

1974 S.C. Op. Atty. Gen. 25 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3686, 1974 WL 22424

Office of the Attorney General

State of South Carolina

Opinion No. 3686

January 4, 1974

***1** The practice of acupuncture constitutes the practice of medicine within the scope and regulation of the South Carolina Medical Practice Act, Section 5–1354 through 138S, S.C.Code of Laws, as amended.

President

State Board of Medical Examiners of South Carolina

By letter of the Executive Secretary dated December 6, 1973, the State Board of Medical Examiners has requested an opinion concerning whether or not the practice of acupuncture constitutes the practice of medicine within terms of the South Carolina Medical Practice Act.

In this State the “practice of medicine” is defined by Section 56–1354, S.C.Code of Laws (1962). Section 56–1354 provides:

Any person shall be regarded as practicing medicine within the meaning of this chapter who (a) shall as a business treat, operate on or prescribe for any physical ailment of another, (b) shall diagnose, cure, relieve any human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin, by attendance or advice, by prescribing, using or furnishing any drug, appliance, manipulation, adjustment or method or by any therapeutic agent whatsoever.

Persons whose activities fall within this definition must by law be licensed to practice medicine by the State Board of Medical Examiners, unless expressly excepted from the provisions of the Medical Practice Act by Section 56–1355 or Section 56–1372. Acupuncturists are not expressly excepted, and consequently it remains to define acupuncture and to determine if its practice includes any of the above described acts.

There is no statute defining acupuncture in the State, nor has a judicial definition been found. Consequently, what constitutes the practice of acupuncture is a question of fact. Apparently there do exist variations in the techniques employed by different acupuncture practitioners. For example, basic acupuncture techniques are sometimes combined with the application of electric current, heat, various herbs, or with a constant manipulation of the acupuncture needle. Nevertheless, this office is informed and believes that the basic technique common to all acupuncture involves the insertion of needles into the body at various points and, moreover, that this is done for the purpose of affecting the patient. It appears that most frequently this procedure is specifically intended to treat a physical ailment of the patient and/or to relieve pain. See Dimond, *Acupuncture Anesthesia*, *Western Medicine and Chinese Traditional Medicine*, 218 *J.Am.Med.Assn.* 1558, 1559–60 (1971). However, for purposes of this opinion this office adopts the broader definition for the practice of acupuncture previously constructed, i.e., the practice of acupuncture is the insertion of needles (or needle) into the body at various points (or point) for the purpose of affecting the patient. The question now is whether or not such a procedure also constitutes the practice of medicine.

***2** The right and responsibility of the State to protect the public health through regulation of the healing arts is closed to question. See [Dantzler v. Callison](#), 230 S.C. 75, 94 S.E.2d 177 (1955). And the State Legislature has in the prosecution of this responsibility assigned a very broad definition to the practice of medicine. See Section 56–1354, *supra*. This definition is sufficiently clear and plain on its face to provide a basis for this opinion. In addition, the definition has been twice applied by the South Carolina Supreme Court. The first case construing the language was that of [State v. Barnes](#), 119

S.C. 213, 112 S.E. 62 (1921), wherein the court held that manipulation or massage of the spinal column by a chiropractor in an effort to heal disease constituted the practice of medicine. The second case was that of [Wadsworth v. McRae Drug Company](#), 203 S.C. 543, 28 S.E.2d 417 (1943), wherein the court inferentially held that the prescription and placement of drops in a person's eyes to relieve soreness constituted the practice of medicine. These decisions consider instances of treatment of the human body which are analagous to the treatment of the human body commonly administered by acupuncture practitioners.

In view of these cited cases and in view of the clear and plain text of Section 56–1354, S.C.Code of Laws (1962), this office is of the opinion that the practice of acupuncture does constitute the practice of medicine within the scope and regulation of the South Carolina Medical Practice Act, Section 56–1354 through 1385, S.C.Code of Laws, as amended.

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