



Acupuncture in Brazilian Nursing Practice: Ethical and legal dimensions

Acupuntura na Enfermagem brasileira: dimensão ético-legal

Acupuntura en la Enfermería Brasileña: dimensión ético-legal

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ABSTRACT

The objective of this study was to reflect on the legal and ethical aspects for the practice of acupuncture by nurses in Brazil. There is a need for nurses to be involved on a task force to create legal regulations and establish the scope of practice of acupuncture. This will prevent the restriction of the practice of acupuncture only to a specific health care professional group.

Keywords: Acupuncture/legislation & jurisprudence; Acupuncture/ethics; Acupuncture therapy/ethics; Complementary therapies/legislation & jurisprudence; Complementary therapies/ethics

RESUMO

Estudo que teve como objetivo contribuir para a reflexão acerca da prática profissional da acupuntura pelo enfermeiro, contemplando as dimensões ético-legais do exercício dessa atividade. Concluiu-se que a participação da enfermagem na regulamentação legal para a atividade de acupuntura é urgente e necessária, para estabelecer seus limites e abrangência, sem, contudo, limitar-se a uma determinada categoria profissional.

Descritores: Acupuntura/legislação & jurisprudência; Acupuntura/ética; Terapia por acupuntura/ética; Terapias complementares/legislação & jurisprudência; Terapias complementares/ética

RESUMEN

Se trata de un estudio que tuvo como objetivo contribuir a la reflexión respecto a la práctica profesional de la acupuntura del enfermero, contemplando las dimensiones ético-legales del ejercicio de esa actividad. Se concluye que la participación de la enfermería en la reglamentación legal para la actividad de la acupuntura es urgente y necesaria, para establecer sus límites y lo que abarca, sin, con todo, limitarse a una determinada categoría profesional.

Descriptorios: Acupuntura/legislación & jurisprudencia; Acupuntura/ética; Terapia por acupuntura/ética; Terapias complementarias/legislación & jurisprudencia; Terapias complementarias/ética

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INTRODUCTION

Acupuncture, currently practiced in many western countries, originated in China, thousands of years ago⁽¹⁾. The World Health Organization (WHO) allows and encourages its use by member countries, and a document entitled “WHO Traditional Medicine (TM) Strategy, 2002-2005” was created, aiming to develop TM implementation policies and establishing safety, efficacy, quality, rational use and access requirements⁽²⁾. In eastern countries, acupuncture has been practiced by technical professionals, eastern doctors, and western doctors specialized in Traditional Chinese Medicine (TCM). Regulations on the practice of acupuncture have been occurring in many countries. However, the professional profile of those allowed to practice it varies and oftentimes the first and main requirement is that the professional has to have graduated in western medicine. In Brazil, acupuncture has been defended as a medical specialty by the *Conselho Federal de Medicina* (CFM – Federal Medical Council). However, it was accepted as a specialty in the sphere of Councils from other health professional categories. Acupuncture has been practiced by acupuncturists with foreign qualification, professionals qualified by short and professional courses other than university courses in Brazil, and acupuncture technicians and specialists, arousing ethical-legal dilemmas concerning who has the right to practice this therapy in the country.

Historically, in terms of legal aspects, in 1982, the Ministry of Labor and Employment created the *Classificação Brasileira de Ocupações* (Brazilian Classification of Occupations), including the occupation of acupuncturist. Subsequently, a new version was made, by means of Decree n° 397/2002, describing the profession of acupuncturist as independent from other professional categories, including the medical one, under register n° 3221-5⁽³⁾.

The Ministry of Health presented the *Política Nacional da Medicina Natural e Práticas Complementares* (National Policy on Natural Medicine and Complementary Therapies) to the *Sistema Único de Saúde* (Unified Health System) in February 2005, aiming to implement experiences that have already been developed in the public health system of many cities and states, with emphasis on TCM/Acupuncture⁽⁴⁾. It should be emphasized, however, that in spite of the advances in acupuncture implementation in the public health system, its practice has been restricted to the medical profession, dentistry and veterinary, without the participation of other professional categories⁽⁵⁾.

In Nursing, ethical questions have led to critical reflections on values, freedom of action, and conscience, in terms of professional principles and foundations, involving judgments, beliefs and convictions⁽⁶⁾. In this sense, there are ethical-legal questions about the practice

of acupuncture in Nursing. Moreover, nurses need to participate in the process of regulation of acupuncture as profession and its practice as a specialty, at the risk of being prevented from practicing it. Thus, this study aimed to contribute to the reflection on the professional practice of acupuncture by the nurse, considering its ethical-legal dimensions.

ETHICAL-LEGAL ASPECTS OF THE PRACTICE OF ACUPUNCTURE BY NURSES

In the nursing profession, it is not enough to be technically prepared. Learning about current ethical, legal and technical aspects is what the nurse's conduct should be founded on. In this way, they can have a critical and reflective approach to the dilemmas that involve their routine practice, based on legal norms and ethical-deontological principles⁽⁷⁾. In the sphere of debates about acupuncture as a nursing practice, the *Conselho Federal de Enfermagem* (COFEN – Federal Nursing Council) recognized acupuncture as a specialty by Resolution n° 197/97⁽⁸⁾. The COFEN establishes and regulates the practice of nursing and, since its creation, in accordance with Law n° 5.905/1973, it has been the institution with legislative competence for nursing, according to resolutions “that have the force of law (even though they are not laws)”⁽⁶⁾. They show validity and efficacy, as they do not oppose the *Lei do Exercício Profissional de Enfermagem* (LEPE n° 7.488/1986 – Law of Professional Nursing Practice), establishing acupuncture as a specialty.

In this perspective, the LEPE/1986, in article 11, section 1, establishes that the nurse is exclusively responsible for: “higher technical complexity care, which requires scientific knowledge and the ability to make immediate decisions”. The above mentioned law is in concordance with the *Código de Ética dos Profissionais de Enfermagem* (CEPE – Nursing Professionals' Code of Ethics), in article 17, which foresees, as a nurse's ethical-moral obligation, the assessment of technical (to know how to do safely, technical mastery and ability) and legal competences (those foreseen by law), and only assume a responsibility when being capable of performing it safely for oneself and for the client. They must aim to achieve maximum benefits and minimize risks or harm to the clients cared for. Thus, it is understood that nursing professionals' ethics has the following guiding values for performance: competence, justice, responsibility and honesty, assuring that clients will be provided care free from flaws or errors caused by lack of expertise, negligence or imprudence⁽⁶⁾.

As a result, it could be asked why a nurse would not be fit to practice acupuncture. Why should it be an exclusive medical practice, if it was refused and despised by these professionals until a short time ago and it is now

claimed as their exclusivity? *CFM* resolutions, concerning homeopathy and acupuncture, are the only “legal exceptions”, prohibiting the practice of these therapies by non-doctors. However, it is worth emphasizing again that such resolutions can only have “legal efficacy” within the limits of the category it is aimed at. Thus, it is not possible for the *CFM* to expect its resolutions to have the force of law, as this would go against the Constitution itself⁽⁹⁾.

The heated debate on what is called the Medical Act, in view of the *Projeto de Lei do Senado* n° 7703/2006 (*PLS* – Senate Bill n° 7703/2006), has become frequent among health professionals. Acupuncture, as a medical specialty in the western world, was only recognized by the *CFM* in 1995, by Resolution *CFM* n° 1455/95, considering it to be a medical act. In the analysis of constitutionality of the Medical Act, this Senate Bill, if approved, could lead to innumerable problems for professional acupuncturists and health professionals that want to practice this therapy. If acupuncture is to be viewed as an exclusive medical activity, there can be violation of a right acquired, according to section 36 of article 5 of the Constitution, because it has already been recognized as a specialty by

nurses and other health professionals. The Ministry of Health Directive n° 971/2006 shows new paths to acupuncture, as it is included by the *Sistema Único de Saúde* (Unified Health System) as a practice of health professionals who have completed a specialization course⁽¹²⁾.

FINAL CONSIDERATIONS

In view of what has been presented here, it is understood that the challenge nurses are faced with is their participation in the implementation of the practice of acupuncture, whether as a profession or a specialty of their professional category. The professional culture depends largely on the interest and awareness of those who perform a profession and are involved with the knowing and practicing that characterize it. Consequently, it is essential to broaden conceptual horizons regarding the benefits of acupuncture, extending this therapy to nurses in both public and private health institutions and universities, so that it becomes a shared and ethical multiprofessional practice, benefitting the Brazilian population.

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