

## **The Right to Bear Herbs in Ohio**

By Anne Kinchen

Ohio House Bill 341 finally passed into law in August 2000, after previously unsuccessful efforts to open up the field of acupuncture to non-MDs had failed. House Bill 341 was a conservative bill, written to be as innocuous as possible in order to slip through quietly in a state that had been notoriously conservative on issues of complementary health care, and was extremely accommodating to a controlling and powerful AMA agenda.

I was one of the first applicants to be approved by the Ohio Medical Board, and anxiously awaited the day I could return to my hometown of Cleveland, Ohio. After graduating from Pacific College of Oriental Medicine in San Diego in 1999, I spent a year in Miami, Florida which, like California, seemed over saturated with practitioners. Although there were already a few underground/unlicensed acupuncturists operating in the area, and a handful of anesthesiologist/medical acupuncturists, I dreamed of Ohio as the land of opportunity, where I would be successful and well-received.

To date, there are less than 40 acupuncturists (non-MDs) registered with the Ohio Medical Board. In the course of the past year, I have received many inquiries from acupuncturists around the country asking me if I thought this was a good place to practice. Many seemed concerned about the law requiring a physician's referral and diagnosis before being able to take a patient on, when actually this has only proved to be a minor inconvenience. The vast majority of physicians have actually been quite receptive for the most part, with only a handful resisting to sign off on the prerequisite referral. Those refusing to sign the referral usually cited the excuse that they didn't "believe" in acupuncture, or that they were not personally aware of any scientific studies that supported Oriental medicine as a viable therapy for a given condition.

In general, the Western medical community here seems genuinely interested in what practitioners of Oriental medicine have to offer. Local doctors are somewhat familiar with medical acupuncture as a pain

management modality, but much less so with using Oriental medicine for internal medical disorders. In an effort to educate our local physicians on this subject, an acupuncturist colleague and I initiated grand rounds continuing medical education programs at the OB/GYN departments of both major hospitals in our area. We spoke about differential diagnosis, acupuncture and herbal protocols, and tried our best in the hour allotted to us, to give our audience of Western physicians a sense of respect and appreciation for the art and science behind Oriental medicine. We were politely received, and although our presentations did not generate many referrals, we still felt gratified in knowing we had delivered an important message. I began to think of myself as a pioneer, and the potential for a successful practice seemed within reach.

When I first arrived in Ohio, I thought it would be a good idea to initiate a state organization, but the few fellow practitioners with whom I was able to make contact (there were only 12 at the time) seemed to think that our purpose as an organization should be to overturn the physician referral requirement. Personally, I did not see trying to dismantle that part of the law as a worthwhile effort. My training was to interface with Western medicine, and I saw the chance to make valuable referral relationships with willing physicians. I also knew the value of having a patient screened by a Western doctor, with the added bonus of not having to take all the responsibility for the consequences associated with failing to recognize urgent medical conditions. That, coupled with language barriers between myself and other licensees, discouraged me from following through with my initial desire to organize a state association on my own.

A year later, we still have no state organization in Ohio, though the following incident has certainly starting the ball rolling in a purposeful direction. One cold January morning, a woman appeared at my door to inform me that I was currently under investigation by the Ohio Medical Board, and that she had some "questions." I was shocked to learn from her that someone had written a formal complaint to the medical board, based on a newspaper article interview that appeared in the *Cleveland Plain Dealer* last July. The article, which was intended to bring awareness of House Bill 341 to the general public, included statements from me along with photos and interviews with my patients, and had provided a big boost to my practice. For a while I was feeling like a regular celebrity. Little did I know that it would boomerang back to negatively impact my entire career six months later.

The complaint stated that I was guilty of practicing medicine without a license by virtue of the fact, as stated in the newspaper, that I had "prescribed" herbs for patients. I was informed that only MDs can prescribe, recommend, or suggest **anything**, including herbs, over the counter or not. She told me our scope is to do acupuncture only, and that practicing medicine in Ohio without a license is a felony. When I argued that

these items were not controlled substances and could be easily purchased at Chinese grocery stores and health food stores, I was told that was irrelevant to the case. I was warned not to recommend anything to a patient that could be construed as having therapeutic value, as this was not within my scope of practice.

When I asked the investigator how I might get my "prescriptions" to my clients legally, I was told the recommendations could only be made by a physician. If you think getting a physician referral takes effort, try getting a doctor with no knowledge of Chinese herbal medicine to reissue your herbal prescription! The liability issue alone makes them cringe. For the next several weeks I searched out physicians who were willing to cooperate with me on this, yet when I did find a couple who agreed to reissue my herbal recommendations, the board disallowed this approach as well, stating that I could not advise a physician on the prescribing of herbs. Thus, the Ohio Medical Board has put the clamp down on my practice of Oriental medicine.

In recent weeks I have gone from feeling victimized to feeling angry, and thus far, every fellow licensee in the state I have spoken with realizes the grave implications this investigation has on the practice of Oriental medicine in Ohio. Most practitioners that have moved here, like myself, had assumed it was a gray area, and that we were going to practice Oriental medicine, not just acupuncture. This recent development seems to have mobilized our collective energies to organize a statewide association, and the sooner the better.

Chiropractors in this state have "nutritional supplementation" written into their scope of practice, which gives them much more leverage, but the authors of the acupuncture bill did not make this minor inclusion, which would have possibly circumvented such issues as I am dealing with now. Naturopathic doctors, who are not recognized or licensed in the state of Ohio, also "recommend/prescribe" with impunity. Since they are not licensed, the board rarely goes after them.

Both national acupuncture organizations were of little help to me, suggesting that I move away to another state and/or get a lawyer. My professional liability insurance company was not much help either. At least they referred me to a decent lawyer, who was willing to make one call to the board on my behalf to check the status of the case. Without any budget for legal representation, my own options are severely limited. When I found that legal retainers start at \$5000, I thought to myself, 'If I had that kind of money, I would just leave the state.' Since that's not an option, I have dug my heels in, revamped my practice to pain management, and hope to rally my colleagues.

The paralyzing effect this case has had on me professionally has been devastating. My practice was entirely dependent on the use of herbs, not for financial reasons, but for the type of cases I have focused on treating. What to do with patients who had been getting great results when they call for refills now? Will I continue to deliver grand rounds presentations at hospitals, attempting to advance and advise on the medicine I am forbidden to practice myself?

A recent example of the situation in Ohio can be seen in a February 12, 2002 letter sent from Tom Dilling, the executive director of the Ohio Medical Board, to another Ohio registered acupuncturist, who had requested an explanation on the use of herbs and our scope of practice. Mr. Dilling's response reads in part:

"Clearly, Ohio has excluded the use of Chinese herbal medicine from your acupuncture scope of practice with the exception of the limited use of moxibustion in conjunction with acupuncture. Furthermore, Chinese herbal medicine is considered the practice of medicine in Ohio and is therefore within the scope of practice of licensed physicians."

"...ORC Section 4731.34 gives definition to what Ohio considers the unlicensed practice of medicine. This definition includes language again related to how someone holds themselves out to the public. In addition, the section includes language describing a person who 'examines or diagnoses' and who 'prescribes, advises, recommends, administers, or dispenses a drug or medicine, or treatment, of whatever nature.' A person needs a medical license or some other license with specific statutory authority to practice in this manner. Unlicensed practice is a felony in Ohio and grounds for discipline for a Board licensee (please see ORC Sections 4731.41 and 4731.99).

I am still in limbo waiting to find out my exact fate from the board, although they have tentatively advised me there will be no formal disciplinary action provided I cease and desist from working outside the established scope of practice (translation: no herbs). When I think of all the effort I put into learning about Chinese herbal medicine, my passion for it, and the people I have seen benefit from it, I am greatly saddened. Now when I get inquiry calls from out of state as to whether this is a hospitable environment to practice in, I must emphatically say, "No, almost anywhere is going to be better than here!" The freedom to practice the medicine as it was taught to me in acupuncture school is **not** a possibility in the state of Ohio at this point in time. The scope of practice as presently defined by law here is extremely limited, and it will take a tremendous and noble effort to change it.

Support your right to bear herbs in the state of Ohio!



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