



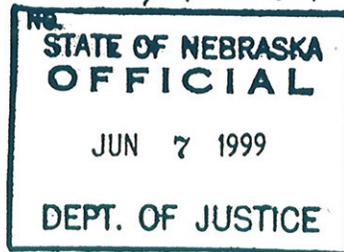
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99026



DATE: May 28, 1999

SUBJECT: Whether Acupuncture is Within the Scope of Practice of Chiropractors

REQUESTED BY: Richard P. Nelson, Director
Department of Health and Human Services, Regulation and Licensure

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

You have asked whether the scope of practice of a chiropractor includes acupuncture. For the reasons discussed below, we believe the answer to that question is yes.

We first note that the practice of acupuncture has not been addressed by statute or regulation in Nebraska. In addition, there are no Nebraska cases on the topic. In 1975, our office was asked whether acupuncture falls within the practice of medicine and surgery and we concluded that it does. 1975-76 Rep. Att'y Gen. 186 (Opinion No. 131, dated October 7, 1975). We did not address at that time whether acupuncture falls within the scope of practice of a chiropractor.

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The practice of chiropractic has been statutorily defined in Nebraska as follows:

One or a combination of the following, without the use of drugs or surgery: (1) The diagnosis and analysis of the living human body for the purpose of detecting ailments, disorders, and disease by the use of diagnostic X-ray, physical and clinical examination, and routine procedures including urine analysis; or (2) the science and art of treating human ailments, disorders, and disease by locating and removing any interference with the transmission and expression of nerve energy in the human body by chiropractic adjustment, chiropractic physiotherapy, and the use of exercise, nutrition, dietary guidance, and colonic irrigation."

Neb. Rev. Stat. § 71-177 (1996). Two questions arise. The first question is whether acupuncture constitutes "surgery" as that term is used in Neb. Rev. Stat. § 71-177. The second question is whether the practice of acupuncture falls within the chiropractic treatments described at § 71-177(2).

As stated previously, the topic of acupuncture has not yet been addressed by a Nebraska statute or regulation. Webster's New Universal Unabridged Dictionary (Second Edition 1983) defines acupuncture as "the ancient practice, especially as carried on by the Chinese, of piercing parts of the body with needles and seeking to treat disease or relieve pain." Dorland's Illustrated Medical Dictionary (1988) defines acupuncture as "the Chinese practice of insertion of needles into specific exterior body locations to relieve pain, to induce surgical anesthesia, and for therapeutic purposes."

Our research has disclosed no Nebraska cases which discuss whether acupuncture constitutes surgery. Moreover, there is a split of authorities from other jurisdictions on this question. In our view, the better answer was provided by the Kansas Supreme Court in ***Acupuncture Society of Kansas v. Kansas State Board of Healing Arts***, 226 Kan. 639, 602 P.2d 1311 (1979). The court found that the ordinary lay person thinks of surgery as "what surgeons do," that is, "sever the tissues of the body for the purpose of penetration for treatment, replacement or removal of afflicted parts." While the dictionary definition of surgery is much broader, the Kansas court concluded that the legislature had in mind, when using the term surgery in the chiropractic practice statute, the more limited meaning developed by the ordinary lay person. "The simple piercing of the skin by the insertion of a solid wire or needle, not intended to separate or sever tissue, for the purpose of treating by acupuncture is not 'surgery' as that term is used in the Healing Arts Act." *Id.* at 646, 602 P.2d at 1316.

This office has previously noted that the statutory definition of chiropractic practice contained in § 71-177 is much broader than the historic definition. Op. Att'y Gen. No. 91055. Surgery is defined in Dorland's Illustrated Medical Dictionary (1988) as "that

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branch of medicine which treats diseases, injuries, and deformities by manual or operative methods." However, application of that broad dictionary definition to the term surgery in § 71-177 would seem to prohibit much of the chiropractic practice described by the legislature in § 71-177(2). We think it more likely that the legislature intended to prohibit surgery as that term is used by the ordinary lay person.

Having determined that acupuncture is not surgery as that term is used within the context of § 71-177, the remaining question is whether acupuncture falls within the treatment modalities permitted by § 71-177(2), including chiropractic physiotherapy. After reviewing informational materials submitted by the Department and the Board of Examiners in Chiropractic, it appears to us that the practice of acupuncture is included within chiropractic physiotherapy and, therefore, that acupuncture is included within the chiropractic scope of practice in Nebraska. Under Nebraska law, where the words of a statute are plain and unambiguous, no interpretation is needed to ascertain their meaning. In the absence of anything to indicate the contrary, words will be given their ordinary meaning. *Kellogg Co. v. Herrington*, 216 Neb. 138, 343 N.W.2d 326 (1984).

Sincerely,

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Approved:


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09-222-16