

Opinion No. 76-32

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BY: OPINION OF TONEY ANAYA, Attorney General Nicholas R. Gentry, Assistant Attorney General

TO: Dr. D. G. Morrison, Chairman, New Mexico Chiropractic Board, 2925 Carlisle Blvd., N.E., Albuquerque, New Mexico 87110

QUESTIONS

Question

Is acupuncture a method of treatment which licensed chiropractors may legally practice, pursuant to the Chiropractic Practice Act, Sections 67-3-1 et seq., NMSA, 1953 Comp.?

Conclusion

Yes.

OPINION

{*114} Analysis

In answering this question, it is necessary to, first of all, define the term "acupuncture." Basically, acupuncture is an ancient Oriental form of treatment, which has only recently been practiced within the United States to any appreciable extent. At present in New Mexico, it is completely unregulated by statute or regulation. It is usually considered one means of Meridian therapy, a form of therapy applying several different procedures, i.e., 1) finger pressure, 2) pressure by blunt probes, 3) electrical and ultrasonic impulses, 4) heat, and 5) use of needles, in order to achieve a balancing of energy in the various meridians of the body. Acupuncture itself has been defined as follows:

"A modality consisting of stimulating various points on or within the human body or interruption of the cutaneous integrity by specific needle insertion." Rule #24, Alabama State Board of Chiropractic Examiners.

"A modality of diagnosing and treating disease, pain or physical conditions by stimulating various points on or within the body or interruption of the cutaneous integrity by needle insertion to secure a reflex relief of the symptoms by nerve stimulation." Rule 21D-1.03(2), Florida Board of Chiropractic Examiners.

See **State v. Won**, 528 P.2d 594 (Or. App. 1974), where the court quoted ORS 677.259, which defines acupuncture as:

"the selective stimulation of the body's neurological and defense mechanisms by the insertion of needles in an effort to correct neuromuscular and organic disorders or to induce analgesia."

One of the problems in dealing with acupuncture is that in method and theory it is quite different from traditional Western allopathic medicine, and to a large extent it is unknown on what scientific principles acupuncture works. But essentially, what these definitions indicate is an insertion of needles into the cutaneous membrane for anesthesia and curative purposes. Although the particular methods of application may vary, and the type of number of needles and depth of insertion may vary depending on several factors, the basic principle is the same.

According to Section 67-3-10 (A), **supra**, of the Chiropractic Practice Act, "chiropractic" is defined as:

"the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body, by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health. It shall include the use of all natural agencies to assist in the healing act, such as food, water, heat, cold, electricity and mechanical appliances. It shall exclude operative surgery and prescription or use of drugs or medicine, except that X-ray, analytical instruments and routine laboratory {^{*115}} procedures, not involving the penetration of human tissues except for blood testing, may be used for the purpose of examination."

Two other sections of the act contain similar language regarding the extent of chiropractic practice. Section 67 - 3 - 14(D), **supra**, is similar to the language quoted above with the addition of the following:

"The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose, including use of x-rays, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic, by the use of any or all methods as provided in this section, such as palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and drugless appliances, . . ."

Section 67-3-17, **supra**, is phrased in similar terms.

From these three sections, it appears that, although the scope of chiropractic practice is most certainly restricted by definite limits, within those limits there is still a wide range of healing modalities available to the chiropractor. Specifically, the statutes provide for the use of "mechanical appliances," "mechanical means" and "drugless appliances." Acupuncture needles can be considered "mechanical appliances," and the use of drugs

is not involved. It should also be realized that chiropractic science is to a large extent concerned with maintaining the integrity of the nervous system as it affects the bodily functions and the altering of malfunctions of the nervous system by chiropractic manipulation and therapeutic procedures. See Section 67-3-10(A), **supra**. Recent studies of acupuncture would indicate that this form of treatment is also concerned with stimulation or inhibition of nerve forces within the human body. See "Chiropractic Adjunctive Procedures," Digest of Chiropractic Economics, Nov./Dec. 1974. See also definitions above.

Section 67-3-14(D), **supra**, provides that a chiropractic may diagnose and treat mental and physical conditions relating to the basic concepts of chiropractic. In addition, Section 67-3-17, **supra**, states that:

"It is the purpose of the Chiropractic Practice Act to grant to chiropractors the right to practice chiropractic as taught and practiced in standard colleges of chiropractic, . . ."

And at the present time, acupuncture is being taught in many accredited schools of chiropractic within the United States.

Further examination of the Chiropractic Practice Act reveals that the legislature intended to allow for a continuing education program for licensed members of the profession. Section 67-3-11(G), **supra**, provides that:

"The board, for the purpose of protecting the health and well-being of the citizens of this state, and maintaining and continuing informed professional knowledge and awareness, may establish by regulations . . . mandatory continuing education requirements for chiropractors licensed in this state. In establishing {**116*} such requirements, the board shall recognize and give weight to existing educational methods, procedures, devices and programs in use."

This language is an obvious indication of the legislative intent to recognize the fact that chiropractic is not a static discipline, but is a continually evolving science, and to recognize the necessity of keeping licensed practitioners familiar with current treatments within the realm of chiropractic.

Although the term acupuncture appears no where within the Chiropractic Practice Act, based on the particular statutory provisions reviewed above and considering the act as a gestalt, it would appear that acupuncture would fall within the scope of chiropractic, unless, of course, it should be excluded by one of the enumerated exceptions: 1) prescription or use of drugs or medicine or 2) operative surgery. It is apparent that the insertion of acupuncture needles does not involve the prescription or use of drugs or medicine. It is not so apparent that it is not "operative surgery," the practice of which is statutorily limited to licensed physicians. See Section 67-5-10, NMSA, 1953 Comp.

According to Black's Law Dictionary, 4th Ed., at 1612 (1968), "surgery" is defined as:

"The art or practice of healing by manual operation; that branch of medical science which treats of mechanical or operative measure for healing diseases, deformities or injuries. (Citations omitted.) **Therapy of a distinctly operative kind, such as cutting operations, the reduction and putting up of fractures and dislocations and similar manual forms of treatment.**" (Emphasis added.)

Schmidt's Attorneys' Dictionary of Medicine, Vol. 2 at S-159 (1976), defines surgery as:

"The branch of medicine dealing with the diagnosis and treatment of those diseases, injuries, and disorders which require manual adjustment (as setting of a broken bone), the use of mechanical appliances (as braces), or operative procedures (as the cutting into the body)."

However, "operative surgery" is specifically defined as "surgery requiring incision or cutting," which would necessarily entail an opening of the tissues and the resultant bleeding.

Acupuncture involves the insertion of special acupuncture needles which are very fine, hairlike, flexible, unbreakable and stainless. The lengths vary according to the usage; the longest needles, three inches or more, are used for deep pique in the region of the buttocks; the medium needles, two to three inches, are used for the deep points of the limbs and trunk; and the shorter needles, one to two inches, or the shortest needles, less than one inch, are used on superficial points. The pique, once placed, must remain for a determined time and depth. **People v. Amber**, 76 Misc. 2d 267, 349 N.Y.S. 2d 604 (1973). There appears to be a definite distinction between the procedures of operative surgery and acupuncture. Acupuncture entails no incision or cutting of tissues. When given its plain and ordinary meaning, "operative surgery" does not include the practice of acupuncture. See **Mobile America, Inc. v. Sandoval County Commission**, 85 N.M. 794, 518 P.2d 774 (1974).

{*117} Before reaching an ultimate conclusion, it is necessary to consider the last sentence in the definition of chiropractic of Section 67-3-10(A), **supra**, which states that:

"x-ray, analytical instruments and **routine laboratory procedures, not involving the penetration of human tissues except for blood testing, may be used for purpose of examination.**"

(Emphasis added.)

At first glance, acupuncture seems to be excluded by this phrase, since it is concerned with penetration of human tissues. But a closer reading of the statute reveals the actual purpose. This particular phrase refers to routine laboratory procedures for purposes of examination and excludes those procedures similar to withdrawal of blood which penetrate the tissue. Acupuncture is neither a laboratory procedure, nor is it performed for purposes of examination. It is done either for curative reasons or as an anesthesia. It

is also quite distinct from the penetration of tissue for purposes of withdrawing a blood sample. The needles are not inserted into major blood vessels no bleeding occurs.

It is important to bear in mind that the Chiropractic Practice Act must be construed as one harmonious whole. Each provision must be considered in its relation to every other part, and the legislative intent and purpose gleaned from a consideration of the whole act. **Winston v. New Mexico State Police Bd.**, 80 N.M. 310, 454 P.2d 967 (1969). When considered on this basis, the act evidences a legislative intent to view chiropractic as an evolving health science with new forms and modalities of treatment within, of course, the realm of its statutory limitations.

It should be pointed out that in answering this rather difficult question, it is not necessary to determine if the practice of acupuncture does or does not constitute "the practice of medicine," as defined by statute. Since Sections 67-5-1 et seq., NMSA, 1953 Comp., relating to the practice of medicine, do not apply to, or affect, the practice of chiropractic. See Section 67-5-10.1, **supra**. Thus, it is only necessary to determine if acupuncture falls within the scope of chiropractic, and we conclude that it does. Chiropractors who practice acupuncture are thereby subject to the provisions of the Chiropractic Practice Act and any rules or regulations promulgated thereto.

It is therefore within the authority of the Chiropractic Board to enact comprehensive rules and regulations pertaining to the practice of acupuncture and to restrict such practice to only those chiropractors who have been properly trained in the discipline.