



Subject FILE
State Boards
Healing Arts

Copy to _____

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

November 26, 1974

Opinion No. 74- 378

Mr. Robert D. Loughbom, Attorney
Board of Healing Arts
292 New Brotherhood Building
Kansas City, Kansas 66101

Dear Mr. Loughbom:

As counsel for the Kansas State Board of Healing Arts, you inquire whether any person may engage in the practice of acupuncture other than those authorized to do so pursuant to ch. 246, L. 1974.

Section 1(a) of that act states thus:

"The state board of healing arts is hereby authorized and directed to make a study of the subject and practice of acupuncture. This study shall include the initiation and supervision of experiments involving the practical application of acupuncture."

Section 1(c) states as follows:

"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."

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As you are aware, Attorney General John Anderson, Jr., in an opinion to which we adhere, concluded that the penetration of tissue of a living human body by a needle inserted to withdraw blood for diagnostic purposes by a practitioner of the healing arts, constitutes surgery, and as such, is restricted to only those practitioners who by virtue of the licensure with the Board of Healing Arts are lawfully empowered to perform surgery.

Acupuncture is defined by section 1(b) of the enactment in question, as follows:

"For purposes of this section, 'acupuncture' means 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."

Under section 1(c) above, the Board may authorize "qualified persons" to engage in the practice of acupuncture for experimental purposes as a part of the study authorized and directed by the enactment. Under this subsection, such "qualified persons" may include persons other than those who by virtue of their licensure by the State Board of Healing Arts would be permitted to perform surgery.

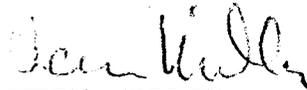
Prior to the passage of 1974 Senate Bill 936, the practice of acupuncture was a lawful mode or method of treatments, available to licensed physicians and surgeons, including osteopathic physicians and surgeons in the State of Kansas. Nothing in this enactment suggest an intention to forbid any mode of treatment which the practitioner deems proper and which is within the lawful scope of the branch of the healing arts for which the practitioner is licensed. Acupuncture is, under the view followed by this office, a surgical mode of treatment, which any practitioner licensed to perform surgery in the State of Kansas might lawfully utilize, absent a statutory provision which forbids it. Section 1(c), above, empowers the Board of Healing Arts to authorize "qualified persons to engage in the practice of acupuncture *for experimental purposes as a part of this study.*" [Emphasis supplied.] Thus, the Board is free to empower "qualified persons" to engage in the practice of acupuncture only "for experimental purposes" and "as a part of" the study authorized by this 1974 legislation. Licensed physicians and

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surgeons remain empowered, by virtue of their licensure as such, to continue to practice acupuncture, not, of course, as a part of the study, but merely as a mode of treatment followed and applied in the treatment of patients in the course of their practice.

Thus, in our opinion, those who are lawfully authorized to practice acupuncture in the State of Kansas include, first, those persons authorized to do so pursuant to ch. 246, L. 1974, and secondly, those persons who are licensed physicians and surgeons authorized thereby to perform surgery.

Yours very truly,



VERN MILLER
Attorney General

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