

Texas Atty. General Says Tui Na NOT Part of Acupuncture

CHIROPRACTOR'S LETTER LEADS TO RESTRICTION OF PRACTICE

Editorial Staff

In a decision that could have far-reaching implications for the way Oriental medicine is practiced in the U.S., Texas Attorney General John Cornyn has rendered an opinion stating that *tui na* - an ancient form of care that incorporates massage, acupressure and manipulative techniques -- does not fall within the practice of acupuncture.

The opinion was published in response to a letter written by Dr. Cynthia Vaughn, a chiropractor and president of the Texas Board of Chiropractic Examiners (TBCE). The TBCE had, in the past few months, begun receiving complaints of patients injured by acupuncturists who were allegedly performing spinal manipulations, and had forwarded these complaints to the Texas State Board of Acupuncture Examiners (TSBAE) to take the appropriate action.

The TSBAE, upon reviewing the complaints, determined that the allegations of spinal manipulation were equivalent to the delivery of *tui na*. The board considered *tui na* to be within the scope of practice of acupuncture and, as such, was of the opinion that no statutory violations had occurred.

Not satisfied with the TSBAE's explanation, on November 1, 2000, Dr. Vaughn wrote the Attorney General with the opinion that "neither *tui na* nor spinal manipulation are within the scope of acupuncture," in Texas and requested a clarification (RQ-0308-JC) as to whether licensed acupuncturists could perform spinal manipulation.

In her letter, Dr. Vaughn referred to section 205.001 of the state's Occupations Code, which defines acupuncture:

"Acupuncture" means:

(A) the nonsurgical, nonincisive 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; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by paragraph (A).

"Nowhere in this act is 'spinal manipulation' or even *tui na* mentioned," Dr. Vaughn wrote.

She also stated that the law "does not provide express authorization or recognition of *tui na* as being within the scope of acupuncture."

It is interesting to note that the same Texas Occupations Code that defines the chiropractic scope of practice incidentally fails to mention or provide a clear definition of spinal manipulation, adjustment, subluxation and other terms often associated with the chiropractic profession. It is also interesting to note that the Accreditation Commission for Acupuncture and Oriental Medicine requires that students be trained in "Oriental bodywork therapy" such as *tui na*, and that each of the state's ACAOM-accredited schools include specific training in *tui na* and other forms of Oriental bodywork as part of their required curricula for graduation. However, this information was not included in Dr. Vaughn's letter to the Attorney General.

The Attorney General's office then contacted the Texas State Board of Medical Examiners (TSBME) to provide more information. The Board reasoned that *tui na* was a form of energy flow exercise which fell within the acupuncture scope of practice, and argued that using a chiropractic definition of spinal manipulation would unfairly restrict acupuncturists (and other practitioners) from incorporating any therapies that would involve the spine:

"There are several types of licensed practitioners in Texas whose work involves manipulation in the spinal area. To adopt the definition of spinal manipulation as set out by chiropractic law could exclude anyone other than licensees of the chiropractic board from performing procedures involving the spinal area. This would have the effect of one regulatory board establishing and enforcing the scope of practice for licensees not under its authority

"The TSBAE and the Medical Board's definition of acupressure, bodywork and energy flow exercises are certainly within the acupuncture scope of practice. Acupressure does not utilize a thrust movement. Acupressure utilizes gentle, subtle, gross and/or specific manipulation. To limit the use of acupressure therapies would eliminate the oldest forms of acupuncture. Request No. 0308-JC depends on a definition of spinal manipulation that is specific to chiropractic law. It is the position of the TSBAE and the medical board that it is quite arbitrary to use a chiropractic definition to limit acupuncture. As defined by chiropractors, acupuncturists *do not* do spinal manipulation. As defined by acupuncturists, acupuncturists *do* manipulate the spine." [emphasis added]

The evidence presented by the Board of Acupuncture Examiners apparently wasn't enough to sway Cornyn from siding with the chiropractic profession. On May 23, he delivered opinion #JC-0379, which states, in part:

"While we do not question the BAE's and BME's decision that *tui na* is a form of energy flow exercise, we note that the definition of acupuncture in the Occupations Code defines the practice to include only the "recommendation," rather than the "administration" of such exercises. Accordingly, the administration of such exercises is not within the statutory definition of acupuncture ·

"While the technique called *tui na*, which involves some manipulation of the spinal area,

may be an energy flow exercise within the meaning of section 205.001 of the Texas Occupations Code, the administration of such exercise is not within the statutory definition of the practice of acupuncture."

Upon being informed of Attorney General's opinion, *Acupuncture Today* contacted the Board of Medical Examiners for comment but was told that the Board would not release an official statement until after its next scheduled meeting in September.

Dr. Vaughn, meanwhile, appeared quite happy with the ruling. "I applaud Attorney General John Cornyn for his wisdom in rendering this decision, as I firmly believe that his doing so has succeeded in protecting the citizens of this state," she enthused. "While some may take the point of view that this defining process is about carving out and maintaining our slice of the 'spinal manipulation' pie, I believe that it is, by far, more of a safety and training issue."

Although Mr. Cornyn's opinion does not change the acupuncture laws in Texas, the fact that the state's highest legal authority believes *tui na* is not a part of acupuncture could have a significant impact on the way Oriental medicine is practiced not just in that state, but possibly the rest of the country. It also raises a number of questions about the future of the profession:

- How does the opinion affect practitioners who are both chiropractors AND acupuncturists?
- Since *tui na* is taught almost exclusively at Oriental medicine schools, are chiropractors really worried about the safety of their patients, or are they worried that they might be losing patients to acupuncturists?
- Acupressure and shiatsu are often included in the same category of bodywork therapy as *tui na*. Now that *tui na* has been all but stripped from the acupuncture scope of practice in Texas, what's to stop the chiropractic profession from trying to limit the use of these techniques as well?

These are just some of the issues the acupuncture and Oriental medicine community must consider. In the meantime, *Acupuncture Today* will continue to monitor the situation in Texas, and will publish the Board's statement on the Attorney General's opinion when it becomes available.

Editor's note: Dr. Vaughn's original letter to the Attorney General, as well as Mr. Cornyn's complete opinion, are both available online. Dr. Vaughn's letter can be viewed at http://intranet1.oag.state.tx.us/opinions/requests_jc/RQ0308JC.pdf; Mr. Cornyn's opinion is at www.oag.state.tx.us/opinopen/opinions/op49cornyn/jc-0379.htm.

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