

1974 WL 27185 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 22, 1974

***1 Columbia, S. C. 29201**

RE: Acupuncture

Mr. J. Richard Coney
Chief
Bureau of Health Facilities and Services
S. C. Department of Health and Environmental Control
J. Marion Sims Building—2600 Bull St.

Dear Mr. Coney:

You have asked for an interpretation of recently passed Act R-1015 which expressly legalizes the practice of acupuncture in this State. Act R-1015 provides:

The practice of acupuncture shall be permitted in this State under the direct supervision of a licensed medical doctor in facilities approved by the Department of Health and Environmental Control.

Specifically, you inquire whether the Department of Health and Environmental Control (HEC) has the authority to promulgate rules and regulations under which to approve acupuncture facilities, if so whether an administrative fee may be charged, and lastly whether under the State Hospital Construction and Franchising Act, S. C. Code §§ 32-761 et seq (Supp. 1973), a 'certificate of need is required prior to any licensure of an acupuncture facility.

Initially, it should be noted that the language of Act R-1015 is indefinite, specifying only that acupuncture must be done under the 'direct supervision' of a licensed physician and in facilities 'approved by the Department of HEC. The application of this law depends entirely upon the meaning which the legislature intended that the words 'direct supervision' and 'approved' should have, and it is this legislative intent which must be uncovered.

When the language of a law is not in and of itself clear, other aids must be sought in determining the legislature's intent. One such aid which has been recognized as being proper is the consideration of the history of the law. In this regard, it is the personal knowledge of this writer that Act R-1015 was passed by the legislature due to a strong public demand that acupuncture treatment be made locally available in South Carolina. This demand stemmed in large part from the relief which acupuncture treatment affords the painful symptoms of arthritis. These acupuncture treatments were available within this State for a short period from about November 1973 until mid-January 1974. Acupuncture treatment then became unavailable after mid-January 1974 due to an opinion issued by this office, on January 4, 1974, stating that this State's Medical Practice Act prohibited the practice of acupuncture except by licensed physicians. In response to many requests by citizens that unlicensed acupuncture technicians be permitted to lawfully renew treatment of patients in this State, Act R-1015 was passed and was signed into law on March 19, 1974. There was little or no opposition to it.

In the opinion of this office, based on the history of this law, the legislature's intent upon passing this law was twofold. That intent was, first, to permit acupuncture technicians to personally treat patients in this State without having to be licensed, and secondly, to afford those patients who might seek acupuncture treatment some protection from medical incompetence by requiring that the acupuncture technicians be adequately supervised and that the treatment facility be adequately inspected. The legislature gave no actual consideration as to how this law was to be implemented. Instead

the intent was simply that the supervising physician and the Department of HEC are to be relied upon to use their best judgement in its implementation through the application of sound medical practices.

*2 Based on this aforesaid legislative intent, it is clear that the Board of HEC has both the authority and the duty to apply those rule making powers granted to it under Section 32-8, S. C. Code of Laws, as amended, in order to promulgate rules and regulations which would specify the requirements, procedures and fees necessary to obtain approval of an acupuncture facility. However, any acupuncture facility must also comply with any existing laws whose provisions encompass it. So, for example, if an acupuncture facility is operated so as to fall within the definition of 'hospital' as defined by Section 32-762(4) of the State Hospital Construction and Franchising Act, then the acupuncture facility must comply with all terms of that act. On the other hand, if an acupuncture facility operates in a manner similar to any physician's private office, then the approval necessary can be in a form other than the license required by the State Hospital Construction and Franchising Act. These are all administrative determinations which the Department of HEC has the authority to make and which the legislature intends it to make. This office remains available for any additional assistance necessary.

Very truly yours,

John B. Grimball
Assistant Attorney General

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