Opinion No. 2009-093

August 7, 2009

Dr. Janice Vigh, President
Arkansas State Board of Acupuncture
& Related Techniques
1020 West 4th Street, Suite 400
Little Rock, Arkansas 72201

Dear Dr. Vigh:

I am writing in response to your request for my opinion on the following six (6) questions:

1) Since the existing law defines an acupuncturist as a "doctor of healing arts" and simultaneously prohibits an acupuncturist from using the title "doctor," is the law as amended in conflict with itself?

2) If (1) is answered in the affirmative, can acupuncturists licensed under the AAPA used the title "doctor," "Doctor of oriental Medicine," or "Doctor of Healing Arts."

3) Regardless of any existing conflict, can those acupuncturists licensed in Arkansas who have earned the title "doctor" through other legitimate education paths, be denied the right to use that title only when practicing acupuncture in Arkansas?

4) If (3) is answered in the negative, how does ASBART determine how to affectively administer the law in fairness to all licensees as the new amendment to the law does not make a distinction for this type of case?

5) If (3) is answered in the affirmative, what legal reasoning would support ASBART's response, and the Attorney General, who represents ASBART, in a defense against petitions or lawsuits filed by those who have rightfully earned the title "doctor" from other educational paths?

6) If (2) is answered in the negative, and since the title "Doctor of Oriental Medicine" has been used for almost 12 years and all Arkansas licensees have existing licenses, signage, business cards, brochures, advertisements, internet sites, and Yellow Pages ads, how should ASBART proceed with enforcement, especially considering that existing Yellow Page ads cannot be changed by the effective date of the statute?

RESPONSE

I regret that I am unable to answer your questions, which raise issues that are currently the subject of litigation in a case styled *Martin v. Campbell, et al.*, which is pending before the United States District Court for the Western District of Arkansas, Texarkana Division, and is designated Civil Action No. 09-4077.

This office has long observed a policy of declining to opine on issues that are the subject of pending litigation. *See, e.g.*, Op. Att'y Gen. Nos. 2006-013; 2003-182; 2003-032; 2002-302; 99-389; 97-329; 97-105. Any opinion issued from this office at this time would constitute an executive comment on matters properly before a judicial body. For this reason, I must respectfully decline to answer your questions.

Assistant Attorney General Jennie Clingan prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JLC/cyh