

Senate

HEALTH, WELFARE AND STATE INSTITUTIONS

Minutes of Meeting - March 25, 1975

The sixteenth meeting of the Health, Welfare and State Institutions Committee was held on March 25, 1975 at 2:10 p.m. in Room 323.

COMMITTEE MEMBERS PRESENT: Chairman Lee E. Walker
 Senator Neal
 Senator Gojack
 Senator Herr
 Senator Hilbrecht
 Senator Schofield
 Senator Young

A.B. 133 - Changes denomination of traditional Chinese medicine to traditional Oriental medicine.

Dr. Scrivner, Chiropractor, spoke in opposition of the bill and stated that they feel that this bill could have an effect on the chiropractic profession because the Chinese acupuncture and oriental medicine would change the usage of what one is as far as the Japanese to the digital pressure and things that the chiropractic profession uses today and has used since 1922. They have been advised by their attorney (see Exhibit B) that this could present a problem within the courts. With reference to A.B. 133 and A.B. 89, Dr. Scrivner stated that one would have to follow the other.

Senator Walker advised that this bill does not limit the practice to Chinese; if someone could pass the exam, no matter what nationality, he could practice. Senator Walker feels that these bills would not effect the chiropractors.

Dr. Falak, Chiropractor, stated that they are concerned because they do use digital pressure and various electrical instruments to locate the interruptions to the nerves. If digital pressure is expanded to oriental medicine, they feel it would effect them in their practice.

Senator Hilbrecht asked Dr. Falak is they believe Chinese medicine means strictly the use of needles, where oriental medicine involves the use of other techniques which they feel have been theirs; Dr. Falak replied in the affirmative.

Dr. Scrivner referred to page 2, subsection 9 and feels that by spelling out the flow and balance of energy for the acupuncturist, it means that the chiropractors are infringing upon their law of the flow and balance of energy which has been their (chiropractor's) profession all along.

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Senator Herr referred to the bill which was passed last session and stated that she was not aware that in the original bill they were allowed the use of any sort of electrical or ultrasonic stimulation. Senator Herr questioned if this was taken on in the last two years, since it was not in the original bill that was passed.

Senator Young queried if this could be handled by the Acupuncture Board and feels that they would be more qualified as to the parameters of the practice. Senator Herr commented that she had ask the head of the Board if this would be within their scope to take care of these things and she was told that they do have the jurisdiction.

Assemblyman Eileen Brookman advised that she attended the subcommittee hearings and it was not their intent to expand the practice itself; it is a definition.

Senator Walker said that the legislative intent of this bill is not to broaden the scope of practice of acupuncture; the intent is to recognize that acupuncture is practiced in other countries other than China.

Dr. Edwards, Secretary of State Board of Chinese Medicine, spoke in favor of the bill and advised that it is a recommendation of the Board. John Crossley has suggested one change on page 4, line 25.- "pay an annual registration fee of \$20 to the Nevada State Board of Chinese Medicine on or....."

Senator Young moved "Do Pass" as amended; seconded by Senator Gojack, unanimously carried.

A.B. 95 - Clarifies jurisdiction of state board of Chinese medicine.

Dr. Edwards advised that this bill was also a recommendation of the State Board of Chinese Medicine.

Senator Herr asked if, under their rules and regulations, they have adopted such things as digitalis pressure and the use of electronic machines. Dr. Edwards replied that the Board moved and passed last Tuesday that they change an article of their rules and regulations which states that x-ray and laboratory tests are not approved techniques to be used by the Board. The Board wants to add to that list diathermy, ultrasonic treatment and muscle stimulation. They feel that these are physical medicine and not traditional Chinese medicine practices.

Senator Young moved "Do Pass"; seconded by Senator Schofield; unanimously carried.

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A.B. 94 - Regulates employment of acupuncture assistants.

Dr. Edwards advised that their rules and regulations state that no doctor licensed under the Board of Chinese medicine shall employ more than one acupuncture assistant. Three of the Board members feel that there should be only one assistant. This is in line with the physician assistants, the osteopathic physician assistants and all the rest. Under this bill, they could have only one, since the bill states not more than three.

Senator Young moved "Do Kill"; seconded by Senator Schofield; unanimously carried.

A.B. 92 - Requires that examinations for licensees to practice traditional Chinese medicine be in English language.

Dr. Edwards advised that this bill was killed in the Assembly because the committee felt that this should be the prerogative of the Board to determine.

A.B. 90 - Increases prerequisites for establishing schools or colleges of traditional Chinese medicine.

Dr. Edwards advised that it was a subcommittee recommendation to increase the prerequisite for schools, and the Board has no feeling or direction on this.

Senator Herr commented that she feels they have been doing a grand job but does not want to see them go outside their line of authority which was given to them during the last session. Senator Herr further commented that she would like to see another two years before we go into opening colleges and training.

Senator Gojack moved that this bill be "Indefinitely Postponed"; seconded by Senator Schofield; unanimously carried.

A.J.R. 5 - Memorializes Congress to adopt legislation requiring federal medical insurance programs to recognize treatment by licensed acupuncturists as legitimate form of medical treatment.

Dr. Edwards advised that this was a subcommittee recommendation and not a Board recommendation.

Senator Young moved "Do Pass"; seconded by Senator Schofield; unanimously carried.

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Mr. Jim Joyce, American Society of Acupuncture, advised that the Society supports A.B. 133 and A.B. 95 and associated itself with the remarks of Dr. Edwards on A.B. 94 in that this should be left to the discretion of the Board. Mr. Joyce further stated that he feels that some action has to be taken legislatively but this is a difficult, new medical discipline. Mr. Joyce is very reticent to see the Legislature lock a number of things into statute. Mr. Joyce opposes the adoption of A.B. 90.

A.B. 88 - Increases annual license fees for practitioners of traditional Chinese medicine.

Mr. Joyce stated that acupuncture has shown enormous success in the number of cases handled; however in terms of financial benefit, some practitioners are doing very well and some are starving. To charge a fee of \$500 a year for a license fee and \$250 for an assistant is much higher than a doctor, dentist, architect, or attorney.

Senator Hilbrecht asked what provisions are in the law to authorize licensed acupuncture assistants. Dr. Edwards advised that Section 634 A150 - Issuance for a license of an acupuncture assistant - states that he must have successfully completed a course of study in acupuncture in any college or school, requiring attendance to 36 months; must practice acupuncture for not less than 3 years and pass an examination by the Board. This license would be the same as practicing under the supervision of a licensed acupuncturist. Senator Hilbrecht feels that it should be spelled out that the assistant can only practice under the direct supervision of a doctor of oriental medicine. Dr. Edwards agreed that the Board would do that.

Senator Young moved "Do Pass" as amended to charge up to those sums indicated in the bill; seconded by Senator Gojack; unanimously carried.

Mr. Merlin Anderson, State Dept. of Education, referred to A.B. 90 and advised that they are in opposition to the inclusion of the State Board of Education as shown on page 1, line 6 of this bill.

S.B. 91 - Extends health and care facility classification to additional institutions.

Dr. Edwards advised that this would give them the authority if and when such facilities are established.

Senator Young moved "Do Pass" and amend to delete "abortion clinic"; seconded by Senator Schofield; unanimously carried.

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A.B. 96 - Permits waiver of licensing requirements by state board of Chinese medicine for educational seminars.

Dr. Edwards advised that this came from the Board; this would apply to doctors from other states who come to Nevada for seminars.

Senator Gojack asked how long the temporary certificates would be valid; Dr. Edwards replied for as long as the seminar lasts.

Senator Hilbrecht felt that this bill would allow anyone to obtain a temporary certificate. Senator Walker referred to Section 4, page 2 which states that such students may only employ techniques of medicine under the supervision of licensed practitioner. Senator Gojack feels that the committee should hear testimony that was given to the Assembly.

Mr. Joyce stated that when this was originally introduced in the Assembly, the Am. Society of Acupuncture opposed it because they felt it was too broad. Mr. Joyce stated that seminars are the biggest rip-off when they are used only for money making. This was proposed by the interim committee and what they said and what they meant to say are two different things. Based on this, stringent requirements were put on this in the first reprint. As the bill reads now, the practice or teaching of seminars cannot be done for a profit.

Senator Walker advised that new language be added to state "that no seminar shall be conducted in the State except under such rules as prescribed by the Board". Also, the subsection should state that "the Board may issue temporary license in accordance with the Act". Senator Young favors this approach and feels that we should add "and informal instruction".

Senator Young moved "Do Pass" as amended; seconded by Senator Gojack; unanimously carried.

S.B. 98 - Clarifies rights of handicapped persons.

Senator Young advised that in view of the fact that he feels there may be a reasonable risk of liability with the present language, he has requested input from Perry Burnett.

Senator Walker advised that this bill would be held until a response is received from Mr. Burnett.

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Upon Senator Walker reading comparison of various statutes regarding the penalties administered by other licensed professions, the committee agreed to return S.B. 259, 260 & 261 back to the floor with this explanation.

S.B. 347 - Permits chiropractors to pierce or sever body tissue for any diagnostic purpose.

J.M. Kirkland, Board of Chiropractic Examiners, stated that the purpose of this bill is the fact that there are chiropractors in the State that wish to do more in diagnostic work; however the drawing of blood inhibits them in the work of EKG. If this language were removed (see line 3), it would broaden the bill and be useful to them in diagnostic purposes.

Senator Young felt that the language should be more specific as to what diagnostic tests this would apply to.


Dr. Scrivner is to return with a list of the neurological tests they would like included in this bill.

Being no further business at this time, the meeting was adjourned at 4:50 p.m.

Respectfully submitted,


Sharon W. Maher, Secretary

APPROVED:


Lee E. Walker, Chairman

ROOM # 323

DAY Tues.

DATE 3.25.75

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Health & Welfare

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Dr. Julius Dulak	Bd of Examiners of Chiropractic	Sparks, Nev., 444 Plumas St.
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LAW OFFICES

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TO: NEVADA STATE BOARD OF CHIROPRACTIC EXAMINERS

FROM: DANIEL WALSH

DATE: MARCH 24, 1975

You have asked me to study the possible legal impact on the Chiropractic profession by the adoption of A.B. 133 and A.B. 89. The following is my analysis.

A.B. 133 and A.B. 89 cannot be considered separately. They are companion bills designed to implement the findings and recommendations of the Legislative Subcommittee on acupuncture to the 58th Session of the Nevada Legislature.

On page 13 of the report, under the designation of "other problems", it is stated:

"After receiving testimony from several eastern and western experts in traditional Chinese medicine, the subcommittee decided that the definition of acupuncture should be expanded. (Appendix N.) The subcommittee was particularly impressed with the testimony of Dr. Richard Yennie, a chiropractor from Kansas City, Missouri, and a lecturer on acupuncture. Dr. Yennie has been trained in the Japanese approach to acupuncture called Shiatsu. This technique employs digital pressure to achieve some of the same benefits gained with piercing needles. The subcommittee was also told that electrical or ultrasonic stimulation at the acupuncture points also achieves beneficial results." (emphasis added).

The definition is expanded by A.B. 133 and the scope of authorized techniques that may be employed are described in A.B. 133 and adopted directly from appendix N, page 1 of the report. This includes the use of digital pressure which has always been used by chiropractors in their practice.

In my opinion, a serious challenge to the use of digital pressure by chiropractors could be raised through the adoption of these two bills without corresponding amendments to the Chiropractic law.

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N.R.S. 634.010 defines Chiropractic as follows:

1. " 'Board' means the Nevada state board of chiropractic examiners.
2. " 'Chiropractic' is defined to be the science, art and practice of palpating and adjusting the articulations of the human body by hand, the use of physiotherapy, hygienic, nutritive and sanitary measures and all methods of diagnosis."

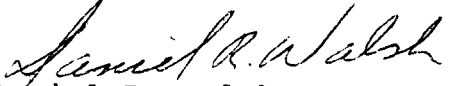
It has always been assumed that the above language includes digital pressure and the other treatment contemplated by A.B. 89 but they are not specifically stated. A specific authorization in the Chapter 634A for acupuncture creates the legal problem which I believe could present a litigable issue. The following general rule of statutory construction is found in 2A Sutherland, Statutory Construction, Sec. 47.23 (1973 Ed.):

"EXPRESSION UNIUS EST EXCLUSION ALTERIAUS. As the maxim is applied to statutory interpretation, where a form of conduct, the manner of its performance and operation, and the persons and things to which it refers are designated, there is an inference that all omissions should be understood as exclusions..."

"Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and no other, and such parties only may act."

Chiropractors could be seriously jeopardized through the enactment of these two bills as presently proposed.

Respectfully submitted,


Daniel R. Walsh
Attorney At Law

DRW/sr