

FILE

Subject

State Board  
Healing Arts

Copy to

State House  
Legislature 1974



STATE OF KANSAS

*Office of the Attorney General*

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Attorney General

May 31, 1974

Opinion No. 74-167

Honorable Jack W. Janssen  
State Senator  
Box 626  
Lyons, Kansas 67554

,Dear Senator Janssen:

Under section 1(a) of 1974 Senate Bill 936, the State Board of Healing Arts is "authorized and directed to make a study of the subject and practice of acupuncture . . . [which] shall include the initiation and supervision of experiments involving the practical application of acupuncture." For the purposes of this bill, "acupuncture" is defined as

"the insertion of needles into the human body by piercing the skin of the body, for the purpose of controlling and regulating the flow and balance of energy in the body."

You inquire concerning § 1(c) of the bill, which states thus:

"The state board of healing arts is hereby empowered to authorize qualified persons to engage in the practice of acupuncture for experimental purposes as a part of this study. Persons so authorized shall be deemed to be licensed to engage in a branch of the healing arts while they are engaged in experiments under this section and, notwithstanding any provision of the laws of this state or of the rules and regulations adopted thereunder to the contrary, such persons shall not be subject to any civil or criminal penalty while so engaged on the ground that they are not duly licensed under the Kansas healing arts act."  
[Emphasis supplied.]

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By a resolution adopted at a special meeting on April 13, 1974, the Board adopted a resolution defining the class of "qualified persons" empowered by the Board to engage in the practice of acupuncture for experimental purposes to include all persons licensed to practice medicine and surgery in Kansas, inclusive of those licensed to practice osteopathic medicine and surgery. The Board further resolved thus:

"Chiropractors are prohibited from practicing acupuncture because of the Attorney General's opinion (1960) stating that puncture of the skin is the practice of surgery. Therefore, the Healing Arts Board goes on record that Acupressure is permitted by the Doctor of Chiropractic to perform."

This resolution correctly acknowledges an opinion issued in 1960 by Attorney General John Anderson, Jr., which states thus:

"The 1957 Legislature, when it passed the act which contained the above quoted prohibition against surgery insofar as chiropractic is concerned, was in our opinion using surgery in the modern limited sense of penetration of the human body by knives or scalpels or other instruments. We think in this limited sense the surgery prohibited to chiropractors would include puncturing of the skin by needles or other apparatus required for the removal of blood or other subcutaneous body fluids . . . [Citations omitted.] From the foregoing authorities, as to the withdrawal of blood specimens, we are of the opinion a chiropractor is prohibited from such practice."

The penetration of tissue of the living human body by instruments in the performance of acupuncture is likewise prohibited by this interpretation, which we do not feel to abandon. This opinion is based, of course, upon the statutory definition of the scope of the practice of chiropractic, K.S.A. 65-2871, which states thus:

"For the purpose of this act the following classes of [or] persons shall be deemed to be engaged in the practice of chiropractic: (1) Persons who examine, analyze and diagnose the human living body, and its diseases by the use of any physical, thermal or manual method and use the X-ray diagnosis and analysis taught in any recognized chiropractic school; and (2) persons who adjust any misplaced tissue of any kind, or nature, manipulate, or treat the human body by manual, mechanical, electrical or natural methods or by

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the use of physical means, physiotherapy . . . or by the use of foods, food concentrates, or food extract, or who apply first aid and hygiene, but chiropractors are expressly prohibited from prescribing or administering to any person medicine, or drugs in materia medica, or from performing any surgery, as hereinabove stated or from practicing obstetrics." [Emphasis supplied.]

Thus, surgery is excluded as a part of that practice which a chiropractor is licensed to conduct in the State of Kansas as a result of his licensure for the practice of chiropractic.

A license to engage in the practice of chiropractic confers no authority upon the holder thereof to perform surgery. However, a license to engage in a branch of the healing arts for which licensure is available under the Kansas Healing Arts Act is not a requirement or prerequisite for the grant of authority to engage in the practice of acupuncture for experimental purposes under Senate Bill 936. The authority which the Board may grant thereunder to a qualified person is independent of any authority which such a person may already hold as a licensee of a recognized branch of the healing arts. Similarly, the statutory prohibition against the performance of surgery by licensed chiropractors operates only upon the authority granted by the license to engage in the practice of chiropractic. That prohibition does not operate to prevent any duly qualified person who obtains authority from the Board pursuant to Senate Bill 936 from exercising the authority so granted, i.e., to engage in the practice of acupuncture for experimental purposes as a part of the study authorized by the bill.

You question whether under S.B. 936, the Board of Healing Arts is authorized to prohibit the practice of acupuncture for experimental purposes to all those persons as a class who are licensed to practice chiropractic in this state. Under the bill, as set out above, the Board is empowered to authorize "qualified persons" to engage in the practice of acupuncture for experimental purposes. A "qualified" person is not necessarily one who is licensed by the Board to practice any healing art in this state. The bill itself implicitly recognizes that despite its long history in China and perhaps elsewhere, acupuncture represents in this country a highly innovative modality of treatment not yet fully understood by modern medical science. Before it is fully and permanently sanctioned, the bill authorizes experimentation and study, and requires the State Board of Healing Arts to report its findings and recommendations based thereon to the legislative coordinating council on or before December 1, 1974. Licensure in a presently statutorily

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authorized healing art is not necessarily conclusive of the qualifications of a given individual to engage in the practice of acupuncture, and the language of § 1(c) imports a legislative recognition that the Board is free to authorize qualified persons to engage in the practice of acupuncture for experimental purposes despite the fact that such persons are not licensed to practice a presently recognized healing art in this state. That is to say, existing licensure in a presently recognized healing art is not necessarily conclusive of the qualifications of a given applicant for authority to conduct experiments in acupuncture under S.B. 936. Indeed, under the second sentence of § 1(c), a person authorized by the Board pursuant to the bill is "deemed to be licensed to engage in a branch of the healing arts" while engaged in experiments pursuant to that authority, and while so engaged, "shall not be subject to any civil or criminal penalty . . . on the ground that they are not duly licensed under the Kansas healing arts act." A licensed practitioner of chiropractic is thus not ineligible for authority granted by the Board to engage in the practice of acupuncture for experimental purposes if that person is in fact "qualified," i.e., properly trained in the use of acupuncture.

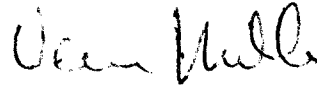
It is a virtual certainty that neither every licensed physician and surgeon, nor every licensed osteopathic physician and surgeon, is properly trained in the use of acupuncture. The fact of licensure alone manifestly does not establish that each such practitioner has been trained and is qualified in the use of acupuncture. Similarly, the fact that one is a licensed practitioner of chiropractic does not establish that he is not qualified in the use of acupuncture. To reiterate, § 1(c) of S.B. 936 empowers the Board to authorize "qualified persons" to engage in the practice of acupuncture for experimental purposes, and such persons while so engaged are not subject to any civil or criminal penalty while so engaged on the ground that they are not "duly licensed under the Kansas healing arts act." Thus, licensure in any branch of the healing arts is not a condition upon the grant of authority by the Board under this act. The term "qualified" as used in § 1(c) does not mean "legally entitled" by the fact of existing licensure to perform acts required in the practice of acupuncture, but "qualified" by professional and/or academic training and qualifications in the use of acupuncture.

Accordingly, we conclude that as a matter of law, a person who is a licensed practitioner of chiropractic in this state is eligible for authorization by the Board of Healing Arts to engage in the practice of acupuncture for experimental purposes if such person is qualified by professional and/or academic

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training in the use of acupuncture. The determination of qualifications necessarily rests with the Board.

Yours very truly,



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