

Report: 407 Review of the Nebraska Oriental Medicine Association's Proposal to License the Practice of Acupuncture

From: Richard P. Nelson *RPN*
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Regulation and Licensure

To: Speaker of the Nebraska Legislature
Chairperson, Executive Board of the Legislature
Chairperson and Members, Health and Human Services Committee

Date: January 10, 2000

Introduction

The Regulation of Health Professions Act provides for an administrative process to review and present to the Legislature recommendations regarding change in scope of practice of licensed health care professionals and the establishment of new credentialing for currently unregulated professions as defined in Neb. Rev. Stat., Section 71-6201, et seq. The process is commonly known as a "407 review" because it was authorized by LB 407 in 1985. The Department of Health and Human Services Regulation and Licensure administers the Act. As director of this department, I am presenting this report under the authority of the Regulation of Health Professions Act.

Summary of the Applicants' Proposal

Under the terms of the proposal submitted by the Nebraska Oriental Medicine Association, a separate regulated profession would be established and licenses would be granted to those who successfully complete an accredited oriental medicine program and pass the national examination in oriental medicine. Licensed practitioners would be allowed to use acupuncture to facilitate patients' recovery from injury or illness, provide rehabilitation or continuing care following injury or illness, or prevent injury or illness.

The proposal was amended by the applicant to remove Chinese herbology from the proposed scope of practice. It was amended further to require an "informed consent" to be signed by patients. The purpose of the informed consent is to clarify for prospective patients the differences in methods of diagnosis and treatment of disease between oriental medicine practitioners and western medicine practitioners.

Summary of Technical Committee and Board of Health Recommendations

The proposal was reviewed by both the Board of Health and a technical committee specifically appointed by the department to review the proposal. The technical committee recommended support for the proposal on each of the four criteria. The Board of Health recommended against support for the proposal on each of the four criteria.

I recommend against support for the proposal and will discuss this recommendation in the subsequent sections of this report.

Regulatory Policy and Philosophy

When practitioners of a health profession not currently regulated are prohibited from the full practice of their profession, the Legislature has provided four criteria which should be satisfied before a separate regulated health profession is created. These criteria focus attention on the health, safety, and welfare of the public as defined in section 71-6221 (2). The term "welfare" is defined in section 71-6220.01 of the act and states:

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable cost.

Additionally, the Regulation of Health Professions Act states in section 71-6202 the following:

The Legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public.

People in Nebraska should be confident that health care professionals licensed by the state are competent to provide quality services. These quality services should be accessible and affordable. It is equally important that people have a choice in health care services when choice can be offered without endangering the health and safety of the public.

Findings and Recommendations

Regarding the four criteria of the credentialing review statute, I have decided to take the following actions.

Pertinent to Criterion One which states:

Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.

I find that Criterion One is not satisfied. There is adequate access to acupuncture services through currently licensed professionals, which protects the health, safety and welfare of the public.

Pertinent to Criterion Two which states:

Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public.

I find that Criterion Two is not satisfied. Creating a separate regulated profession would create significant new danger to the public health and welfare.

Pertinent to Criterion Three which states,

Creation of a separate regulated profession would benefit the health, safety, and welfare of the public.

I find that Criterion Three is not satisfied. Creation of a separate regulated profession would not benefit the health, safety, and welfare of the public.

Pertinent to Criterion Four which states:

The public cannot be effectively protected by other means in a more cost-effective manner.

I find that Criterion Four is not satisfied. The current licensure laws provide the most cost-effective means of addressing the issues raised by the proposal.

I recommend that the practice of acupuncture, as further defined in this report, not be established as a separate regulated profession. It may be possible, however, to establish a mechanism whereby persons appropriately trained in acupuncture can practice in collaboration with medical doctors, osteopathic doctors, or chiropractors.

Discussion on Recommendations

Nebraska law requires persons who practice medicine to be licensed. Under the definition of the practice of medicine and surgery, Neb. Rev. Stat., Section 71-1,102, this includes:

“(3) persons holding themselves out to the public as being qualified in the diagnosis or treatment of diseases, ailments, pain, deformity, or any physical or mental condition, or injuries of human beings; (4) persons who suggest, recommend or prescribe any form of treatment for the intended palliation, relief or cure of any physical or mental ailment of any person; (5) persons who maintain an office for the examination or treatment of

persons afflicted with ailments, diseases, injuries, pain, deformity, or any physical or mental condition of human beings;”

Because the applicants propose activities which require a license under Nebraska law, they meet the description in 71-6221(2) of a profession which is not currently regulated and whose members are prohibited from the full practice of their profession in Nebraska.

The proposal has been referred to variously as a proposal to license oriental medicine practitioners and a proposal to license acupuncturists. The applicants’ proposal, in Item Number Three, states: “The Nebraska Oriental Medicine Association is seeking to have legislation passed that would allow the licensing of acupuncturists.” The applicants’ proposal, in Item Number Eight, states:

“The practice of acupuncture means the insertion of acupuncture needles and the application of moxibustion to specific areas of the body based on oriental medical evaluation as a mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, electrical, and electromagnetic treatment, Chinese herbology, and the recommendation of nutritional support, dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.”

During the review, the applicant group amended the proposal to remove Chinese herbology and stated that their principal concern was with providing acupuncture services. In an effort to clarify which activities would be included in the proposed scope of practice in addition to the use of acupuncture needles, I contacted the applicant group for further information. The applicant group responded by defining modalities that are included as part of the provision of acupuncture services in addition to the insertion of needles. These definitions are as follows:

- 1) “manual stimulation” means the use of acupressure to stimulate acupuncture points and meridians.
- 2) “mechanical stimulation” means the stimulation of acupuncture and meridians through the use of tapping, scraping, or vacuum devices that do not penetrate the skin.
- 3) “thermal stimulation” means the use of heat to stimulate an acupuncture point or meridian. This includes the use of moxibustion and heat lamps. Moxibustion is a preparation of the herb artemesia vulgaris that is lit and held above the surface of the skin to warm an acupuncture point or meridian.
- 4) “electrical stimulation” means the stimulation of acupuncture points or meridians using a mild electrical current, with or without the use of acupuncture needles.
- 5) “electromagnetic stimulation” means the use of magnets to stimulate an acupuncture point or meridian.

In this report, therefore, I understand that the proposal consists of acupuncture as defined here, together with the adjunctive therapies of nutritional support, dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

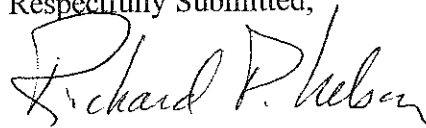
Medical doctors and osteopathic doctors licensed in Nebraska presently can provide acupuncture services, and some of them do provide them. In addition, during this review, the department requested and received from the Attorney General an opinion which concludes that chiropractors are also permitted to practice acupuncture within their scope of practice in Nebraska (Atty. Gen. Opn. # 99026, June 7, 1999). Information provided to the technical committee indicates that at least forty chiropractors currently use acupuncture in their practices and that more may do so in the future. I conclude that the applicant group has not established that the absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public.

There are thirty-seven states that permit some sort of credentialing of acupuncture practitioners who are neither licensed as physicians or chiropractors, and of these thirty-seven, eleven require some sort of collaboration, referral, or independent diagnosis by a physician. My main concern about licensing acupuncturists is whether they should practice independently. Because acupuncture is a form of oriental medicine, training is focused on non-western concepts of disease and diagnosis of disease. While there was some information presented to the technical committee that students who attend schools of oriental medicine are also trained to refer patients to a physician when necessary, I have concluded that the information was not sufficient to establish that the training in western sciences received by acupuncturists is adequate to protect the public health and safety. Nor do I believe that having a patient sign an informed consent is sufficient protection given the public's present lack of understanding about the differences between western medicine and oriental medicine and particularly the ability to diagnose diseases.

The technical committee did receive information that acupuncture can be used for more than pain control. In 1997, a National Institutes of Health Conference was convened on acupuncture and concluded that it has been proven effective in treating disease conditions such as sinus problems, ulcers, constipation, acne, and menstrual problems. It may be helpful for the public to have access to some of these alternative forms of treatment.

Medical and osteopathic physicians should give serious consideration to offering more of these kinds of treatments in Nebraska. This could be done through additional training for physicians themselves, or by establishing some sort of supervised or collaborative practice with qualified acupuncturists that would increase access to alternative treatments without risking a disconnection from the benefits of western medicine.

Respectfully Submitted,



Richard P. Nelson, Director

