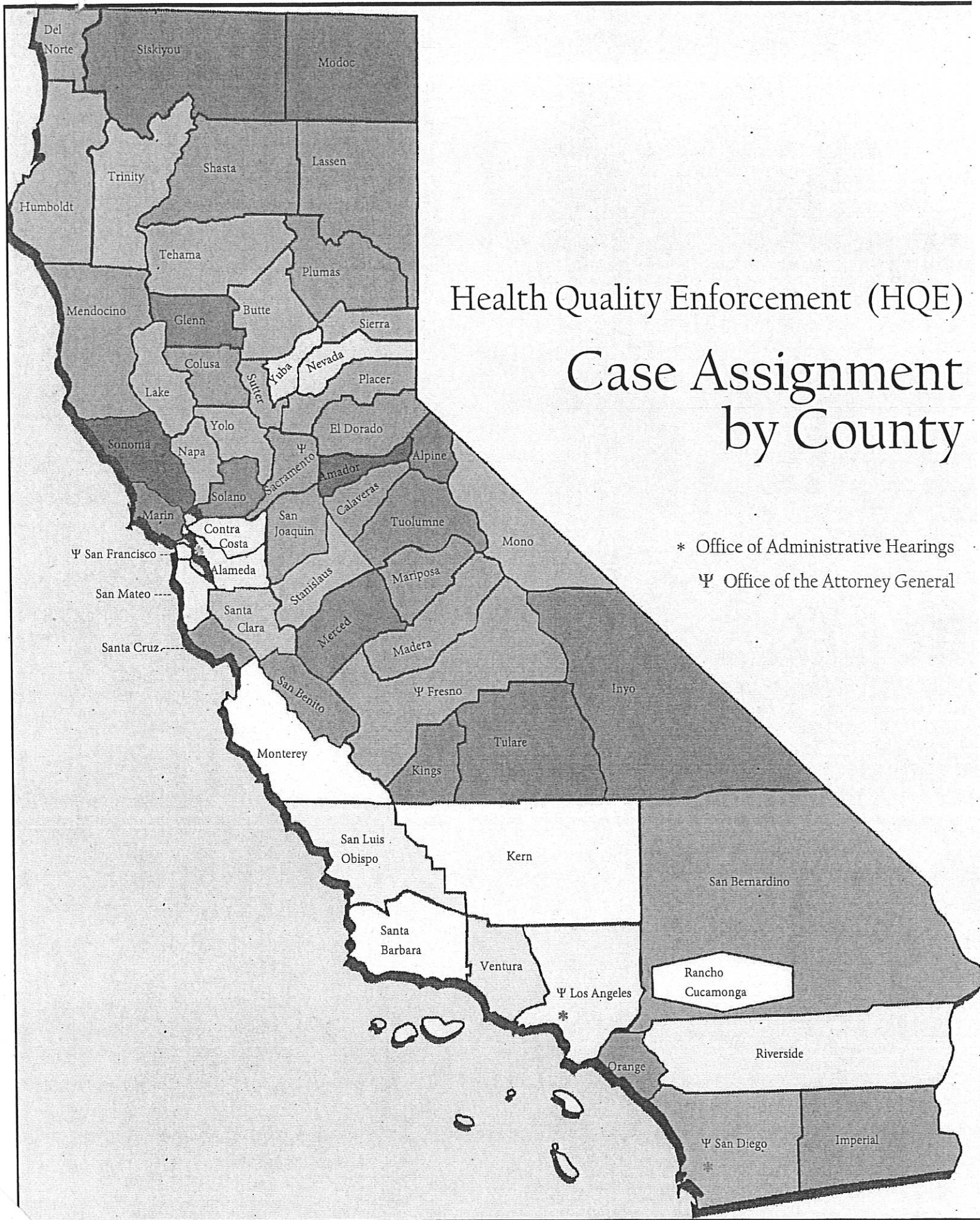


This document did not originate within the Department of Consumer Affairs. If you have difficulty accessing this document, please contact the Board at <https://www.acupuncture.ca.gov/disability.shtml>.

Additional Items for Agenda Item 6



Health Quality Enforcement (HQE) Case Assignment by County

* Office of Administrative Hearings
 Ψ Office of the Attorney General

Office of Administrative Hearings

Sacramento General Jurisdiction Office

2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833

Los Angeles General Jurisdiction Office

320 West Fourth Street, Suite 630
Los Angeles, CA 90013
Located in: Junipero Serra State Office Building

Oakland General Jurisdiction Office

1515 Clay Street, Suite 206
Oakland, CA 94612

San Diego General Jurisdiction Office

1350 Front Street, Suite 3005
San Diego, CA 92101
Located in: The San Diego State Building

County/Attorney General's Office

Alameda - San Francisco

Alpine - Sacramento

Amador - Sacramento

Butte - Sacramento

Calaveras - Fresno

Colusa - Sacramento

Contra Costa - San Francisco

Del Norte - San Francisco

El Dorado - Sacramento

Fresno - Fresno

Glenn - Sacramento

Humboldt - San Francisco

Imperial - San Diego

Inyo - Fresno

Kern - Los Angeles

Kings - Fresno

Lake - San Francisco

Lassen - Sacramento

Los Angeles - Los Angeles

Madera - Fresno

Marin - San Francisco

Mariposa - Fresno

Mendocino - San Francisco

Merced - Fresno

Modoc - Sacramento

Mono - Sacramento

Monterey - Los Angeles

Napa - San Francisco

Nevada - Sacramento

Orange - San Diego

Placer - Sacramento

Plumas - Sacramento

*Rancho Cucamonga (San Bernardino County) - Los Angeles

Riverside - Los Angeles

Sacramento - Sacramento

San Benito - San Francisco

San Bernardino - San Diego

San Diego - San Diego

San Francisco - San Francisco

San Joaquin - Sacramento

San Luis Obispo - Los Angeles

San Mateo - San Francisco

Santa Barbara - Los Angeles

Santa Clara - San Francisco

Santa Cruz - San Francisco

Shasta - Sacramento

Sierra - Sacramento

Siskiyou - Sacramento

Solano - Sacramento

Sonoma - San Francisco

Stanislaus - Fresno

Sutter - Sacramento

Tehama - Sacramento

Trinity - San Francisco

Tulare - Fresno

Tuolumne - Fresno

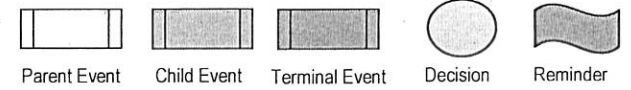
Ventura - Los Angeles

Yolo - Sacramento

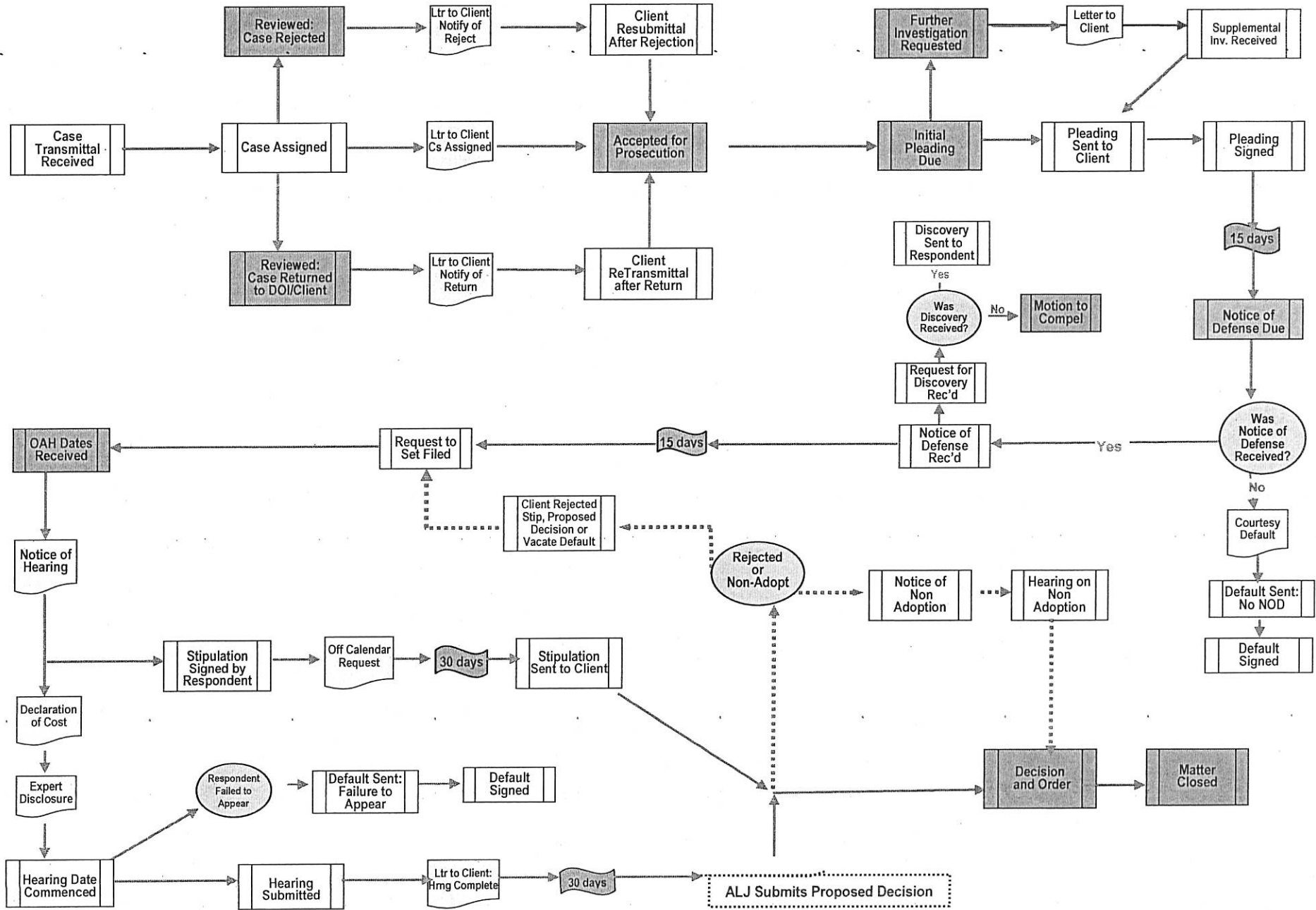
Yuba - Sacramento

Administrative Matter: Accusation Flow Chart

■ Accusation (CV-HQE:ACC)



Case Work (Accusation)



**Materials
Submitted During
Agenda Item 18**



COLORADO

Department of
Regulatory Agencies

Division of Professions and Occupations

**Office of Acupuncture Licensure
4 CCR 738-1
RULES AND REGULATIONS
Effective May 30, 2016**

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Rule 1 Requirement for Licensure

The purpose of this rule is to establish the qualifications for an acupuncturist license as required in Sections 12-29.5-104(3) and 24-34-102(8.5), C.R.S.

- A. In order to qualify for licensure, Section 12-29.5-104(3), C.R.S., requires an applicant to either successfully complete an education program that conforms to the standards approved by the Director of Professions and Occupations (Director) or provide documentation of qualifications that are substantially similar to an approved education program. The Director approved education program includes any diploma program in acupuncture and Oriental medicine accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or a successor organization.
- B. To satisfy the licensure requirement in Section 12-29.5-104(3), C.R.S., the Director requires an applicant to have a current certification at the time of initial license application by the National Certification Commission for Acupuncture and Oriental Medicine ("NCCAOM") or a successor organization. The applicant shall provide verification of this current certification in a manner prescribed by the Director.
- C. Education, training, or service gained in military services outlined in Section 24-34-102(8.5), C.R.S., to be accepted and applied towards receiving a license, must be substantially equivalent, as determined by the Director, to the qualifications otherwise applicable at the time of receipt of application. It is the applicant's responsibility to provide timely and complete evidence for review and consideration. Satisfactory evidence of such education, training, or service will be assessed on a case by case basis.

Rule 2 Licensure by Endorsement

The purpose of this rule is to establish the qualifications that are substantially equivalent for an acupuncturist license by endorsement pursuant to Section 12-29.5-104.5(2), C.R.S.

- A. For an applicant to establish "substantially equivalent credentials and qualifications" under Section 12-29.5-104.5(1), C.R.S., the Director requires the applicant to submit a certification by NCCAOM or a successor organization. Verification of the certification shall be provided directly from NCCAOM or its successor in a manner prescribed by the Director; and
- B. Verification of licensure in another state shall be provided in a manner prescribed by the Director.

Rule 3 Requirements for Reinstatement

The purpose of this rule is to state the requirements for reinstatement of a license that has expired, pursuant to Section 12-29.5-104(4), C.R.S.

- A. An applicant seeking reinstatement of an expired license shall complete a reinstatement application, pay a reinstatement fee, and attest to malpractice insurance in the amount required by statute.
- B. If the license has been expired for more than two (2) years from the date of receipt of the reinstatement application, but less than five (5) years an applicant shall establish competency to practice under Sections 24-34-102(8)(d)(II), C.R.S. and 24-34-105, C.R.S., by demonstrating one of the following:

1. Licensure in good standing from another state along with proof of active practice in that state for two (2) years of the previous five (5) years from the date of application for reinstatement.
 2. Completion of thirty (30) hours of continuing education courses related to the practice of acupuncture during the two (2) years immediately preceding the application for reinstatement. The continuing education must meet the approval of and shall be attested to in a manner prescribed by the Director.
 3. Active certification by NCCAOM or a successor organization.
 4. Competency to practice by any other means approved by the Director.
- C. An applicant seeking to reinstate a license that has been expired for more than five (5) years shall establish competency to practice as required in Section 24-34-102(8)(d)(II), C.R.S. by demonstrating one of the following:
1. Licensure in good standing from another state along with proof of active practice for two (2) years of the previous five (5) years from the date of application for reinstatement.
 2. Completion of supervised practice for a period no less than six (6) months subject to the terms established by the Director.
 3. Competency to practice by any other means approved by the Director.

Rule 4 Unlicensed Persons in Acupuncture Training Programs

The purpose of this rule is to identify the circumstances and conditions under which a person in training may practice acupuncture without a valid and current license on file with the Division of Professions and Occupations pursuant to Section 12-29.5-105(2), C.R.S.

- A. A person in training may practice acupuncture without a valid and current license issued by the Division of Professions and Occupations if such practice takes place in the course of a bona fide training program. A bona fide training program is a training or apprenticeship program with an accredited school of acupuncture.
- B. A person in training shall be supervised by an acupuncturist licensed in Colorado who holds an active and unrestricted license to practice acupuncture in Colorado.
- C. Section 12-29.5-105(2)(a), C.R.S., requires a supervising acupuncturist to provide direct, on-site supervision of persons in training. Direct supervision shall mean supervision that is on the premises and in the same building where any such persons in training are practicing.
- D. A person in training may engage in the full scope of the practice of acupuncture as defined in Section 12.29.5-102(3.5), C.R.S.
- E. The supervising acupuncturist is responsible for maintaining documentation detailing the beginning and ending dates of the bona fide training program and for ensuring that the names and current addresses of all supervised persons in training are maintained by the supervising acupuncturist and are readily available for inspection at the request of the Director or designee.

Rule 5 Use of Title and Restrictions

The purpose of this rule is to clarify the use of title "licensed acupuncturist" and "diplomat of acupuncture", and use of the designations "L.Ac." and "Dipl. Ac." under Section 12-29.5-105(1.5)(b)(II), C.R.S.

- A. ~~Obtaining an acupuncturist license does not automatically entitle or confer upon the licensee the right to use the title Dr. or Doctor.~~
- B. ~~A licensed acupuncturist can use the title Doctor or Dr. only when such licensee has, in fact, been awarded a doctorate degree from an acupuncture or oriental medicine academic/educational institution and satisfies the requirements of Section 6-1-707, C.R.S.~~
- C. ~~In such instances where a licensee qualifies to use the title "Doctor" or "Dr.", an acupuncturist can use the title "Doctor" or "Dr." only when accompanied by the words "Doctor of Acupuncture" or letters "D.Ac.", "Oriental Medicine Doctor" or "OMD", "Doctor of Acupuncture and Oriental Medicine" or "D.Ac.OM", "Doctor of Traditional Chinese Medicine" or "DTCM", "Doctor of Acupuncture and Oriental Medicine" or "DAOM" or any other doctoral degree recognized and approved by the Director.~~

Rule 6 Declaratory Orders

The purpose of this rule is to establish procedures for the handling of requests for declaratory orders filed pursuant to the Colorado Administrative Procedures Act at Section 24-4-105(11), C.R.S.

- A. Any person or entity may petition the Director for a declaratory order to terminate controversies or remove uncertainties as to the applicability of any statutory provision or of any rule or order of the Director.
- B. The Director will determine, at her discretion and without notice to petitioner, whether to rule upon such petition. If the Director determines that the Director will not rule upon such a petition, the Director shall promptly notify the petitioner of the action and state the reasons for such decision.
- C. In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:
 1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provisions or rule or order of the Director.
 2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more petitioners.
 3. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Director or a court but not involving any petitioner.
 4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.

5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Colorado Rules of Civil Procedure 57, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule, or order in question.
- D. Any petition filed pursuant to this rule shall set forth the following:
1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Title 12, Article 29.5.
 2. The statute, rule, or order to which the petition relates.
 3. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner.
- E. If the Director decides to rule on the petition, the following procedures shall apply:
1. The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - b. The Director may order the petitioner to file a written brief, memorandum, or statement of position.
 - c. The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - d. The Director may dispose of the petition on the sole basis of the matters set forth in the petition.
 - e. The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - f. The Director may take administrative notice of facts pursuant to the Colorado Administrative Procedures Act at Section 24-4-105(8), C.R.S., and may utilize the Director's experience, technical competence, and specialized knowledge in the disposition of the petition.
 2. If the Director rules upon the petition without a hearing, the Director shall promptly notify the petitioner of her decision.

3. The Director may, at the Director's discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The hearing notice to the petitioner shall set forth, to the extent known, the factual or other matters that the Director intends to inquire.

For the purpose of such a hearing, to the extent necessary, the petitioner shall have the burden of proving all the facts stated in the petition; all of the facts necessary to show the nature of the controversy or uncertainty; and the manner in which the statute, rule, or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Director to consider.

- F. The parties to any proceeding pursuant to this rule shall be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene shall set forth the same matters as are required by Section D of this Rule. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Director.
- G. Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to the Colorado Administrative Procedures Act at Section 24-4-106, C.R.S.

Rule 7 Reporting Convictions, Judgments and Administrative Proceedings

The purpose of the rule is to clarify the procedures for reporting convictions, and other adverse actions to include judgments and administrative proceedings pursuant to Sections 12-29.5-103, 12-29.5-104 and 12-29.5-106, C.R.S.

A licensee as defined in Section 12-29.5-102, C.R.S., shall inform the Director, in a manner set forth by the Director, within thirty (30) days of any of the following events:

- A. The conviction of the licensee of a felony under the laws of any state or of the United States, which would be a violation of Section 12-29.5-106, C.R.S. A guilty verdict, a plea of guilty or a plea of nolo contendere (no contest) accepted by the court is considered a conviction;
- B. A disciplinary action imposed upon the licensee by another jurisdiction that licenses acupuncturists, which would be a violation of Section 12-29.5-106, C.R.S., including, but not limited to, a citation, sanction, probation, civil penalty, or a denial, suspension, revocation, or modification of a license whether it is imposed by consent decree, order, or other decision, for any cause other than failure to pay a license fee by the due date or failure to meet continuing professional education requirements;
- C. Revocation or suspension by another state board, municipality, federal or state agency of any health services related license, other than a lapsed license for acupuncture as described in Section 12-29.5-106, C.R.S.;
- D. Any judgment, award or settlement of a civil action or arbitration in which there was a final judgment or settlement against the licensee for malpractice of acupuncture.

- E. The notice to the Director shall include the following information;
1. If the event is an action by a governmental agency (as described above), the name of the agency, its jurisdiction, the case name, court docket, proceeding or case number by which the event is designated, and a copy of the consent decree, order or decision;
 2. If the event is a felony conviction, the court, its jurisdiction, the case name, the case number, a description of the matter or a copy of the indictment or charges, and any plea or verdict entered by the court. The licensee shall also provide to the Director a copy of the imposition of sentence or judgment, whether deferred or immediate, related to the felony conviction and the completion of all terms of the sentence or judgment with thirty (30) days of such action;
 3. If the event concerns a civil action or arbitration proceeding, the court or arbiter, the jurisdiction, the case name, the case number, court docket, a description of the matter or a copy of the complaint, and a copy of the verdict, the court or arbitration decision, or, if settled, the settlement agreement and court's order of dismissal;
- F. The licensee notifying the Director may submit a written statement with the notice to be included with the licensee records.

Rule 8 Exceptions and Director's Review of Initial Decisions (Repealed)

Rule 9 Duty to Self-Report Certain Medical Conditions (Section 12-29.5-108.5, C.R.S.)

- A. No later than 30 days from the date a physical or mental illness or condition that affects a licensee's ability to perform acupuncture services with reasonable skill and safety, the licensee shall provide the Director, in writing, the following information:
1. The diagnosis and a description of the illness or condition;
 2. The date that the illness or condition was first diagnosed;
 3. The name of the current treatment provider and documentation from the current treatment provider confirming the diagnosis, date of onset, and treatment plan; and
 4. A description of the acupuncturist's practice and any modifications, limitations or restrictions to that practice that have been made as a result of the illness or condition.
- B. The licensee shall notify the Director of any worsening of any worsening of the illness or condition, or any significant change in the illness or condition that affects the licensee's ability to practice with reasonable skill and safety, within 30 days of the change of the illness or condition. The acupuncturist shall provide to the Director, in writing, the following information:
1. The name of the current treatment provider, documentation from the current treatment provider confirming the change of the illness or condition, the date that the illness or condition changed, the nature of the change of the illness or condition, and the current treatment plan; and
 2. A description of the licensee's practice, and any modifications, limitations, or restrictions to that practice that have been made as a result of the change of condition.

- C. Compliance with this rule is a prerequisite for eligibility to enter into a Confidential Agreement with the Director pursuant to Section 12-29.5-108.5(2), C.R.S. However, mere compliance with this rule does not require the Director to enter into a Confidential Agreement. Rather, the Director will evaluate all facts and circumstances to determine whether a Confidential Agreement is appropriate.
- D. If the Director discovers that a licensee has a mental or physical illness or condition that affects the licensee's ability to practice with reasonable skill and safety, and the licensee has not timely notified the Director of such illness or condition, the licensee may be subject to disciplinary action pursuant to Section 12-29.5-106(1)(l), C.R.S.

Rule 10 Injection Therapy

- A. Definitions. For purposes of this rule only:
 - 1. The Director recognizes that "Injection therapy" is the stimulation of acupuncture points, including trigger points (historically known as "AHSHI" points), by the injection of saline, sterile herbs, vitamins, minerals, homeopathic substances, glucose, lidocaine, procaine, and sarapin, or other similar substances specifically manufactured for nonintravenous injection by means of hypodermic needles.
- B. Except as restricted by paragraph (C) of this rule, an acupuncturist with an active license may practice injection therapy in the treatment of patients in his or her care,
- C. Requirements to Practice Injection Therapy. The acupuncturist shall:
 - 1. possess a Colorado acupuncture license in good standing;
 - 2. hold a current Clean Needle Technique Certificate through the NCCAOM (or successor organization); and
 - 3. be current in basic life support (BLS) or cardiopulmonary resuscitation (CPR) approved by the American Heart Association or American Red Cross;
 - 4. complete educational coursework covered in subsection D.
- D. Acupuncturists employing injection therapy shall use only those substances and techniques for which they have received training. Required Educational Coursework shall include:
 - 1. Anatomy and Physiology
 - 2. Acupuncture physical exam and differential diagnosis;
 - 3. Acupuncture point location, including underlying anatomy;
 - 4. Acupuncture needling technique;
 - 5. General injection safety;
 - 3. Acupuncture point injection therapy;
 - 7. Pharmacology; and
 - 8. Clean Needle Technique.

9. For the use of injectable substances prepared from oriental herbs, completion of training in Chinese herbology and injection of Chinese herbal injectables is required.

To demonstrate satisfying the training requirements in Chinese herbology and injection of Chinese herbal injectables the Director will accept NCCAOM, or a successor organization's, certification in Chinese herbology and/or certification in Oriental Medicine.

10. For the use of substances listed in (E)(3)(a)(12-17), instruction on the use of inhaled O2 and IM epinephrine for emergency use is required.

E. Permissible Substances

1. An acupuncturist shall comply with all federal and state laws that pertain to obtaining, possessing and administering any drug;
2. A substance shall only be approved for use if procured in compliance with all federal and state laws;
3. The following drugs are authorized in the modes of administration that are specified except as limited or restricted by federal or state law:
 - a. Permissible substances that an acupuncturist may obtain for injection therapy as permitted per Section 12-29.5-102(3.3), C.R.S and as permitted by the Director per Section 12-29.5-102(3), C.R.S. are:
 - (1) Dextrose;
 - (2) d-glucose;
 - (3) Enzymes except urokinase;
 - (4) Glucose;
 - (4) Homeopathic Substances (to only include those that are within the US Pharmacopia);
 - (5) Hyaluronic Acid;
 - (6) Minerals;
 - (7) Saline;
 - (8) Sarapin;
 - (9) Sodium chloride;
 - (9) Sterile water;
 - (10) Traumeel;
 - (11) Vitamins;
 - (12) Cyanocobalamin;

- (13) Lidocaine;
- (14) Marcaine (Bupivacaine Hydrochloride) with or without epinephrine;
- (15) Oriental Herbs
- (16) Procaine ; and
- (17) Vitamin B-12.

F. Patient safety.

1. Acupuncturists shall have an adverse event/emergency plan in place.
2. An acupuncturist practicing injection therapy of substances listed in (E)(3)(a)(12)-(17) shall be equipped and trained to treat patients with oxygen and epinephrine. The oxygen and emergency epinephrine kit shall be on site where injection therapy utilizing substances with potential allergic side effects are being rendered.
3. An acupuncturist authorized to practice injection therapy shall not inject any substance intravenously.

G. Acupuncturists shall show current medical malpractice coverage for this procedure and maintain coverage.

1. It is the acupuncturist's responsibility to only inject substances that are listed in subsection E and are explicitly covered by the acupuncturist's insurance policy obtained in compliance with Section 12-29.5-104(6), C.R.S.

Colorado Revised Statutes 2018

TITLE 12 **Professions and Occupations**

ARTICLE 29.5 **Acupuncturists**

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TITLE 12
Professions and Occupations

ARTICLE 29.5
Acupuncturists

12-29.5-101. Legislative declaration. While recognizing that the rendering of acupuncture services is not part of the traditional practice of western medicine, it is the intent of the general assembly that those citizens who wish to obtain acupuncture services be allowed to do so and, in addition, that such citizens have available certain information to assist them in making informed choices when seeking such services. It is also the intent of the general assembly that the providers or practitioners of acupuncture should not misrepresent their qualifications, harm their clients, practice in an unhealthy manner, or otherwise deceive insurers or the recipients of acupuncture services.

Source: L. 89: Entire article added, p. 656, § 1, effective June 6.

12-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means a system of health care based upon traditional and modern oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(2) "Acupuncturist" means any person who provides for compensation, or holds himself out to the public as providing, acupuncture services.

(3) "Director" means the director of the division of professions and occupations in the department of regulatory agencies.

(3.2) "Guest acupuncturist" means an acupuncturist who is:

(a) Licensed, registered, certified, or regulated as an acupuncturist in another jurisdiction;

(b) In this state for the purpose of instruction or education for not more than seven days within a three-month period; and

(c) Under the direct supervision of a Colorado licensed acupuncturist or licensed chiropractor while performing such instruction or education.

(3.3) "Injection therapy" means the injection of sterile herbs, vitamins, minerals, homeopathic substances, or other similar substances specifically manufactured for nonintravenous injection into acupuncture points by means of hypodermic needles used primarily for the treatment of musculoskeletal pain. Permissible substances include saline, glucose, lidocaine, procaine, oriental herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. "Injection therapy" includes the use of epinephrine and oxygen as necessary for patient care and safety, including for the purpose of addressing any risk of allergic reactions when using injection substances.

(3.4) "Licensee" means an acupuncturist licensed pursuant to section 12-29.5-104.

(3.5) (a) "Practice of acupuncture" means the insertion and removal of acupuncture needles, injection therapy, the application of heat therapies to specific areas of the human body, and adjunctive therapies. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment; the recommendation of therapeutic exercises; and, subject to federal law, the recommendation of herbs and dietary

guidelines. The "practice of acupuncture" is based upon traditional and modern oriental medical concepts and does not include the utilization of western medical diagnostic tests and procedures, such as magnetic resonance imaging, radiographs (X rays), computerized tomography scans, and ultrasound.

(b) Nothing in this article authorizes an acupuncturist to perform the practice of medicine; surgery; spinal adjustment, manipulation, or mobilization; or any other form of healing except as authorized by this article.

(4) (Deleted by amendment, L. 2002, p. 33, § 1, effective March 13, 2002.)

Source: L. 89: Entire article added, p. 656, § 1, effective June 6. **L. 95:** (1) amended and (3.2) and (3.5) added, p. 482, § 1, effective January 1, 1996. **L. 2002:** (3.2)(c) and (4) amended and (3.3) added, p. 33, § 1, effective March 13. **L. 2013:** (1) and (3.5) amended, (SB 13-172), ch. 396, p. 2313, § 3, effective June 5. **L. 2015:** (3.3) and (3.5)(a) amended and (3.4) added, (HB 15-1360), ch. 319, p. 1300, § 1, effective June 5.

12-29.5-102.5. Injection therapy - training - substances - rules. (1) A licensee shall obtain the necessary training as determined by the director prior to practicing injection therapy.

(2) Notwithstanding section 12-42.5-305, a licensee who has received the necessary training to practice injection therapy may obtain substances for injection therapy from a registered prescription drug outlet, registered manufacturer, or registered wholesaler. An entity that provides a substance to a licensee in accordance with this section, and who relies in good faith upon the license information provided by the licensee, is not liable for providing the substance.

(3) The director shall promulgate rules to implement this section that include the necessary training for a licensee to practice injection therapy and a list of substances that a licensee may obtain for injection therapy. In promulgating the rules, the director shall consult with knowledgeable medical professionals and pharmacists.

Source: L. 2015: Entire section added, (HB 15-1360), ch. 319, p. 1301, § 2, effective June 5.

12-29.5-103. Mandatory disclosure of information to patients - retention of records of disclosure. (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

(a) The name, business address, and business phone number of the acupuncturist;

(b) A fee schedule;

(c) A statement indicating that:

(I) The patient is entitled to receive information about the methods of therapy, the techniques used, and the duration of therapy, if known;

(II) The patient may seek a second opinion from another health care professional or may terminate therapy at any time;

(III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the director of the division of professions and occupations in the department of regulatory agencies;

(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons

licensed pursuant to this article, certificates or credentials related to acupuncture awarded by such organizations, the length of time required to obtain said degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in acupuncture or any other health care profession which was issued to the acupuncturist by any local, state, or national health care agency, and indicating whether any such license, certificate, or registration was suspended or revoked;

(f) A statement that the acupuncturist is complying with any rules and regulations promulgated by the department of public health and environment with respect to this article, including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices;

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director of the division of professions and occupations in the department of regulatory agencies; and

(h) A statement indicating the acupuncturist's training and experience in the recommendation and application of adjunctive therapies and herbs as defined by traditional oriental medical concepts.

(2) Any changes in the information required by paragraphs (a) to (f) of subsection (1) of this section shall be made in the mandatory disclosure within five days of the said change.

(3) The acupuncturist shall retain a copy of the written information specified in subsection (1) of this section, dated and signed by the patient, from the time of the initial evaluation until at least three years after the termination of treatment.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. L. 92: (1) amended and (3) added, p. 1992, § 3, effective July 1. L. 94: (1)(f) amended, p. 2725, § 326, effective July 1. L. 95: (1)(g) amended and (1)(h) added, p. 483, § 2, effective January 1, 1996. L. 2002: (1)(d) amended, p. 33, § 2, effective March 13.

12-29.5-104. Requirement for licensure with the division of professions and occupations - annual fee - required disclosures. (1) Every acupuncturist shall apply for licensure with the division of professions and occupations by providing an application to the director in the form the director shall require. Said application shall include the information specified in section 12-29.5-103 (1)(a) and (1)(d) to (1)(g), and shall include the disclosure of any act that would be grounds for disciplinary action against a licensed acupuncturist under this article.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days of said change to the division of professions and occupations in the manner prescribed by the director.

(3) In order to qualify for licensure, an acupuncturist shall have:

(a) Successfully completed an education program for acupuncturists that conforms to standards approved by the director, which standards may be established by utilizing the assistance of any professional organization whose membership includes not less than one-third of the persons licensed pursuant to this article; or

(b) Qualifications based on education, experience, or training which are substantially similar to those provided by paragraph (a) of this subsection (3) which are documented in the form required by the director and accepted by him in lieu of such education program.

(4) Every applicant for licensure shall pay license, renewal, and reinstatement fees to be established by the director in the same manner as is authorized by section 24-34-105, C.R.S. All licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(5) (a) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make such report either within thirty days after the judgment or action or upon application for licensure or reinstatement, whichever occurs earlier.

(b) An acupuncturist who has had his or her license revoked or who has surrendered his or her license to avoid disciplinary action is not eligible to apply for a license for two years after the license is revoked or suspended.

(6) As a condition of licensure, every acupuncturist shall purchase and maintain commercial professional liability insurance with an insurance company authorized to do business in this state in a minimum indemnity amount of:

(a) Fifty thousand dollars per incident and fifty thousand dollars per year, if practicing as a sole proprietor or general partnership;

(b) Three hundred thousand dollars per incident and three hundred thousand dollars per year, if practicing as a limited liability company or a corporation.

(7) The director shall issue a license to practice acupuncture to any acupuncturist who is registered to practice acupuncture in this state prior to March 13, 2002.

Source: L. 89: Entire article added, p. 657, § 1, effective June 6. L. 92: (1) and (4) amended and (5) added, p. 1993, § 4, effective July 1. L. 95: (6) added, p. 483, § 3, effective January 1, 1996. L. 2002: (1), IP(3), (3)(a), (4), (5), and IP(6) amended and (7) added, p. 34, § 3, effective March 13. L. 2004: (4) amended, p. 1818, § 55, effective August 4. L. 2013: (5) amended, (SB 13-172), ch. 396, p. 2313, § 4, effective June 5.

12-29.5-104.5. Licensure by endorsement. (1) The director shall issue a license by endorsement to engage in the practice of acupuncture in this state to any applicant who has a license in good standing as an acupuncturist under the laws of another jurisdiction if the applicant presents satisfactory proof to the director that, at the time of application for a license by endorsement, the applicant possesses substantially equivalent credentials and qualifications to those required for licensure pursuant to this article.

(2) The director shall specify by rule what shall constitute "substantially equivalent credentials and qualifications" for the purposes of this section.

(3) The director shall establish a fee to be paid by any applicant for licensure by endorsement.

(4) For the purposes of this section, "in good standing" means a license that has not been revoked or suspended, or against which there are no disciplinary or adverse actions.

Source: L. 2002: Entire section added, p. 35, § 4, effective March 13.

12-29.5-105. Unlawful acts - exceptions - definition. (1) Nothing in this article shall interfere with, or be interpreted to interfere with or prevent, any other licensed health care professional from practicing within the scope of his or her practice, as defined in this title.

(1.5) (a) It is unlawful for any person to practice acupuncture without a valid and current license on file with the division of professions and occupations, unless the acupuncturist is practicing pursuant to section 12-36-106 (3)(1) or has met the requirements of subsection (2) of this section.

(b) It is unlawful for any person to:

(I) Engage in the practice of acupuncture without being licensed; or

(II) Use the title "licensed acupuncturist", "registered acupuncturist", or "diplomate of acupuncture", or use the designation "L.Ac.", "R.Ac.", or "Dipl. Ac.", unless such person is practicing pursuant to section 12-36-106 (3).

(2) Notwithstanding any provision of this section to the contrary, a person in training may practice acupuncture without a valid and current license issued by the division if such practice takes place in the course of a bona fide training program and the person performs all acupuncture acts and services under the direct, on-site supervision of a licensed acupuncturist, who is responsible for all such acts and services as though the licensed acupuncturist had personally performed them.

(3) (a) Notwithstanding any provision of this article 29.5 to the contrary, a mental health care professional who has provided documentation that he or she has been trained to perform auricular acudetox in compliance with subsection (3)(d) of this section may perform auricular acudetox if the auricular acudetox is performed under the mental health care professional's current scope of practice, and the mental health care professional is:

(I) Licensed pursuant to article 43 of this title 12;

(II) Certified as a level III addiction counselor pursuant to part 8 of article 43 of this title 12; or

(III) Registered as a psychotherapist pursuant to part 7 of article 43 of this title 12.

(b) A mental health professional performing auricular acudetox pursuant to this subsection (3) shall not use the title "acupuncturist" or otherwise claim to be a person qualified to perform acupuncture beyond the scope of this subsection (3).

(c) As used in this subsection (3) "auricular acudetox" means the subcutaneous insertion of sterile, disposable acupuncture needles in the following five consistent, predetermined bilateral locations:

(I) Sympathetic;

(II) Shen men;

(III) Kidney;

(IV) Liver; and

(V) Lung.

(d) In order to perform auricular acudetox pursuant to this subsection (3), a mental health care professional must successfully complete a training program in auricular acudetox for the treatment of substance use disorders that meets or exceeds standards of training established by

the national acupuncture detoxification association or another organization approved by the director.

Source: **L. 89:** Entire article added, p. 658, § 1, effective June 6. **L. 92:** Entire section amended, p. 1994, § 5, effective July 1. **L. 95:** Entire section amended, p. 484, § 4, effective January 1, 1996. **L. 2002:** (1.5) and (2) amended, p. 35, § 5, effective March 13. **L. 2013:** (2) amended, (SB 13-172), ch. 396, p. 2314, § 5, effective June 5; (3) added, (SB 13-207), ch. 416, p. 2462, § 1, effective July 1. **L. 2017:** (3)(d) amended, (SB 17-242), ch. 263, p. 1267, § 42, effective May 25. **L. 2018:** (3)(a) amended, (SB 18-020), ch. 52, p. 494, § 1, effective August 8.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-106. Grounds for disciplinary action. (1) The director may deny licensure to or take disciplinary action against an acupuncturist pursuant to section 24-4-105 if the director finds that the acupuncturist has committed any of the following acts:

- (a) Violated the provisions of section 12-29.5-105;
- (b) Failed to provide the mandatory disclosure required by section 12-29.5-103 or provided false, deceptive, or misleading information to patients in the said disclosure;
- (c) Failed to provide the information required by section 12-29.5-104 (1) or provided false, deceptive, or misleading information to the division of professions and occupations;
- (d) Committed, or advertised in any manner that he or she will commit, any act constituting an abuse of health insurance as prohibited by section 18-13-119, C.R.S., or a fraudulent insurance act as defined in section 10-1-128, C.R.S.;
- (e) Failed to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;
- (f) Accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;
- (g) Offered or gave commissions, rebates, or other forms of remuneration for the referral of clients; except that, notwithstanding the provisions of this paragraph (g), an acupuncturist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services, on a per patient basis;
- (h) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations adopted by the executive director of the department of public health and environment, including those regulations governing the proper cleaning and sterilization of acupuncture needles or the sanitary conditions of acupuncture offices, or any lawful orders of the department of public health and environment or of court;
- (i) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations governing the practice of acupuncture adopted by the director, or any lawful orders of the director or of court;
- (j) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial patient evaluation and ending with the termination of treatment;

(k) Departed from, or failed to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(l) (I) Failed to notify the director of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that impacts the licensee's ability to practice acupuncture with reasonable skill and safety to patients;

(II) Failed to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to perform acupuncture with reasonable skill and safety to the patient; or

(III) Failed to comply with the limitations agreed to under a confidential agreement;

(m) Continued in the practice of acupuncture while abusing or habitually or excessively using alcohol, a habit-forming drug, or controlled substance as defined in section 18-18-102 (5), C.R.S.;

(n) Committed and been convicted of a felony or entered a plea of guilty or nolo contendere to a felony; and

(o) Published or circulated, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications.

(2) The director may accept, as prima facie evidence of the commission of any act enumerated in subsection (1) of this section, evidence of disciplinary action taken by another jurisdiction against an acupuncturist's license or other authorization to practice if such disciplinary action was based upon acts or practices substantially similar to those enumerated in subsection (1) of this section.

(3) (a) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this article. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Source: L. 89: Entire article added, p. 658, § 1, effective June 6. L. 92: Entire section amended, p. 1994, § 6, effective July 1. L. 94: (1)(h) amended, p. 2725, § 327, effective July 1. L. 2002: IP(1) amended, p. 36, § 6, effective March 13. L. 2003: (1)(d) amended, p. 620, § 25, effective July 1. L. 2004: (1)(m) amended, p. 1193, § 32, effective August 4; (3) added, p. 1819, § 56, effective August 4. L. 2012: (1)(m) amended, (HB 12-1311), ch. 281, p. 1610, § 12, effective July 1. L. 2013: (1)(l) and (1)(m) amended, (SB 13-172), ch. 396, p. 2314, § 6, effective June 5. L. 2017: IP(1) and (1)(l) amended, (SB 17-242), ch. 263, p. 1267, § 43, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-107. Disciplinary authority and proceedings. (1) A proceeding for discipline of a licensee may be commenced by the director when the director has reasonable grounds to believe that a licensee has committed any act prohibited by section 12-29.5-106 (1).

(2) Disciplinary actions may consist of the following:

(a) Revocation or suspension of licensure;

(b) Placement of the licensee on probation and setting the terms of that probation; and

(c) (I) Issuance of letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, the director may issue and send a letter of admonition by first-class mail, to the licensee.

(II) When the director sends a letter of admonition to a licensee, the director shall advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(III) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(2.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the director and, in the opinion of the director, the complaint should be dismissed, but the director has noticed indications of possible errant conduct by the licensee that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the licensee.

(3) Complaints of record on file with the director and the results of investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a licensee. The director's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S.

(4) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(5) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (5), the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(6) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this article, then, in addition to any specific powers granted pursuant to this article, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (6) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (6). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (6) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (6) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this article, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (6), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(7) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this article, any rule promulgated pursuant to this article, any order issued pursuant to this article, or any act or practice constituting grounds for administrative sanction pursuant to this article, the director may enter into a stipulation with such person.

(8) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(9) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

Source: L. 89: Entire article added, p. 659, § 1, effective June 6. L. 2002: (1), (2)(a), (2)(b), and (3) amended, p. 36, § 7, effective March 13. L. 2004: (2)(c) amended and (4) added, p. 1819, § 57, effective August 4. L. 2006: (2.5) and (5) to (9) added, p. 787, § 20, effective July 1. L. 2013: (2)(c)(I) and (2)(c)(II) amended, (SB 13-172), ch. 396, p. 2314, § 7, effective June 5.

12-29.5-108. Unauthorized practice - penalties. (1) Any person who practices or offers or attempts to practice acupuncture without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Any person who violates the provision of section 12-29.5-106 (1)(j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be referred for criminal prosecution.

(3) Any person who violates the provisions of section 12-29.5-106 (1)(j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be referred for criminal prosecution.

Source: L. 89: Entire article added, p. 659, § 1, effective June 6. L. 2002: Entire section amended, p. 1476, § 67, effective October 1. L. 2006: Entire section amended, p. 86, § 22, effective August 7.

Cross references: For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

12-29.5-108.5. Examinations - notice - confidential agreements. (1) If an acupuncturist suffers from a physical illness; a physical condition; or a behavioral or mental health disorder that renders the licensee unable to practice acupuncture or practice as an acupuncturist with reasonable skill and patient safety, the acupuncturist shall notify the director of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period of time determined by the director. The director may require the licensee to submit to an examination or to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the licensee's ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that an acupuncturist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited acupuncture treatment with reasonable skill and patient safety, the director may enter into a confidential agreement with the acupuncturist in which the acupuncturist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the director.

(b) The agreement must specify that the licensee is subject to periodic reevaluations or monitoring as determined appropriate by the director.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(d) By entering into an agreement with the director under this subsection (2) to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an administrative action and does not constitute a restriction or discipline by the director. However,

if the licensee fails to comply with an agreement entered into pursuant to this subsection (2), the failure constitutes grounds for disciplinary action under section 12-29.5-106 (1)(l) and the licensee is subject to discipline in accordance with section 12-29.5-107.

(3) This section does not apply to a licensee subject to discipline under section 12-29.5-106 (1)(m).

Source: L. 2013: Entire section added, (SB 13-172), ch. 396, p. 2315, § 8, effective June 5. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1268, § 44, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-29.5-109. Civil penalties. (1) No action may be maintained against a recipient of acupuncture services for breach of a contract involving the rendering of acupuncture services provided under such contract by an acupuncturist who has committed, with respect to such recipient, any act prohibited by section 12-29.5-106 (1).

(2) When a patient, his insurer, or his legal guardian or representative has paid for acupuncture services rendered by an acupuncturist who has committed, with respect to such patient, any act prohibited by section 12-29.5-106 (1), whether or not said patient knew that said act or acts were illegal, he, his insurer, or his legal guardian or representative may recover, in an action at law, the amount of any fees paid for the acupuncture services and reasonable attorney fees.

(3) The criminal and civil penalties specified under this article are not exclusive but cumulative and in addition to any other causes of action, rights, or remedies a patient may have under law.

Source: L. 89: Entire article added, p. 660, § 1, effective June 6.

12-29.5-109.5. Immunity. The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

Source: L. 92: Entire section added, p. 1996, § 7, effective July 1. **L. 2004:** Entire section amended, p. 1820, § 58, effective August 4.

12-29.5-110. Director - powers and duties. (1) In addition to any other powers and duties conferred by this article, the director shall have the following powers and duties:

(a) To adopt such rules and regulations as may be necessary to carry out the provisions of this article;

(b) To establish the fees for licensure and renewal of licenses in the same manner as is authorized by section 24-34-105, C.R.S.;

(c) To accept or deny applications for licensure and to collect the annual license fees authorized by this article;

(d) To inspect on a complaint basis any premises where acupuncture services are provided to ensure compliance with this article and the rules and regulations adopted pursuant thereto;

(e) To contract with the department of public health and environment or others to provide appropriate services as needed to carry out the inspections authorized with respect to the proper cleaning and sterilization of needles and the sanitation of acupuncture offices;

(f) To make investigations, hold hearings, and take evidence with respect to any complaint against any licensee when the director has reasonable cause to believe that the licensee is violating any of the provisions of this article and to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to those investigations or hearings. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(g) To conduct any other meetings or hearings necessary to carry out the provisions of this article;

(h) Through the department of regulatory agencies, and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(i) To seek, through the office of the attorney general, an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (i), the director shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(j) To order the physical or mental examination of an acupuncturist if the director has reasonable cause to believe that the acupuncturist is subject to a physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; and the director may order such an examination whether or not actual injury to a patient is established;

(k) To report to the United States department of health and human services, pursuant to applicable federal law and regulations, any adverse action taken against the license of any acupuncturist.

Source: L. 89: Entire article added, p. 660, § 1, effective June 6. L. 92: (1)(d) amended and (1)(j) and (1)(k) added, p. 1997, §§ 8, 9, effective July 1. L. 94: (1)(e) amended, p. 2726, § 328, effective July 1. L. 2002: (1)(b), (1)(c), (1)(f), and (1)(k) amended, p. 36, § 8, effective March 13.

12-29.5-111. Powers and duties of the executive director of the department of public health and environment. The executive director of the department of public health and environment shall promulgate rules and regulations relating to the proper cleaning and

sterilization of needles to be used in the practice of acupuncture and the sanitation of acupuncture offices.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 94:** Entire section amended, p. 2726, § 329, effective July 1.

12-29.5-112. Insurance coverage - not affected. Nothing in this article shall be construed to affect any present or future provision of law or contract or other agreement concerning insurance or insurance coverage with respect to the provision of acupuncture services.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-113. Scope of article. The provisions of this article shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the provision of acupuncture services is within the scope of such licensure. It is not intended nor shall it be interpreted that the practice of acupuncture constitutes the practice of medicine within the scope of the "Colorado Medical Practice Act", article 36 of this title.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 95:** Entire section amended, p. 484, § 5, effective January 1, 1996.

12-29.5-114. Division of professions and occupations cash fund. It is the intention of the general assembly that all direct and indirect costs incurred in the implementation of this article be funded by annual registration and license fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of professions and occupations cash fund, created by section 24-34-105, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 2002:** Entire section amended, p. 37, § 9, effective March 13.

12-29.5-115. Effective date - applicability. This article shall take effect July 1, 1989, and shall apply to practicing acupuncturists on or after January 1, 1990.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6.

12-29.5-116. Repeal of article - termination of functions. (1) This article is repealed, effective September 1, 2022.

(2) The licensing functions of the director of the division of professions and occupations as set forth in this article are terminated on September 1, 2022. Prior to such termination, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 89: Entire article added, p. 661, § 1, effective June 6. **L. 93:** Entire section amended, p. 1460, § 3, effective June 6. **L. 2002:** Entire section amended, p. 37, § 10, effective March 13. **L. 2013:** Entire section amended, (SB 13-172), ch. 396, p. 2312, § 1, effective June 5.



ACUPUNCTURE BOARD

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June 14, 2001

Linda Chong,
Customer Service Representative
Zenith Insurance Company
Corporate Offices
P.O. Box 9055
Van Nuys, CA 91409-9055

Re: Jill Van Meter, L.Ac.
Myofascial Release

Dear Ms. Chong:

This letter is in response to your letter, dated June 19, 2001, from Zenith to one of our licensees. In the third paragraph Zenith stated *"Additional research was conducted on these codes by contacting the Acupuncture Board of California to render an opinion on this issue. Their opinion is as follows, 'Myofascial release appears to be a western term and treatment procedure. As such, it would not be defined as oriental massage under the business and professions code, section 4937'."*

Apparently there was some misunderstanding of Zenith's inquiry to the Board, which needs further explanation. Worker's Compensation Codes are used universally among all health care professions in the United States. While the term is a Western term, treatment procedures are limited to each profession's scope of practice.

For example, the Western code and term for "myofascial release" refers to the massage of tissue, joints, muscle, pressure soft tissue manipulation known as *Tui Na* in acupuncture and Oriental medicine. These codes have historically been used since 1981 when it was determined that acupuncturists were allowed to participate in the Worker's Compensation system, and throughout the development of acupuncture being utilized as a modality and acupuncturists' recognition as primary care. Acupuncturists participating in the Worker's Compensation system have historically used these codes, along with many other physical medicine codes, and variations of these procedures and modalities have been used historically throughout the development of Chinese medicine and acupuncture within the scope of practice of acupuncturists.

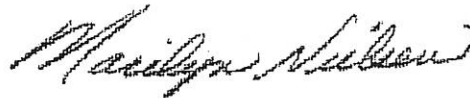
While myofascial release appears to be a Western term, discussion of the historical roots of the types of myofascial procedures under physical medicine were developed throughout history primarily by the Chinese in use of pressure techniques, massage, manipulation and mobilization of tissues and bones, and are included within the definition of Oriental massage. Also, practitioners have used radiant heat historically as well as ultrasound since the beginning of the early 1970's while addressing safety issues of heating. Business and Professions Code, Section 4937(b) authorizes an acupuncturist "to perform or prescribe the use of Oriental massage, acupressure, breathing techniques, exercise, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health." The statute does not require that these modalities be performed in conjunction with the stimulation of acupuncture points.

Oriental massage consists of various techniques but are generally characterized by the kneading, or rubbing of the surface of the body to achieve a therapeutic object.

Historically in California, acupuncturists have utilized these modalities and have ongoing continuing education in the use and safety of these procedures and modalities mentioned, as well as other procedures and modalities within the physical medicine codes of Worker's Compensation.

Therefore, procedure codes 97250 and 97026 are universally used by all healthcare providers. Each profession may have different terminology prevalent to it's profession, however treatment procedures are similar and often administered within the boundaries of each profession's scope of practice.

Sincerely,



MARILYN NIELSEN
Executive Officer

cc: Ted Friebe, L.Ac., O.M.D.
Jill Van Meter, L.Ac.

CALIFORNIA ACUPUNCTURE BOARD

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Schwarzenegger, Governor

State of California
Department of Consumer
Arnold



September 15, 2005

John Harrington, Manager
Blue Shield of California
P.O. Box 272540
Chico, CA 95927-2540

Dear Mr. Harrington:

This letter is in response to a claim from a licensee that Blue Shield had denied – claim number 06051433612200 (Subscriber: K.Abadee, No. J022958620000). The licensee has contacted the Board requesting assistance to rectify Blue Shields payment denial of her claim. Blue Shield cited the following as the basis for the denial: “Your initial appeal was reviewed. The information submitted does not support consideration for additional payment. Studio City Oriental Medical Center or Neal Miller, L.Ac is not certified in the State of California as a Physical Therapist; therefore is not able to perform such services.” The Board is addressing your interpretation of the treatment services in question, which were manual therapy charges for myofascial release, not to the practitioner himself.

Workers’ Compensation Codes are used universally among all healthcare professions in the United States. While manual therapy is a Western term, treatment procedures relating to it are limited to each profession’s scope of practice. For example, the Western term for ‘myofascial release’ refers to the massage of tissue, joints, muscle and pressure of soft tissue manipulation known as Tui Na in acupuncture and Oriental medicine. Since 1981 acupuncturists participating in the Workers’ Compensation system use designated codes along with many other physical medicine codes for variations of manual therapy procedures and modalities that are within an acupuncturist scope of practice.

Myofascial procedures, under physical medicine, was developed primarily by the Chinese in use of pressure techniques, massage, manipulation and mobilization of tissues and bones, all of which are included within the definition of Oriental massage. Business and Professions Code Section 4937(b) authorizes an acupuncturist “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.” The statute does not require that these modalities be performed in the conjunction with the stimulation of acupuncture points.

Oriental massage consists of various techniques, but are generally characterized by the kneading, or rubbing of the surface of the body to achieve a therapeutic objective. Therefore, procedure codes 97250 and 97026 are universally used by all healthcare providers. Each profession may have different terminology prevalent to its profession, however treatment procedures are similar and often administered within the boundaries of each profession scope of practice.

I trust the above provides Blue Shield with an explanation of manual therapy practices in acupuncture and Oriental Medicine and assists to rectify the denial of Ms. Abadee’s claim.

Sincerely,

Marilyn Nielsen
Executive Officer

Cc: K.G. Adadee
Neal Miller, AC3643

AB 3014 (Koretz)

As Amended on June 29, 2006

Acupuncture: Asian Massage

FACT SHEET

PURPOSE

This bill defines the term "Asian massage" in Statute so as to further clarify an Acupuncturist's Scope of Practice.

SUMMARY

This bill amends Business and Professions Code Section 4937, the Acupuncture Licensure Act, to codify the definition of "Asian massage" in California law.

AB 3014 will define "Asian massage" to mean the use of pressure techniques, including myofascial release/manual therapy as it relates to soft tissues, through massage and mobilization of the skin and muscle for the therapeutic objective of stimulation of proper body function, so long as the pressure techniques or manual therapy are consistent with the training requirements specified in the board's regulations.

COMMENTS

Since 1981, acupuncturists have been covered by some form of health insurance for the various types of therapies,

procedures and modalities they perform within their own scope of practice. For instance, one such treatment acupuncturists use in their daily practice is manual therapy.

While manual therapy is a Western term, treatment procedures relating to it are limited to each profession's scope of practice. For example, 'myofascial release' is a treatment used not only in acupuncture but also in physical therapy. However, in acupuncture and Oriental medicine, the term refers and is limited to the massage of tissue, joints, muscles and pressure of soft tissue manipulation known as 'Tui Na'.

In fact, Asian massage techniques have historically included documented procedures that are encompassed by the terms "myofascial release" and "manual therapy." These procedures were developed primarily by the Chinese in use of pressure techniques, massage, manipulation and mobilization of tissues and bones, all of which are included within the definition of Asian massage.

While acupuncturists are not "physical therapists," they are certainly allowed to utilize physical modalities and procedures in conjunction with acupuncture treatments that are within their scope of practice. However, insurance carriers have

taken advantage of this lack of clarity in the acupuncturist's scope of practice.

For example, some insurance companies have, in the recent past, refused to pay on claims for procedures that they would typically pay for by characterizing the procedure in question as "physical therapy," etc.

Because "Asian massage" is not clearly defined in statute, acupuncture practitioners and their patients alike find themselves in financial dilemmas in that neither group receives reimbursement from insurance carriers for procedures they have continually and historically paid on in the past,

By codifying the definition of "Asian massage," this legislation seeks to clarify what is legally included in an acupuncturist's scope of practice, thereby making it easier for patients and licensees to get reimbursement.

It is important to note that this bill does not change the acupuncturist's scope of practice. It merely provides a clearer understanding of what is included in an acupuncturist's scope of practice.

STATUS

June 29, 2006 – To Senate Third Reading

SUPPORT

- Acupuncture and Integrated Medicine Specialists (AIMS) - (Sponsor)
- Acupuncture & Integrative Medicine College in Berkeley
- California State Oriental Medical Association (CSOMA)
- Santa Cruz County Oriental Medical Association (SCCOMA)

- American Association of Oriental Medicine (AAOM)
- National Board of Acupuncture Orthopedics (NBOA)
- Pacific College of Oriental Medicine in San Diego
- Five Branches Institute in Santa Cruz
- California Certified Acupuncture Association (CCAA)
- Empress College of Oriental Medicine in Santa Monica
- Southern California University of Health Sciences in Whittier

OPPOSITION

- CA Physical Therapy Association
- Council of Acupuncture and Oriental Medicine Associations (CAOMA)
- California Chiropractic Association

VOTES

- Assembly Business and Professions Committee – Do Pass – 6 Ayes; 2 Noes
- Assembly Third Reading – Do Pass – 41 Ayes; 33 Noes
- Senate Business, Professions and Economic Development Committee – Do Pass as Amended – 3 Ayes; 1 No

Consultant: David Hersch/319-2272
Version: July 12, 2006

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For example, some insurance companies have, in the recent past, refused to pay on claims for procedures that they would typically pay for by characterizing the procedure in question as "physical therapy," etc.

Because "Asian massage" is not clearly defined in statute, acupuncture practitioners and their patients alike find themselves in financial dilemmas in that neither group receives reimbursement from insurance carriers for procedures they have continually and historically paid on in the past,

By codifying the definition of "Asian massage," this legislation seeks to clarify what is legally included in an acupuncturist's scope of practice, thereby making it easier for patients and licensees to get reimbursement.

It is important to note that this bill does not change the acupuncturist's scope of practice. It merely provides a clearer understanding of what is included in an acupuncturist's scope of practice.

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Consultant: David Hersch/319-2272
Version: July 12, 2006

*****FLOOR ALERT*****

To: Members of the Senate

Re: Support for AB 3014

As the sponsors of AB 3014, the Acupuncture and Integrated Medicine Specialists (AIMS), we strongly urge you to support this bill on the Senate Floor when it is considered on Thursday, August 10, 2006. AIMS is a California professional association representing Licensed Acupuncturists across the state.

Existing law currently authorizes an acupuncturist to perform or prescribe the use of Asian massage. However, nowhere in the code is the term "Asian massage" defined. By codifying the definition of "Asian massage" in statute, AB 3014 seeks to clarify what is legally included in an Acupuncturist's scope of practice, thereby making it easier for patients and practitioners to access benefits that are already in place in many insurance plans. This bill does not expand an Acupuncturist's scope of practice.

AB 3014 defines "Asian massage" as the use of pressure techniques, including myofascial release or manual therapy, as it relates to soft tissues, through massage and mobilization of the skin and muscle for the therapeutic objective of stimulation of proper body function, so long as the pressure techniques or manual therapy are consistent with the training requirements specified in the board's regulations.

Even though Asian massage is part of the curriculum of California accredited acupuncture schools set out in regulation (curriculum requirements 1399.434 (b) 2-C), many California consumers are being denied insurance coverage for procedures such as "myofascial release" and "manual therapy" simply because these procedures were performed by licensed acupuncturists. It is consistent with the recommendations of the September, 2004 Little Hoover Commission report to clarify in statute any language that may be ambiguous. It is in the best interest of the consumer and serves to improve the communication between the licensed acupuncturist and other healthcare providers by using commonly acceptable medical terminology to describe the techniques. By codifying the definition of "Asian massage," this bill will make it easier for patients and licensees to seek reimbursement for procedures already covered.

This legislation would protect both public safety and the individual practitioner by providing a clear definition of a modality already safely employed by licensed practitioners. In fact, the Chinese therapeutic modality of Tui Na (Asian Massage) dates back over 2000 years and has been safely practiced in California for decades by trained providers of Asian medicine.

Please join AIMS, the American Association of Oriental Medicine (AAOM), the California Certified Acupuncture Association (CCAA), the Acupuncture & Integrative Medicine College in Berkeley, the California State Oriental Medical Association (CSOMA), the National Board of Acupuncture Orthopedics (NBAO), Five Branches Medical Institute in Santa Cruz, the Santa Cruz County Oriental Medical Association (SCCOMA), Pacific College of Oriental Medicine in San Diego, Emperors College of Oriental Medicine in Santa Monica in supporting AB 3014.

*****VOTE AYE ON AB 3014*****

WORKING COPY

BILL NUMBER: AB 3014 AMENDED
BILL TEXT

AB 3014 Amendment
May 23, 2006

AMENDED IN ASSEMBLY MAY 15, 2006
AMENDED IN ASSEMBLY MAY 2, 2006
AMENDED IN ASSEMBLY APRIL 17, 2006

INTRODUCED BY Assembly Member Koretz

FEBRUARY 24, 2006

An act to amend Section 4937 of the Business and Professions Code, relating to acupuncture.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4937 of the Business and Professions Code is amended to read:

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 Asian massage pressure techniques, including myofascial release and manual therapy as it relates to soft tissues, through massage and mobilization of the skin and muscle for the therapeutic objective of stimulation of proper body function, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(c) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances, or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(e) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

~~(f) For purposes of this section, "Asian massage" means the use of pressure techniques, including myofascial release and manual therapy as it relates to soft tissues, through massage and mobilization of the skin and muscle for the therapeutic objective of stimulation of proper body function.~~

AMENDED IN ASSEMBLY MAY 15, 2006

AMENDED IN ASSEMBLY MAY 2, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 3014

Introduced by Assembly Member Koretz

February 24, 2006

An act to amend Section 4937 of the Business and Professions Code, relating to acupuncture.

LEGISLATIVE COUNSEL'S DIGEST

AB 3014, as amended, Koretz. Acupuncture: Asian massage.

Existing law, the Acupuncture Licensure Act, provides for the licensure and regulation of acupuncturists by the Acupuncture Board. Existing law authorizes the holder of an acupuncturist's license to engage in the practice of acupuncture and various other forms of treatment, including Asian massage. Existing law specifies that the act does not prohibit a person who is not a licensed acupuncturist or licensed healing arts practitioner from performing or prescribing Asian massage.

This bill would define Asian massage for purposes of that provision ~~and would express the Legislature's findings and intent regarding health care coverage of Asian massage.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. (a) The Legislature finds and declares that~~
2 ~~certain health care service plans and health insurers do not cover~~
3 ~~lawful acupuncture procedures performed by qualified, licensed~~
4 ~~acupuncturists.~~

5 ~~(b) It is the intent of the Legislature, in the interest of public~~
6 ~~health and safety, to clarify for health care service plans and~~
7 ~~health insurers and for health care providers that Asian massage~~
8 ~~is a lawful procedure that is appropriate for health care coverage.~~

9 ~~SEC. 2.~~

10 SECTION 1. Section 4937 of the Business and Professions
11 Code is amended to read:

12 4937. An acupuncturist's license authorizes the holder
13 thereof:

14 (a) To engage in the practice of acupuncture.

15 (b) To perform or prescribe the use of Asian massage,
16 acupressure, breathing techniques, exercise, heat, cold, magnets,
17 nutrition, diet, herbs, plant, animal, and mineral products, and
18 dietary supplements to promote, maintain, and restore health.
19 Nothing in this section prohibits any person who does not
20 possess an acupuncturist's license or another license as a healing
21 arts practitioner from performing, or prescribing the use of any
22 modality listed in this subdivision.

23 (c) For purposes of this section, a "magnet" means a mineral
24 or metal that produces a magnetic field without the application of
25 an electric current.

26 (d) For purposes of this section, "plant, animal, and mineral
27 products" means naturally occurring substances of plant, animal,
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- 1 substance listed in Chapter 2 (commencing with Section 11053)
- 2 of Division 10 of the Health and Safety Code.
- 3 (f) For purposes of this section, "Asian massage" means the
- 4 use of pressure techniques, including myofascial release and
- 5 manual therapy as it relates to soft tissues, through massage and
- 6 mobilization of the skin and muscle for the therapeutic objective
- 7 of stimulation of proper body function.