



Texas State Board of Medical Examiners

1812 CENTRE CREEK DRIVE, SUITE 300
P.O. BOX 14000
AUSTIN, TEXAS 78714-9134

(512) 834-7728
FAX (512) 834-4597

RECEIVED

SEP 16 1994

September 14, 1994

Opinion Committee

RO-748
SJS

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Honorable Dan Morales
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-29177-94
13A 29177

RE: Request for opinion as to whether acupuncturists may hold themselves out as "doctor", "O.M.D.", or "Oriental Medical Doctor"

Dear Attorney General Morales:

An Attorney General Opinion is respectfully requested under the authority of Section 22 of Article IV of the Texas Constitution and sections 402.041 through 402.045 of the Texas Government Code as to whether or not licensed acupuncturists in the State of Texas may hold themselves out as "doctor", "Oriental Medical Doctor", or "O.M.D."

The Legislature did not designate educational or licensure titles for acupuncturists in Subchapter F of the Medical Practice Act of Texas (MPA), V.A.C.S., article 4495b, attached as Exhibit A. It is in the interest of the public to have designations which clearly define the practitioner's scope of practice so persons will be aware of the type of practitioner from whom they are seeking care. The Texas State Board of Acupuncture Examiners hopes to address this issue through rulemaking, but Board counsel believes it would be ill-advised to promulgate rules without first seeking an Attorney General opinion on the matters set forth herein.

Honorable Dan Morales
Page Two

The Healing Art Identification Act (HAIA), Section 2, V.A.C.S. article 4590e, attached as Exhibit B, defines a healing art to include "any system, treatment, operation, diagnosis, prescription or practice for the ascertainment, cure, relief, palliation, adjustment or correction of any human disease, ailment, deformity, injury or unhealthy or abnormal physical or mental condition." This definition seems to encompass the practice of acupuncture as defined in section 6.02(1)(A) of the MPA:

(1) "Acupuncture" means:

(A) the insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition;

The HAIA sets forth, in Section 3, the legally required identifications for persons licensed by the following boards:

Medical Examiners (M.D. or D.O.);

Dental Examiners (D.D.S. or D.M.D.);

Chiropractic Examiners (D.C.);

Examiners in Optometry (O.D.); and

Podiatry Examiners (D.S.C. or D.P.M.).

The HAIA continues, in Section 4:

"Any person ... not given herein a means of identification shall, in using the title "doctor" as a trade or professional asset ... designate under what authority such title is used, or what college or

Honorable Dan Morales
Page Three

honorary degree gave rise to its use, in the same manner as practitioners of the healing arts are required under this Act to identify themselves."

The language requiring persons to designate under what authority such a title is used or what college or honorary degree gave rise to its use may be simply a matter of restricting the designation to only those individuals licensed to practice acupuncture in Texas; however, V.A.C.S, article 4512p, attached as Exhibit C, addresses false, misleading, or deceptive advertising and under that article a question arises as to whether it would be misleading to use "doctor", "Oriental Medical Doctor", or initial designations containing "M.D." in that sequence, such as "O.M.D." Even so, if such a designation is limited to only licensed acupuncturists, the likelihood of misleading the public may be sufficiently minimized.

A formal opinion is requested as to whether or not licensed Texas acupuncturists may presently hold themselves out as "doctor", "Oriental Medical Doctor", or "O.M.D.". It is further requested that an opinion be rendered which addresses whether or not such designations may be approved and limited by agency rule. To provide an additional perspective, correspondence from members of the acupuncture community is attached as Exhibit D.

Honorable Dan Morales
Page Four

If additional information is needed, please let me know.

Thank you for your assistance.

Sincerely,

Bruce A. Levy M.D., J.D.

Bruce A. Levy, M.D., J.D.

Executive Director

Texas State Board of Medical Examiners

Texas State Board of Acupuncture Examiners

BAL/JPR/pgr
JR.Corres 8098