are associated with a special inner organ function, process or system. The meridians emerge at the surface of the body at a certain number of designated points where vital energy can be predictably influenced by manipulation. These are known as acupuncture points. By palpating six pulses on each wrist, the acupuncturist is able to read the condition of the twelve organs and to determine the existence of energy imbalances, deficiencies, excesses, blockages and escapes. In response to individual symptoms, specific acupuncture points are then chosen for piqure. Out of the 670 points of the meridian, 31 are forbidden to piqures, and there are other points where a piqure is dangerous and may only be made after special precautions have been taken.

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"The piqure is made by the use of acupuncture needles. Those currently in general use are required to be very fine, hairlike, flexible, unbreakable and stainless. The lengths vary according to the usage; the long needle (three inches or more) is used for deep piqure in the region of the buttocks; the medium needle (two to three inches) is used for the deep points of the limbs and trunk; and the short needle (one to two inches) or the very short needle (less than one inch) is used on superficial points. The piqure, once placed, must remain there for a determined time at a determined depth.

"The piqures are inserted and manipulated in accordance with the 'great law of Pu-Hsieh and the rule of Shou Fa', which constitute the keystone of acupuncture, its procedure being to supply energy where it is lacking or to calm or retire an excess of energy where such excess is present. Ideally, it restores the equilibrium of the Yin and Yang and as a consequence the person's state of health is restored.

"Acupuncture includes cauterizations, referred to as 'a burning therapy' for which laws were established about a thousand years ago under the Northern Sung Dynasty. Sixty-six points are forbidden to cauterization, but are permitted to piqures. Six points are forbidden to both."

The section of the Michigan dentistry act, relating to the practice of dentistry, is 1939 PA 122, § 12(1)(7), which states as follows:

"A person practices dentistry, within the meaning of this act, when it is shown:

"(1) That he uses a dental degree, designation, card, device, directory, poster, sign, or other means whereby he represents himself, or permits himself to be represented as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth, teeth, alveolar process, gums or jaws, or their dependent tissues.

"* * *

"(7) That he conducts a physical evaluation, uses or administers anesthetics in the treatment of dental, or oral diseases, or in any preparation incident to a dental operation of any kind or character."
MCLA 338.212; MSA 14.629(12)

The Michigan Medical Practice Act, 1973 PA 185; MCLA 338.1801 *et seq*; MSA 14.542(1) *et seq*, defines the practice of medicine in section 2(g) as follows:

"'Practice of medicine' or 'to practice medicine' means to diagnose, treat, prevent, cure, or relieve a human disease, ailment, defect, complaint, or other condition, whether physical or mental, by attendance or advice, or by a device, diagnostic test, or other means, or to offer, undertake, attempt to do, or hold oneself out as able to do, any of these acts." MCLA 338.1802; MSA 14.542(2)

Acupuncture, as a total system of diagnosis and treatment of a patient, clearly falls within the statutory definition of the practice of medicine and

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is, therefore, under the jurisdiction of the Medical Practice Board. A similar conclusion was reached in *People v Amber, supra*. This is also in accord with *Locke v Ionia Circuit Judge*, 184 Mich 535, 543; 151 NW 623 (1915), which states:

"That the practice of various systems of drugless healing which have been devised and exploited from time to time, the respective merits of which the courts cannot and do not assume to decide, is to be regarded as practicing medicine, has been held in the following States and decisions, as well as many others therein cited, . . ."

As has already been noted, acupuncture comes under the statutory definition of the practice of medicine. The division of the scope of responsibility between dentistry and medicine was litigated in Michigan in *People v Phippin*, 70 Mich 6, 10; 37 NW 888 (1888). Construing an earlier statute, the court stated:

". . . the practice of dentistry is not the practice of medicine, nor included in the idea of the practice of medicine. . . ."

Later, the Michigan Supreme Court, in *People v Blair*, 192 Mich 183, 187; 158 NW 889 (1916), stated:

". . . the several acts heretofore passed by the legislature regulating the practice of medicine and dentistry have indicated its intention of separating these professions and making them two distinct professions. . . ."

Such consistent interpretation by the court on similar statutes will not allow an intermingling of the practice of medicine with the practice of dentistry. No contrary intent is evident in current legislation dealing with the two professions. Section 9a(1)(2), referring to dental assistants, provides in pertinent part as follows:

"(1) A person may assist in rendering dental care to a patient under the supervision of a licensed dentist, excluding the diagnosing or prescribing for a disease, pain, deformity; deficiency, injury or physical condition, or the cutting of the human teeth, alveolar process, gums, jaws or attendant tissue, the removal of accretion and stains including calcareous deposits, deep scaling, root planing, restoration of hard or soft tissue and the independent administration of anesthesia, analgesia or *acupuncture* and other procedures prohibited by rules promulgated by the board. The provisions of this subsection shall become effective upon promulgation of the rules of the board.

"(2) A licensed dentist may delegate certain dental procedures prohibited by subsection (1) which the board finds would not jeopardize the dental health of the patient to a person authorized by a certificate of the board to perform such procedures except that the removal or calcareous deposits, deep scaling, or root planing shall not be delegated to a person other than a dental hygienist. . . ."
MCLA 338.209a; MSA 14.629(9a) (Emphasis added.)

Thus, it may be noted, 1939 PA 122, § 9a(2) provides that a licensed dentist may delegate certain procedures to the dental assistant, but this

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delegation is dependent upon a proper finding and certification of the Board and is restricted to "certain dental procedures prohibited by subsection (1)."

In interpreting a statute, it is significant that similar provisions are found in the same act. The court, in *Roberts Tobacco v Department of Revenue*, 322 Mich 519, 530; 34 NW2d 54 (1948), states:

" . . . The basic rule governing the matter is to ascertain and give effect to the legislative intent. [citations omitted] This requires that the clause in question shall be read in connection with other pertinent provisions of the act and that a meaning shall be given thereto consistent with the general purpose wought to be accomplished. . . ."

As has already been noted, 1939 PA 122, §§ 19a and 12, *supra*, contain substantially the same language. The language used in section 9a(1), although restricted to dental assistants, suggests that the intent was to prohibit certain procedures in a place where dentistry is performed. In addition, section 12 is clearly intended to define the practice of dentistry and must, therefore, have been intended to exclude the use of acupuncture. If the legislature had so intended, it could have included acupuncture within the practice of dentistry as defined in section 12.

One of the aspects of acupuncture which has attracted considerable attention has been its ability to reduce pain, including pain associated with dental procedures. The use of acupuncture to arrest pain is a very recent development. Dr. Walter R. Tkach reported in *Medical World News*, April 7, 1972, ". . . that the Chinese doctors told them that the development of acupuncture—traditionally a therapeutic maneuver—as an anesthesia began in 1957. . . ." Various theories abound regarding the reasons for the anesthetic effects of certain acupuncture techniques, but none has found widespread acceptance in the medical world to date. The effects these anesthetic techniques have upon the rest of the body are also unknown.

At this early stage of development in the western society, the separation of the practice of acupuncture with its concern for the maintenance of an equilibrium of energy forces, and the selected use of some of the techniques to produce an anesthetic effect, is premature. In addition, section 9a(1) of the dentistry act, *supra*, by listing both acupuncture and anesthetic, acknowledges a statutory distinction between the two subjects.

Thus, the separation of one effect of a technique from the entire practice of acupuncture seems unwarranted until further study can be made. Forthcoming research, including combined medical and dental projects, may sufficiently demonstrate that certain techniques of acupuncture may be used in a purely dental sense. Until that time arrives, the use of acupuncture as previously defined is found to be outside the scope of dentistry. Acupuncture is a separate and distinct segment of medicine and not merely a technique to be used by the other healing arts.

Very truly yours,
FRANK J. KELLEY,
Attorney General.