



July 9, 2003

Marilyn Nielsen
Executive Officer
Department of Consumer Affairs
1424 Howe Avenue, Suite 37
Sacramento, CA 95825-3233

Re: Acupuncture Board Proposed Regulations: Educational Curriculum
Requirements under Title 16

Dear Ms. Nielsen:

The California Medical Association appreciates the opportunity to comment on regulations proposed by the California Acupuncture Board with respect to educational curriculum requirements for acupuncturists licensed by the board.

California Government Code Section 11349.1 requires regulations to comply with all of the following requirements:

1. Necessity
2. Authority
3. Clarity
4. Consistency
5. Reference
6. Nonduplication

We address here in particular the issues of:

Necessity – “Necessity” in pertinent part means that the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute. [Govt. Code §11349(a)]

Authority - "Authority" means there is a provision of law that permits or obligates the agency to adopt, amend, or repeal a regulation. [Govt. Code §11349(b)]

Consistency - “Consistency” means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. [Govt. Code §11349 (d)]

The Acupuncture Licensure Act carefully and clearly describes and limits the scope of practice of licensed acupuncturists as follows:

Business and Professions Code

Section 4937

An acupuncturist's license authorizes the holder thereof:

- (a) To engage in the practice of acupuncture.
- (b) To perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant animal, and mineral products, and dietary supplements to promote, maintain and restore health . . .

Acupuncture is defined as:

Section 4927 (d)

“Acupuncture” means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of eletroacupuncture, cupping and moxibustion.

The Act also authorizes the Acupuncture Board to license acupuncturists who meet requirements including an educational and training program approved by the board (B& P Code Section 4938); and to establish standards and minimum hours for education and training programs approved by the board (B & P Code Section 4939). In particular, under Section 4939, the board is directed to approve training programs relevant to acupuncture practice as follows:

4939(b) Standards for the approval of training programs shall include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist. [Emphasis added]

Thus, while the board is authorized to establish standards for approved training for licensed acupuncturists, regulations at this time mandating broad educational standards and training for acupuncturists, including the practice of Oriental medicine and clinical medicine, patient assessment and diagnosis are not necessary, authorized or consistent with the existing statutory authority of the board or with the authorized practice of acupuncture.

The Practice of Oriental Medicine and Clinical Medicine Is Inconsistent with Existing Law and Not Authorized

Under existing regulations Title 16, Section 1399.436 describes an “approved” training program for acupuncturists that covers a “theoretical,” “general,” “survey” or “review” course of study in basic sciences, the history of medicine, clinical sciences, clinical medicine, Western pharmacology and traditional Oriental medicine. The primary focus of the curriculum, however is on “fundamentals” and “techniques” of acupuncture, acupressure, breathing techniques, exercise and Oriental herbology. This curriculum is consistent with the authorized activities of a licensed acupuncturist as described in Business and Professions Code Section 4937 noted above.

The curriculum proposed in new section 1399.434, to become effective January 1, 2005, represents a radical shift in training emphasis to treatment procedures (as opposed to general theory, survey or review) of “Oriental Medicine” and “Clinical Medicine, Patient Assessment and Diagnosis,” the practice of “Oriental medicine diagnosis” and “Oriental medicine specialties, including dermatology, gynecology, pediatrics, ophthalmology, orthopedics, internal medicine, traumatology, and emergency care.” (See Section 2399.434 (b)) In addition, the proposed new approved training program explicitly aims to prepare acupuncturists to “assess or diagnose disease,” and “utilize standard physical examinations, laboratory and imaging studies and international classification of diseases (ICD) diagnostic principles.” (See Section 1399.434 (c))

Clearly this newly proposed approved training program anticipates activities by acupuncturists not authorized in B & P Code Section 4937 cited above and, indeed, is inconsistent with its clear delineation of permissible activities. To repeat, a licensed acupuncturist can perform acupuncture, or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant animal, and mineral products, and dietary supplements to promote, maintain and restore health. Nowhere is the acupuncturist authorized to practice Oriental medicine (in fact “Oriental medicine” is not defined anywhere in the Acupuncture Licensure Act, or in the entire Business and Professions Code), conduct histories and physicals, order diagnostic tests or diagnose disease.

The Legislature has carefully crafted the law related to the practice of acupuncture to assure “that individuals practicing acupuncture be subject to regulation and control as a primary health care profession.” (B & P Code Section 4926). The Acupuncture Board cannot expand by regulation the clear statement of authorized practice activities for acupuncturists as articulated in B & P Code Section 4937.

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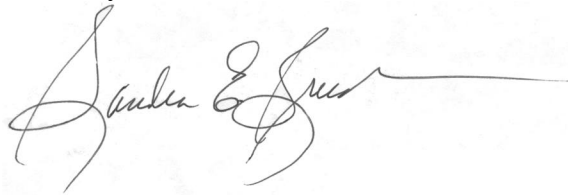
The Proposed Regulations are Unnecessary and Inconsistent with a Recent Legislative Mandate

Last year the Legislature enacted B & P Code Section 4934.1 requesting the “Little Hoover” Commission on California State Government Organization and Economy “to conduct a comprehensive analysis” recommending the scope of practice, educational requirements and the approval process for educational training programs for acupuncturists. The findings of that analysis are to be reported to the Legislature by September 1, 2004. It is not necessary and, indeed, is inconsistent with the intent of Section 4934.1 for the Acupuncture Board to promulgate radically new regulations when a study and analysis of the very subject matter of the proposed regulations is authorized and under way.

Conclusion and Recommendation

For all of the reasons elaborated above, we believe that the proposed regulations are without proper authority, are inconsistent with existing law and are unnecessary given the Legislative mandate to study the subject matter of the proposed regulations. We respectfully urge the Acupuncture Board to withdraw the proposed regulations and to await the findings of the “Little Hoover” Commission before undertaking any reformulation of the training requirements for acupuncturists in California.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra E. Bressler", with a long horizontal flourish extending to the right.

Sandra E. Bressler
Vice President, Medical and Regulatory Policy

cc: Little Hoover Commission

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bcc: Jack Lewin, MD
Executive Committee
Committee On Health Professions & Licensure
Catherine Hanson
Katherine Gallia
Peter Warren