

HUMAN SERVICES OCCUPATIONS ADVISORY COUNCIL

Acupuncture Subcommittee

FINAL REPORT

November, 1980

The purpose of this report from the Acupuncture Subcommittee is to address the following questions: (1) should lay acupuncturists be regulated by the state of Minnesota? If so, (2) which mode of regulation is appropriate? and (3) if regulated, what would be the appropriate administrative structure? The recommendations of the subcommittee are based on over two years of study which included 18 meetings, a public forum, informal discussion with the applicant group representatives, and the completed Applicant Group Questionnaire and its amendments.

On October 7, 1980, the three member Acupuncture Subcommittee voted to forward the following recommendations to the Human Services Occupations Advisory Council:

- 1. That acupuncturists should be regulated by the State of Minnesota.

3 Aye      0 Nay

- 2. That the appropriate mode of regulation be a limited practice standard with state enforcement.

2 Aye      1 Nay

- 3. That the appropriate administrative structure for regulation should be the Commissioner of Health.

3 Aye      0 Nay

I. DESCRIPTION OF THE APPLICANT GROUP

The applicant group for lay acupuncturists is the 35 member Acupuncture Society of Minnesota. The 45 member Midwest Acupuncture Society declined to participate in the credentialing process.

The exact number of lay acupuncturists in Minnesota is unknown even to the applicant group. Estimates of the number of practicing lay acupuncturists in

Minnesota range from "less than a handful" to 25 practitioners. The usual work setting for lay acupuncturists is in a solo/independent practice.

The Applicant Group Questionnaire defines the practice of acupuncture as "the stimulation of acupuncture points by needles, transcutaneous electrical stimulation or moxibustion, with the intent of maintaining optimal physiological function or improving physiological function where it is suboptimal and for relief of pain." A lay acupuncturist uses traditional Chinese medical theory to (1) diagnose the clients state of health, (2) design a treatment plan, (3) administer treatment, and (4) do follow-up and evaluate outcomes.

Acupuncture is used as therapy for those who are ill and as health maintenance for clients who are in good health. Examples of situations in which acupuncture is appropriate are: musculo skeletal disorders, digestive problems, neurological problems, respiratory conditions, pain management and management of withdrawal in chemical dependency.

An acupuncturist does not diagnose or treat disease in the Western medical sense. When an acupuncturist makes a diagnosis in the Eastern sense s/he tries to determine the energy balance in the body. A diagnosis in the Western sense uses the patient's symptoms to identify a disease entity.

## II. REGULATORY FACTORS

The subcommittee based their recommendations on the three factors contained in Minnesota Statutes 214.001, Subd. 2:

### Factor 1

Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of the citizens of the state and whether the potential for harm is recognizable and not remote.

The determination regarding whether the unregulated practice of acupuncture by lay practitioners may harm or endanger the health, safety and welfare of the citizens of Minnesota focused on the role of the acupuncturists in the diagnosis and treatment of health problems. Evidence and testimony accumulated throughout the process supports the need for regulation of acupuncturists as providers of health care. Specifically, the subcommittee became aware of the following:

- Lay acupuncturists practice in independent practice settings without supervision by already regulated occupational groups.
- Lay acupuncturists exercise a high degree of independent judgment where applying Chinese medical theory to analyze a client's health status and to plan and implement treatment.
- Client's of lay acupuncturists frequently resort to acupuncture when other more traditional forms of health care have failed. Consequently, these clients may be more vulnerable to inappropriate or incompetent actions by lay acupuncturists.

Subcommittee members were particularly concerned that potential harm could result from the following:

- Delay in receiving medical treatment for conditions not appropriately treated by acupuncture.
- Unethical practices in using acupuncture to treat fractures, malignancies, infections and contagious diseases.
- Frequent acupuncture treatments with no noticeable improvement in health status.
- Acupuncture practitioners unskilled in handling complications or emergencies resulting from treatment.
- Hepatitis and other contagious diseases resulting from improperly sterilized instruments.

The subcommittee concluded that the independence in job functions for lay acupuncturists indicates a need for regulation as a means of protecting the public.

#### Factor II

Whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational skill.

The functions performed by the lay acupuncturist require specialized skill and training. Currently the only training offered to acquire skills as a lay acupuncturist range from a six (6) month home study course to formal educational programs of two - three years in length. Additional training is usually acquired at the discretion of the beginning acupuncturist by on-the-job training or apprenticeship with an experienced acupuncturist.

The Minnesota Acupuncture Society does not provide non-governmental certification through proficiency examinations or continuing education. Because membership in this organization is voluntary and the frequency and accessibility of educational offerings is limited, neither current training nor educational programs assure the public that lay acupuncturists have the necessary skill or training to perform their functions competently.

Since training opportunities and testing mechanisms are inadequate, and because the potential for harm exists and skills are needed, lay acupuncturists should be regulated.

### Factor III

Whether the citizens of the state are or may be effectively protected by other means.

The traditional safeguards which offer protection to the public are missing where applied to acupuncture. Specifically lacking is the protection which is offered by the following:

- (1) Supervision by practitioners in a regulated occupation;
- (2) Existence of laws governing devices and substances used in the occupation;
- (3) Existence of laws governing the standard of practice;
- (4) Existence of standards for professional performance;
- (5) Employment in licensed human service facilities which are required to employ competent staff;
- (6) Existence of federal licensing as credentialing mechanism;
- (7) Existence of civil service procedures which effectively screen potential employees for competence;
- (8) Graduation of members of the applicant group from an accredited educational institution or training program;
- (9) Mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;
- (10) Existence of professional credentials and standards of performance which effectively sanction malpractice; and
- (11) Existence of a national certification process which effectively attests to the competency of recognized professionals.

The subcommittee also recognized that no provisions of common law or statutory causes of civil action or criminal prohibition exist which specifically address the practice of acupuncture.

The above arguments indicate the public is not protected by other means.

### III. CONCLUSIONS

The subcommittee recommends limited practice standards with state enforcement (see Item VI for specific limited practice standards developed by the subcommittee) as the most appropriate regulatory tract. The general lack of information about the practice of acupuncture in Minnesota (number of practitioners and their education and training) and the need to develop guidelines in terms of appropriate practice support this recommendation.

The subcommittee noted physicians, chiropractors, dentists, podiatrists, naturopaths and veterinarians are reported to use acupuncture. To put the regulation of acupuncture under any one group of practitioners would deny this multi focus. The State Department of Health as administrative authority promotes a service for bringing together the different groups of practitioners and assuring that policies affecting the lay acupuncturist will be developed as fairly as possible.

### IV. SUBCOMMITTEE MEMBER STATEMENTS

Walter Mackey

"The Acupuncture Subcommittee has just completed an extensive study of the history modes of practice, extent of practice, rationality, educational requirements and legality of the therapeutic modality known as acupuncture. We found it to be a vague, little understood, poorly documented system of medical care. Acupuncturists

say that numerous medical problems can be alleviated by the insertion of needles, or the application of heat, pressure or electrical stimulation to certain "points" on the human body. These applications are said to control "energy" which they feel flows through certain pathways or "meridians" of the human body. Little scientific verification of these claims seems to be available.

Acupuncture was developed in the Orient over the past several thousand years. A review of the current literature discloses it to be of supposed value in the cure of hundreds of diverse medical problems, including the following: Diabetes, asthma, ulcers, Parkinsons disease, obesity, shock, arthritis, angina and constipation, etc., etc.. Information on the extent of acupuncture being practiced here in Minnesota was difficult to ascertain since lay practice has been declared illegal in this state.

I cast my vote against the proposal that Limited Standards of Practice be developed to allow the practice of lay acupuncture. I do not believe this proposal is politically feasible or would provide adequate protection to the public. I believe that acupuncture should be allowed to be practiced only by or under the direct supervision of already regulated professions such as medicine and dentistry.

It is my contention that acupuncture has not matured, in the U.S., to the point that it has recognized professional organization, quality educational programs, continuing education programs, enforceable standards of ethics or clearly defined practice limits. I believe that to place acupuncture under direct medical supervision will allow it to mature and gain the stature it needs to be a recognized member of the U. S. health care delivery system."

Glen L. Clover

I believe that the unregulated practice of acupuncture in Minnesota may harm or endanger the public health, safety and welfare of citizens, but throughout our months of deliberation and study, no such harm has been uncovered. Whether the absence of such evidence is due to inaccurate reporting methods or to existing safe practice procedures can be only speculation.

I believe that the practice of acupuncture requires specialized skill or training and that the public would benefit from initial and continuing occupational ability. Since few medical schools offer basic education in acupuncture and few specialty schools exist and are accredited to teach acupuncture, it appears that achievement of the desired training and competence is difficult.

I believe that Minnesota citizens are not currently protected by other means, since, although acupuncture is considered the practice of medicine by the State Attorney General, there is no active governmental enforcement against an apparently active community of practicing non-physician acupuncturists. Whether acupuncture should indeed be considered medicine and therefore subject to regulation by medical authorities has also been questioned and thus proposes another dilemma.

Upon consideration of these aforementioned factors, evidence presented in our deliberations, including the notion that the existing "do nothing" status is suppressing a method of health care, and the existing practice statutes and regulations in other states, I believe that the acupuncture subcommittee's proposed limited practice standards should be considered by HSOAC for all practicing acupuncturists in Minnesota.

Mary Culver

I believe the limited practice standards as written by the Acupuncture Subcommittee to be the most effective regulation of the Acupuncture Practitioner at this time in Minnesota.

With regard to the three regulatory factors:

1. The potential for harm in acupuncture is recognizable as evidenced by the inherently dangerous nature of the acupuncturist's functions; dangerous nature of devices and substances used in the practice of acupuncture treatment in the use of needle insertion into the body and moxibustion. It was evident that the acupuncturist uses an observable degree of independent judgment when:
  - a. Identifying and evaluating the clients physical and emotional symptoms:
  - b. Formulating a treatment plan and;
  - c. Providing client care and implementation of the treatment plan.
2. Acupuncture requires skill and training and the public will benefit by assurances of initial and continuing occupational ability. The functions of acupuncture are of a complex nature with numerous functions and a thorough understanding of such complex relationships between those functions is critical. Filiform needles are inserted into various parts of the body to treat a variety of diseases and used as analgesia for surgical procedures as sensitive and demanding as brain and lung surgery. Knowledge of pain and pathophysiology would seem essential as well as knowledge of the system of anatomy. During the public forum, a slide presentation indicated the close if not similar neurological pathway systems parallel to the acupuncture system of energy channels in which circulates vital energy or force termed "Chi."

Most of the acupuncture points are located on these channels or meridians although some are located also on the human ear. Absence of special skills and adequate training was voiced with concern by physicians at the public forum in testimony and presentation and concluded the need of knowledge and skill or otherwise suggested without this knowledge and skill the likelihood of increased evidence of harm to the public.

3. Opinion by the Minnesota Attorney General's office allows the practice of acupuncture only by the medical profession, yet recognized health professions in other states provide qualified acupuncturists other than the medical profession to practice with regulatory standards. Several states allow the regulated, but independent practice of acupuncturist. Minnesota citizens presented the subcommittee with petition by signatures voicing concern and dissatisfaction with present system and advocated regulation of acupuncturists other than just physicians. Intimation that the practice is presently underground and also consideration for the Southeast Asian population in Minnesota known to use acupuncture as an alternate means of health care in their culture, it would seem restriction of those practitioners in acupuncture not of the medical profession perpetuates an underground or hidden cultural practice of acupuncture. The need to allow other qualified health providers to give alternative health care into the delivery system in Minnesota would allow legitimacy in the practice of acupuncture, but more seriously allow necessary surveillance and monitoring of the practice and provide the public with alternative choices which presently are limited in Minnesota in regard to acupuncture.

At the public forum held June 7, 1979, subcommittee members were apprised by physicians and other health professionals testimony of their concerns

with acupuncture treatment by unqualified practitioners. Concerns voiced by physicians and other health service professionals were over the variety of indications which exist for the clinical application of acupuncture therapy and medical/physical disorders for which acupuncture can be recommended. It can be agreed that specific contraindications to the use of acupuncture includes pregnancy, needling of tumor sites, skin injections, presence of cardiac pacemaker, and not necessarily limited to these conditions. There are obvious risks attendant on any kind of needle insertion into the body, particularly where vital structures might be punctured.

In June of 1979, the World Health Organization held an interregional seminar in Peking on acupuncture, moxibustion and acupuncture anesthesia. World Health Organization Seminar concluded: "Acupuncture is clearly not a panacea for all ills, but the sheer weight of evidence demands that acupuncture must be taken seriously as a clinical procedure of considerable value." During World Health Organization's deliberations evidence of demonstrated clinical efficacy was presented by recognized health professionals.

Serious thought as to how this technique is practiced by practitioners of different training, expertise or professional and academic backgrounds must be considered. There is resistance as to its acceptance by physicians particularly from the point of view of its potential usefulness as a tool in the primary health care delivery. I, too, believe with logistic support, training, limited practice standards, and a collected data base acupuncture has its place in the delivery of health care.

Acupuncture has value and can be accepted with responsible care giving in our health care delivery, but regulation is needed. I credit present licensure laws as in the practice of medicine to the restriction of others

from practicing who do not meet the idio syncretic provisions of the law regulating acupuncture practitioners.

I earnestly recognize the need to protect the rights in some instances of non-traditionally licensed and regulated practitioners and those without high enough academic credential or clinically demonstrated ability. I believe when the rights of the acupuncturist trained academically and with proven competency - based skills through extensive practicum experience are potentially infringed by our present licensure restrictions--there needs to be a method so as not to restrict his practice. (Am. J. Acupuncture, Vol. 8, No. 3, July - September 1980: The World Health Organization Viewpoint on Acupuncture, R. H. Bannerman, M.D., Geneva, Switzerland, pp. 231 - 235 reprint from originally published article in World Health - The Magazine of The World Health Organization, December 1979.) Another serious obstacle to the transfer of acupuncture, "...The antagonistic attitude of many colleagues and allied health professionals towards accepting this therapy as a valid practice. This skepticism is paralled by a general ignorance on the part of the general public, which makes patients in search of treatment easy prey for unscrupulous or uninformed practitioners. The elimination of such quacks, so as to assure a high level of clinical ethics and practice, would do much to make acupuncture respectable...." Dr. Bannerman also says, "...Special programs might be organized to reverse the unfavorable attitudes of medical professionals and to educate the general public about the safety of procedure, its indications and its limits."

Concrete evidence was not accessible to discern the extent of acupuncture practice in Minnesota. The serious obstacle in gaining such a data base is the present opinion in regard to the legal practice of acupuncture in

Minnesota except by the medical profession in independent settings. Yet, I strongly sense the practice independently by non-physicians occurs by other health professionals and in the practice, also, of Eastern cultures currently living in Minnesota.

Hence, I believe that limited practice standards for all practicing acupuncturists would give necessary regulation to protect the public from harm, assure ethical and competent practice, allow the emergence legitimately of non-physician practitioners. Collection of data base information in the open practice of acupuncture will provide information to then realistically evaluate the practice scope, academia, clinical training, and future regulatory standards. I advocate the need to allow provision of other health care delivery in our system to more adequately address the health needs in Minnesota and as in the practice acupuncture to provide protection of the public through limited practice standards.

V. STAFF RECOMMENDATIONS

Staff supports the recommendations of the subcommittee that acupuncturists be regulated, that the regulation be by limited practice standards with state enforcement to monitor and enforce the standards and that the administrative authority be the Department of Health.

VI. LIMITED PRACTICE STANDARDS FOR ALL PRACTICING ACUPUNCTURISTS

A. ROSTER INFORMATION

1. Name
2. Address
3. Location of practice
4. Type of practice (independent, group, supervisory)
5. Education and training
6. Other credentials
7. Optional demographics (may include age, sex, ethnic origin, etc.).

B. OPERATIONAL GUIDELINES

1. Informed consent
2. Physical exam within the past \_\_\_\_\_ days
3. Physician diagnosis  
or
4. Waiver  
or
5. Referral for continuum of care

C. PRACTICE CONTROL

1. Red flags
2. Emergency procedures including medical backup, training and equipment
3. Equipment sterilization procedures
4. Minimum education and training requirements

To Be  
Developed  
By TAG

D. RECORDS

1. Records which include:
  - a. Medical history
  - b. diagnosis
  - c. course of treatment
  - d. treatment outcomes
2. Monitor and record
  - a. complaints
  - b. judgements
  - c. prosecutions
3. Monitoring and enforcement of practice standards through inspection.