

**Acupuncture in California:  
Study of Scope of Practice**

**Overview of Current Status and Issues to Consider**

**Prepared for the Milton Marks “Little Hoover” Commission on California State  
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## Executive Summary

The legal scope of practice for licensed acupuncturists (L.Ac.'s) in California is one of the areas of concern to the California State Legislature as evidenced by the passage of SB 1951 (Figueroa, 2002) and the request for a study of the issue. This report provides background, interpretation and context for acupuncturists' legal scope of practice. It also offers some options and alternatives for policy makers and professionals to consider when addressing ongoing areas of concern and uncertainty.

For California acupuncturists, the practice act is found at California Business & Professions Code (CA B&P) sections 4925-4979. In addition, the regulations issued by the California Acupuncture Board (CA Code of Regulations, Title 16 §§1399.400 *et seq.*), particularly §§ 1399.450-1399.456 regarding Standards of Practice, contain relevant information about the legal scope of practice. The third major resource for this profession is the compilation of legal opinions issued by the state's Department of Consumer Affairs. A number of state and federal laws regarding health and safety, labor and food and drugs also apply. Finally, the practice acts of the other health professions provide both context and boundaries, often defining for example, what acupuncturists and others not licensed in those professions may *not* do.

Based on these sources, there are services and treatment modalities that are clearly within the authorized purview of licensed acupuncturists in this state, including acupuncture, 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. Unlike some other health professions, there are no limitations on area of the body that licensed acupuncturists may treat.

However, several aspects of the current legal scope of practice are unclear. Over the years, the California Department of Consumer Affairs has been asked many times to issue opinions addressing areas of the statute that are vague or incomplete. Although the DCA opinions do not carry the same legal weight as statutory or case law, they do currently stand as valid interpretations of unclear areas of the acupuncture practice act and could be used to interpret unclear areas of the statute absent anything else from a higher authority. However, the internal inconsistencies within the series of opinions themselves coupled with the apparent continued confusion among practitioners indicate ongoing problems. Among the substantive issues are questions of whether licensed acupuncturists are legally authorized:

- *To diagnose* and, if so, whether this includes Oriental medicine and/or Western/allopathic diagnostic theory – Based on a review of law, legal opinions, and other materials, there is considerable justification for including Oriental medical diagnostic authority within the licensed acupuncturist's legal scope of practice. There is considerably less justification for including the full range of Western/allopathic medicine diagnostic authority (in fact, several legal opinions indicate that acupuncturists definitely may not diagnose cancer and other diseases and conditions within the allopathic model). There are likely some Western diagnoses that licensed acupuncturists are competent to make but the parameters

around their Western diagnostic authority should be clarified by legislation and/or regulation.

- *To order and/or interpret laboratory and radiology tests* – Based on a review of relevant legal materials, the authority to order Western diagnostic tests and studies is linked to a profession’s authority to diagnose, interpret and use the results of such tests; any parameters and limits that surround diagnostic and related authority would necessarily carry over to limits on authority to order laboratory, radiology and other Western medical tests. Once the diagnostic authority is clarified as noted above, the corresponding implications for ordering tests and studies need to be clarified in the acupuncture statutes or regulations. The capacity to interpret results of such tests is a separate issue, probably requiring demonstration of competency for many of the tests, particularly on the more advanced reaches on the continuum of tests.
- *To treat patients with cancer* – Based on a recent opinion of the Department of Consumer Affairs interpreting relevant California code, acupuncturists may not diagnose, treat, alleviate or cure cancer but treatment of patients with cancer is permitted if such treatment is intended to relieve the side effects of or protect the body from the damaging effect of the therapies used to treat cancer and if it does not counteract the efficacy of or otherwise interfere with the treatments prescribed for the patient by a physician. This opinion helps clarify the question at hand but several issues still remain, including why the opinion focuses on treating “patients with cancer” while the statute deals with treating “cancer”. It would be beneficial for this issue to be clarified and integrated into statute and/or regulation. The profession would benefit from education guidelines on this topic including proper referral procedures as indicated.

There are also several terms used in the practice act that have not been defined, leading to some questions and confusion. For example, “herbs” needs to be defined (or defined by reference to another state or federal source).

One specific area of confusion has been whether the reference to acupuncture as a “primary health care profession” in the legislative intent language of the practice act has any bearing on the scope of practice. As there is nothing in the statute itself, beyond the legislative intent language, that uses or refers to the term “primary health care profession” or anything in the list of modalities acupuncturists are authorized to perform that would need reference to the legislative intent language for clarification, there does not appear to be any relevance of the use of the term in the legislative intent section of the act to the legal scope of practice for acupuncturists. That is, there is no impact of the use of the term “primary health care profession” in section 4926 (the intent language) on sections 4937 and 4927 (the statutory scope of practice). All indications point to the fact that the Legislature, at the time of including the term in the statute, was underscoring the authority of licensed acupuncturists to treat patients without a prior diagnosis or referral from another health care professional. This recognition does not add to or subtract from the legal scope of practice. Nor does it affect the reality that some acupuncturists are

serving as primary health care professionals (under some non-statutory definitions) while others are not.

This study uses several analyses to put the acupuncture scope of practice into perspective:

*Compared to most other health care professions in California* that have independent practice authority (i.e. no supervision, prior diagnosis or referral is legally required) acupuncturists generally have fewer required hours in formal education and training (particularly in the biomedical sciences) and a correspondingly more limited scope of practice.

*Compared to regulated acupuncturists in other US states*, California acupuncturists are like those in 15 other states who have independent practice authority and authority to use or prescribe herbs in their practices. The other 24 states that regulate acupuncturists have more limited practice acts (either requiring referral from or supervision by another health care professional or not including herbal authority in the scope of practice). California is among the top three states in terms of length of required professional educational program but may be the only state that (either directly in statute or indirectly through accreditation and national testing requirements) does not require at least two years of undergraduate course work for admission into a professional acupuncture training program.

*Compared to the occupational analysis*, the California laws regarding the scope of practice for acupuncturists are fairly but not exactly aligned. Overall, there is very little within the acupuncturist's legal scope of practice that is not being done by practitioners and there is not much being done by practitioners that is beyond the legal scope of practice. However, licensed acupuncturists do find the areas of "Patient Assessment" and "Developing a Diagnostic Impression" (with a non-exclusive focus on Oriental medicine theory) critical to their practices although these activities are not specifically listed or described in the practice act. Also, many of the "auxiliary treatments" included in the practice act are not given much weight in the occupational analysis. The notable exception is herbs, which is reported to be a modality that accounts for a significant portion of acupuncture practice. Even closer alignment between the practice act and the actual practice of acupuncture would benefit the public and the profession.

*Options and alternative to consider regarding the legal scope of practice for licensed acupuncturists in California:*

- Clarify and define the questionable areas outlined above, including establishing parameters as appropriate.
- Consider the benefits of an expanded scope of practice (e.g. one with more biomedical/allopathic diagnostic authority) for practitioners who can demonstrate education, training and competency in the expanded area. Models for add-on certificates can be found in several health care professions.
- Consider the benefits of providing standard information to patients about the qualifications and scope of practice for acupuncturists.

- Develop and distribute to licensed acupuncturists clear interpretations of the legal scope of practice and guidelines for practice and referral to assist them in understanding their rights, responsibilities and potential liability.

From a public policy perspective, expanding the legal scope of practice for licensed acupuncturists in California – for example by granting broader diagnostic authority – could improve or ease access to health care for many in the state. In particular, the health care skills and knowledge combined with strong multi-linguistic and cultural competency among California acupuncturists are significant resources for the health needs of Californians. Such a significant expansion of legal scope of practice however would necessitate increased education, training and testing of all applicants for licensure or for any subset of licensed acupuncturists seeking add-on certification.

## I. Introduction

The legal scope of practice for licensed acupuncturists (L.Ac.'s) in California is one of the areas of concern to the California State Legislature as evidenced by the passage of SB 1951 (Figuroa, 2002) and the request for a study of the issue. This report provides background, interpretation and context for acupuncturists' legal scope of practice.<sup>1</sup> It also offers some options and alternatives for policy makers and professionals to consider when addressing ongoing areas of concern and uncertainty. The report is organized as follows:

- Clarification: Identifying what is clear about the current legal scope of practice for licensed acupuncturists and what is currently unclear or questionable
- Other health care professions: Comparing the California acupuncture practice act to select other health care professions' practice acts in California
- Other states: Comparing the California acupuncture practice act to acupuncture acts in other US states
- Job analysis: Reviewing the California practice act in light of the occupational analysis of acupuncture practice
- Options and alternatives to consider

Throughout this report, the authors are mindful of the legal parameters within which the Legislature operates when establishing and revisiting legal scopes of practice (or statutory "practice acts"). With the justification for governmental regulation of a profession grounded in a police power to protect the public, state lawmakers are responsible for drawing a line that is sufficient for safety but not so excessive as to unnecessarily intrude upon individuals' rights to practice their trade or profession (see e.g. *Dent v West Virginia* 129 US 114 (1889)). In other words, with a focus on regulating to guard against unsafe practice, health professions' practice acts do not aim to determine the "best" health care or even effective health care. This theme has been articulated in numerous legal cases and publications. For example,

"Licensing is 'the process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the *minimal* degree of competency necessary to ensure that the public health, safety, and welfare will be reasonably well protected.'"[emphasis added]<sup>2</sup>

Historically and in contrast to governmental efforts to establish minimal standards for safe practice have been other, usually private-sector and voluntary efforts:

"It should be noted that many professionals, licensed or unlicensed, avail themselves of voluntary 'certification' programs. Non-governmental in nature,

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<sup>1</sup> The focus of this study is on the *legal* scope of practice. Although it refers to and takes into consideration information that might regard *professional* scope of practice, for purposes of this report we are looking only at what licensed acupuncturists are permitted and authorized to do under state and other laws and regulations, not necessarily what practitioners are actually doing in practice or where the profession thinks it should be going in the future.

<sup>2</sup> Shimberg, Benjamin. *Occupational Licensing: A Public Perspective*. New Jersey: Center for Occupational and Professional Assessment, Educational Testing Service. 1980 citing U.S. Department of Health, Education and Welfare, Public Health Service. *Credentialing health manpower*. DHEW publication No. (05) 77-50057. Washington, DC: July 1977.

this type of certification is most often conferred upon deserving individuals by professional and/or trade associations. These associations set their own standards and usually grant such status to individuals demonstrating the attainment of exceptional competence, as opposed to the minimal competence necessary for licensure or [governmental] certification. Examples of such include admission to the American Academy of Surgeons or the diplomate status awarded to deserving psychologists by the American Board of Professional Psychology.<sup>3</sup>

Contemporary analyses and models offer additional insights. As noted recently, “By understanding the origins and continued effects of the ‘first in time, first in right’ dynamic produced by the omnibus medical practice acts, and by recognizing that there are models that both value public protection more than professional prerogatives and allow clinical ability to guide legal authority, policymakers can be better positioned to promote truly effective changes in the scope-of-practice laws.”<sup>4</sup>

These themes then provide a framework for the following report:

- Valuing public protection more than professional prerogatives
- Regulating to the extent necessary to protect the public from unsafe care
- Linking clinical ability to legal authority
- Respecting and valuing the non-regulatory and private sector contributions to quality and effectiveness of care as distinct from licensing activities
- Fully disclosing to the public information useful in making health care and health care professional choices

### ***Methodology***

A review of relevant California and other states’ statutes and regulations, analysis of legal opinions issued by the California Department of Consumer Affairs – Legal Office regarding acupuncture, literature review, review and analysis of the occupational analysis regarding acupuncture, key informant interviews and key informant comments (including Little Hoover Commission Acupuncture Advisory Committee responses to questionnaires) were used in this study. References are included throughout to information, data and findings that can be found in the companion studies on accreditation/approval of programs and education.

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<sup>3</sup> Reaves, Randolph P. *The Law of Professional Licensing and Certification* Third Edition. Montgomery AL: Publications for Professionals. 1997.

<sup>4</sup> Safriet, Barbara. *Closing the Gap Between Can and May in Health-Care Providers’ Scopes of Practice: A Primer for Policymakers*. 19 Yale Journal on Regulation. 301-334, 331. Summer 2002. See also: U.S. Department of Health, Education and Welfare, Public Health Service. *Credentialing health manpower*. DHEW publication No. (05) 77-50057, Washington, DC: July 1977; Shimberg B and Roederer D. *Questions a Legislator Should Ask*. Kara Schmitt (ed). Second edition. The Council on Licensure, Enforcement and Regulation. Lexington, KY. 1994.

## II. Clarifying the legal scope of practice for California licensed acupuncturists

The primary sources for information about the health professions' legal scopes of practice are the state statutes (in California, found in the Business & Professions code). Other sources that play roles in defining and interpreting the scope of practice include rules and regulations, case law decisions, legal opinions (e.g. from the Department of Consumer Affairs or the Attorney General's office) and even public initiative. The various professions rely on different mixes and proportions of all these sources to compile their individual legal scopes of practice.

Although statutes are usually the mechanism of choice among the states to define and describe practice authority, there is no common template for the legal practice acts for the various health professions. Medical practice acts (for physicians and surgeons) are uniquely all encompassing. Other professions' practice acts are "carved out" of the medical practice act; some grant relatively broad diagnostic and treatment authority to holders of licenses but limit that authority to an area or region of the body. Others focus on describing a type of philosophy or model of health care that is applicable to the whole body but differs significantly from the type of care physicians provide or differs from the biomedical/allopathic medical model. Some specifically differentiate mental health care from physical health care and cover only one or the other. Some practice acts focus on a list of modalities and techniques that license holders may use; others specify modalities and activities that licensees may not perform.

For California acupuncturists, the practice act is found at B&P §§ 4925-4979. In addition, the regulations issued by the California Acupuncture Board (CA Code of Regulations Title 16 §§1399.400 *et seq.*), particularly §§ 1399.450-1399.456 regarding Standards of Practice, contain relevant information about the legal scope of practice. The third major resource for this profession is the compilation of legal opinions issued by the state's Department of Consumer Affairs.<sup>5</sup> A number of state and federal laws regarding health and safety, labor, and food and drugs also apply. Finally, the practice acts of the other health professions provide both context and boundaries, often defining for example, what acupuncturists and others not licensed in those professions may *not* do.

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<sup>5</sup> In its August 8, 2003, letter to the Little Hoover Commission, the California Acupuncture Board states that a definitive scope of practice, based on statute (CA B&P §§ 4927, 4937) and Department of Consumer Affairs (DCA) *Legal Opinion 93-11*, exists for acupuncture. In addition, the Board notes that it has adopted as a reference document the Council of Acupuncture and Oriental Medical Associations (CAOMA) March 1997 *Scope of Practice for Licensed Acupuncturists*. While all of these sources play important roles in describing the legal scope of practice, each of them also contributes to the lack of clarity. The statute is incomplete, does not cover all issues that have been raised, and does not define all terms that are in the statute. DCA Legal Op. No. 93-11 is inconsistent with some earlier DCA legal opinions on the same topics and is somewhat dated and possibly irrelevant or inappropriate on some topics that have since been addressed by state and/or federal legislation and regulation. The CAOMA document includes professional standards that have questionable legal weight; it has not been reviewed for validity by the legislature or by any court and there are internal inconsistencies as well as inconsistencies with statute and/or legal opinions. Furthermore, reliance on these three sources ignores other important sources relevant to the practice of acupuncture, including the acupuncture regulations, the practice acts of other health care professions and other statutes/codes and regulations that would affect the scope.

The California acupuncture practice act can be described as a list of treatment modalities and services that licensed acupuncturists may provide to patients. Although allusion is made in the statute's intent language to a philosophy of care that is different from existing allopathic medicine, this approach to care is neither named nor described in the statute itself. As explored further below, the list of what modalities acupuncturists can use is fairly clear but questions remain about the practice act partly because of its structure. Some of the items on the list are defined and others are not. In addition, a recurring issue with a list structure is that it is unclear whether the list is absolutely exclusive; items may have been left off the list intentionally or only because they were not considered at the time of writing. Finally, a list of treatment modalities alone is insufficient to address scope of practice questions that have to do with other issues such as diagnostic modalities, disease-specific guidelines or limitations, and interdisciplinary collaboration.

In the sections below, what is clear in the California acupuncture practice act and what remains unclear are discussed.

A. What's clear

*What are the modalities licensed acupuncturists may use?*

California statute authorize the holder of an acupuncture license to engage in the practice of acupuncture (as defined below) and also “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...” (B&P 4937 (a)-(b)).

Some of these services and modalities are defined in the statute:

“Acupuncture” is defined as 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 electroacupuncture, cupping, and moxibustion.” (B&P § 4927 (d)).

A “magnet” means “a mineral or metal that produces a magnetic field without the application of an electric current.” (B&P § 4937 (c))

“[P]lant, animal, and mineral products” mean “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.” (B&P § 4937 (d))

“[D]ietary supplement has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code [generally including a non-tobacco product intended to supplement the diet that contains a vitamin, mineral, an herb or other botanical, or amino acid and labeled as a dietary supplement], 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.” (B&P § 4937 (e))

Neither the statute nor the relevant regulations (CA Code of Regulations Title 16 §§1399.400 *et seq.*) offer any additional definitions on these or other modalities listed in the statute.

*Are there any limitations on area of the body?*

Some health professions’ legal scopes of practice, including dentistry, optometry and podiatry, are limited to specified areas or parts of the physical body. The legal scope of practice for licensed acupuncturists does not limit the practice of acupuncture to a particular area or region of the body; licensed acupuncturists may treat any part of the physical body. The statutory definition of “acupuncture” clearly includes “diseases or dysfunctions of the body” without any qualifier or modifier for the word “body” (B&P §4927 (d)). There are no body-specific restrictions elsewhere in the statute, regulations or available legal opinions.

B. What’s not clear

Several aspects of the current legal scope of practice for acupuncturists are not clear. Some of these elements concern definitions or descriptive word choice; others are more substantive in nature. Among the substantive issues are questions of whether licensed acupuncturists are legally authorized to diagnose (and if so, whether this includes Oriental medicine and/or Western/allopathic diagnostic theory), to order and/or interpret laboratory and radiology tests, and to treat patients with cancer. Following the discussion below regarding the substantive issues is the discussion about definitions.

*1. Diagnosing (Oriental/TCM and/or Western)*

Although there is no reference in the California statute to the authority of licensed acupuncturists to diagnose their patients’ illnesses or conditions, California Department of Consumer Affairs, Legal Affairs Legal Opinion No. 93-11 (1993) concludes that the Legislature has authorized an acupuncturist to diagnose a patient’s condition prior to providing any treatment. The California Acupuncture Board adopted the legal opinion as a “reference” document and has further requested that the opinion be revised and codified into statute (Letter from the California Acupuncture Board to the Little Hoover Commission, August 8, 2003). At meetings of the Little Hoover Commission’s Advisory Committee on Acupuncture, the issue of diagnostic authority for acupuncturists was further explored, with considerable attention on whether, assuming the view in Legal Opinion No. 93-11 is valid, the diagnosis that a licensed acupuncturist could make would be limited to one founded on traditional Oriental medicine theory and terminology and/or if that diagnosis could or should be based on Western theory and terminology.

There are several legal grounds on which one could conclude that California licensed acupuncturists are not authorized to diagnose illnesses or conditions under current law:

- A list of services licensed acupuncturists may provide is included in the act but there is no mention of diagnostic authority in the acupuncture practice act (CA B&P §§ 4925-4979).<sup>6</sup>
- Practice acts for other health professions considered and enacted both prior to and after the acupuncture practice act specifically refer to the authority of licensed practitioners to diagnose (See e.g. Medicine (CA B&P § 2052 (a); Dentistry (CA B&P § 1625); Naturopathic medicine (CA B&P § 3613 (c)); and Podiatric medicine (CA B&P § 2483 (b)). Some of these statutes include definitions of “diagnose” and/or references to curricular requirements regarding competency in diagnostic techniques; other statutes do not. See Appendix I for legal references to diagnostic authority for select health care professions other than acupuncture in California.
- The presence of diagnostic authority in other health professions’ statutes, combined with its absence in the acupuncture practice act, would be strictly interpreted as meaning that that licensed acupuncturists would be practicing beyond their legal scope of practice (and possibly practicing another profession, such as medicine, without a license to practice that profession) should they “diagnose” as defined in any of those statutes that include diagnostic authority for licensed members of the profession.
- When the Legislature has wanted to grant diagnostic or similar authority to a profession, but within some parameters, it has found ways to do so. For example, the statutory definition of physical therapy includes “physical therapy evaluation, treatment, planning, instruction and consultative services.... [but a physical therapist license] does not authorize the diagnosis of disease.” (CA B&P § 2620). Licensed chiropractors may “treat ..., and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques ....” (CA Code of Regulations, Title 16 § 302 (a) (3)).

The reasons to include diagnostic authority in the licensed acupuncturist’s scope of practice can be summarized as follows:

- It makes logical sense that a health care practitioner who may legally practice independently (without prior referral or supervision) must assess, evaluate and/or diagnose a patient prior to treating that patient.
- The legal and market-based recognition of acupuncturists within various public and private reimbursement plans and policies have fostered an environment in which licensed acupuncturists know and use “coding” (numerical designations for health care services), including diagnostic coding such as “ICD-9” coding<sup>7</sup>, to ensure reimbursement for services provided.

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<sup>6</sup> A maxim of statutory interpretation is *expressio unius est exclusio alterius* meaning that the expression of one thing is the exclusion of another. Black’s Law Dictionary, 6<sup>th</sup> Edition, 1990.

<sup>7</sup> The World Health Organization’s International Classification of Diseases (ICD-9) is the official international system for medical diagnoses. ICD-9-CM (*International Classification of Diseases, Ninth edition, Clinical Modification*) is the official coding system for use in the United States; it is overseen and maintained by the National Center for Health Statistics and the Centers for Medicare and Medicaid Services. The ICD-9-CM is designed for diagnoses and procedures associated with hospital utilization in the United States. “CPT” (Current Procedural Terminology) codes, developed and maintained by the

- Interactions with other health care providers, including collaboration and referrals, as well as with many members of the public, benefit from the use of common, Western-based diagnostic terminology.
- Consistent with the evolving health care environment, acupuncture schools, training programs and tests appear to have incorporated more focus on diagnostic knowledge and competency than they did in the past.

The focus on the logical or common sense interpretation that a practitioner needs to diagnose before treating forms the core grounds on which the diagnosis section of DCA Legal Op. No. 93-11 is based:

“Diagnosis is not specifically authorized under the Act. However, a review of the legislative history of the Act shows that former section 2155 required an acupuncturist to obtain a prior diagnosis or referral from a physician before providing acupuncture to a patient. Under former section 2155, it was clear that an acupuncturist was required to act as a subordinate to a physician and was precluded from making an independent diagnosis of a patient’s condition. Section 2155 was repealed by Statutes of 1979, Chapter 488, effective January 1, 1980. Although, under current law, an acupuncturist is not specifically authorized to diagnose a patient’s condition prior to rendering treatment, logic compels us to conclude that the Legislature in repealing former section 2155 has authorized acupuncturist [sic] to diagnose a patient’s condition prior to providing any treatment.” (California Department of Consumer Affairs Legal Office, Legal Op. No. 93-11, December 14, 1993.)

The opinion issued in 1993 appears to draw on a line of opinions issued by the Department of Consumer Affairs, Legal Affairs, which began by at least 1986, when the Department wrote:

“Even though the Acupuncture Certification Act does not specifically refer to the making of a diagnosis by an acupuncturist, we conclude that an acupuncturist may make a diagnosis in order to undertake treatment of a patient’s condition. We are informed that a diagnosis in Oriental medicine is undertaken in a manner different from Western medicine. It would be illogical to conclude that an acupuncturist may treat a patient and then hold that an acupuncturist may not make a diagnosis before he or she undertakes such treatment.

“When the Acupuncture Certification Act was first enacted in 1975 acupuncturists were required to have a prior diagnosis or referral from a physician. That requirement was repealed by Chapter 488 of the Statutes of 1979. One may conclude from this the Legislature has indirectly recognized the authority of an acupuncturist to render a diagnosis.

“The Acupuncture Examining Committee requires that candidates be examined in Oriental medicine diagnosis and treatment and in diagnosis and treatment plans

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American Medical Association, are also commonly used. A recent addition to the coding scene has been the development of “ABC Codes”, which are designed specifically to describe the products and services delivered by alternative health care providers.

(Section 1399.443 of the Acupuncture Certification Act) [sic]. The Committee has historically viewed the making of a diagnosis as within the authorized and necessary scope of practice of an acupuncturist.” (Letter from the Department of Consumer Affairs to Peter Betcher, Practice Manager and Mark Denzin, C.A., February 14, 1986.)

This conclusion and line of reasoning – that the statutory elimination of the requirement for prior diagnosis or referral should be interpreted as meaning that acupuncturists may make their own diagnoses before treating a patient – can be found in a number of opinions and memoranda issued by the Department of Consumer Affairs between 1986 and 1993.<sup>8</sup>

We are unaware of any opinions from the Department of Consumer Affairs issued since 1993 specifically on the topic of diagnosis that counters this interpretation that licensed acupuncturists have the authority to diagnose. However, we note that legal opinions issued both prior to and since the 1993 opinion have included language that would tighten the authority of acupuncturists to diagnose. For example, Legal Opinion No. 03-07, issued December 12, 2003, regarding the treatment of cancer by acupuncturists included the following language:

“Based upon the repeal of an earlier law that required an acupuncturist to first obtain a prior diagnosis or referral from a physician before providing acupuncture to a patient, we concluded in Legal Opinion 93-11 that an acupuncturist may diagnose a patient’s condition. However, *it cannot be said that an acupuncturist is expressly authorized under the Act to diagnose diseases in general, let alone cancer....*” [emphasis added]

It is worth noting that the some of the earlier memoranda and letters contain a distinction between Western diagnosis and Oriental diagnosis that is missing from Legal Op. No. 93-11. For example, the February 14, 1986, letter to Mr. Betcher clearly focuses on the authority of acupuncturists to undertake only an Oriental medicine diagnosis. Similarly, the December 1, 1989, memorandum (regarding a licensed acupuncturist’s use of the term “disability evaluator”) noted that a licensed acupuncturist “may only render a traditional or Oriental medical diagnosis as a licensed acupuncturist. While licensure is not required to measure blood pressure or to perform noninvasive evaluations of stress, the rendering of a diagnosis of hypertension or diagnosing other physical conditions by non-traditional means is not within the scope of practice of an acupuncturist.” The memorandum goes on to cite California Labor Code § 3209.3 (e) and to conclude that a licensed acupuncturist could not use the term in question because “... an acupuncturist is not authorized to determine disability for workers’ compensation and for industrial disability leave and is not authorized to make Western medical diagnoses....”

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<sup>8</sup> See, e.g. Memorandum from Department of Consumer Affairs, Legal Office to Lynn Morris, Acupuncture Examining Committee, December 1, 1989 re Disability Evaluator; Memorandum from Department of Consumer Affairs, Legal Office to Lynn Morris, Acupuncture Committee, July 16, 1990 re Suggested Response – Scope of Practice; and Memorandum from Department of Consumer Affairs, Legal Office to Lynn Morris, Acupuncture Committee, October 19, 1990 re Suggested Response – Scope of Practice Legal Op No. 90-21.

DCA Legal Op. No. 93-11 does note that “Although an acupuncturist is authorized to practice all three phrase [sic] of the healing arts (i.e., diagnose, prescribe, and administer treatment),<sup>9</sup> the acupuncturist is limited by the statute as to the types of treatments which he or she can prescribe and administer.” However, the opinion concludes that acupuncturists have diagnostic authority and puts no limits or parameters on such authority; furthermore, it makes no distinction between Western and Oriental medical diagnosis as earlier opinions did. Finally, Legal Op. No. 93-11 offers no reason for the change or possible evolution of the interpretation over the years.

*Is diagnosis included in the training and current practice of acupuncturists?*

Under current regulations, the California Acupuncture Board requires that, to be eligible for approval, acupuncture training programs must include “Traditional Oriental medicine – a survey of the theory and practice of traditional diagnostic and therapeutic procedures” as one of six acupuncture and Oriental medicine topics that together must total at least 660 didactic hours. There is no specific reference to diagnosis or diagnostic procedures included in the 158 didactic hours required in allopathic medical history, terminology, clinical medicine and Western pharmacology. Within the 800 clinical hours required must be an unspecified number of hours dedicated to “Diagnosis and evaluation – the application of Eastern and Western diagnostic procedures in evaluating patients.” (CA Code of Regulations Title 16 § 1399.436)

Under proposed regulations<sup>10</sup> that would affect students entering programs on or after January 1, 2005, the California Acupuncture Board would require that “Acupuncture and Oriental Medicine Diagnosis” and “Integrated acupuncture and Oriental medicine diagnostic and treatment procedures” be included in the 1,255 didactic hours dedicated to “Acupuncture and Oriental Medicine Principles, Theories and Treatment”. In addition, the California Acupuncture Board has proposed that at least 240 didactic hours be dedicated to “Clinical Medicine, Patient Assessment and Diagnosis”. Within this category is the following description:

“The curriculum in clinical medicine, patient assessment and diagnosis shall consist of at least 240 hours of didactic instruction and shall prepare the student to possess the knowledge, skills and abilities necessary to utilize standard physical examinations, laboratory and imaging studies, and international classification of diseases (ICD) diagnostic principles to improve treatment efficacy, patient safety, referral, and continuity of care; to improve communication and collaboration of care with all other medical providers; to assist in the evaluation and documentation of patient progress; and to improve the acupuncturists [sic] understanding of biochemical etiology and pathology. Clinical medicine, patient assessment, and diagnostic skills curriculum shall include ...” [See companion studies on accreditation and education for details of this requirement]

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<sup>9</sup> There is no reference or citation offered for this description of “primary health care professional” included in DCA Legal Op. No. 93-11.

<sup>10</sup> California Acupuncture Board 2003 Notice of Proposed Regulations; Educational Curriculum Requirements – Amended Language. “Title 16. Acupuncture Board Modified Text” [undated] retrieved 3/16/04 from [http://www.acupuncture.ca.gov.law\\_reg/2003ammended\\_language.pdf](http://www.acupuncture.ca.gov.law_reg/2003ammended_language.pdf).

The most recent occupational analysis done of acupuncture in California (November 2001) found that “Developing a Diagnostic Impression” was one of the five final content areas that define acupuncture practice. The description for this content area reads:

“The practitioner evaluates clinical manifestations to determine the relative strength and progression of disease. The practitioner evaluates patterns of disharmony according to theories of Oriental medicine to arrive at a final diagnosis. The practitioner demonstrates a knowledge of how pathology in Western medicine relates to disease in traditional Oriental medicine.”

While most of the subareas (and task and knowledge statements that make up the subareas) within the Diagnostic Impression content area focused on Oriental medicine theory, one of the subareas was “Biomedical Disease”. Within the Biomedical Disease subarea were 6 task statements and 16 knowledge statements. The task statements included the following:

T73. Provide patient with information regarding physiological systems to explain how the body functions.

T74. Inform patient of Oriental medical diagnosis by relating Oriental concepts to Western medicine concepts.

T75. Evaluate symptoms to determine indications of Western conditions that require referral for treatment.

T76. Prepare reports regarding patient condition by translating Oriental medical diagnosis into terminology common to other health care providers.

Included in the list of knowledge statements within the Biomedical Disease subarea are many statements concerning the knowledge of Western disease processes, pathology, medical terminology, and diagnostic codes.

#### *Analysis and discussion: Options regarding diagnostic authority*

Although the opinions from the legal affairs office of the California Department of Consumer Affairs do not carry the same legal weight as statutory or case law, they do currently stand as valid interpretations of unclear areas of the acupuncture practice act and could be used to interpret unclear areas of the statute absent anything else from a higher authority. However, the internal inconsistency within the series of opinions themselves coupled with the apparent continued confusion among practitioners indicates an ongoing problem. The various interpretations of whether licensed acupuncturists may diagnose and, if so, whether that diagnosis is limited to one based on Oriental medical theory and technique have resulted in confusion among practitioners and could be confusing if not harmful to the public. Both the public and the profession of acupuncture would benefit from a legislative and/or administrative clarification of whether diagnosis is within the authority of licensed acupuncturists in California.<sup>11</sup>

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<sup>11</sup> An alternative approach to health professions’ regulation can be found in other countries. For example, under Ontario, Canada’s Regulated Health Professions Act, 13 procedures have been identified that, if not done correctly and by a competent person, have a high element of risk. An all-public council under the Minister of Health reviews evidence provided by the various health care professions and input from the public and determines which of the professions shall have the authority to perform which of the procedures. The first activity on the list is described as “Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative

Based on the information presented above, there is considerable logic and justification for including Oriental medical diagnostic authority in the licensed acupuncturist's legal scope of practice. This position is reinforced by the fact that licensed acupuncturists have been practicing since at least 1986 under legally-informed guidelines (i.e. the memoranda from the Department of Consumer Affairs, Legal Affairs) that Oriental medical diagnosis is included in their legal scope of practice. Less convincing is the information suggesting that diagnosis based on Western theory and terminology is or should be within the legal scope of practice for acupuncturists at this time. Neither current nor past standards for education, training and licensure have required that licensed acupuncturists be competent to perform the full range of Western diagnosis authorized to allopathic medical doctors. While licensed acupuncturists may be competent to diagnose some, or even many, diseases or conditions using Western terminology and theory, a line between those diseases or conditions they are competent to diagnose and those they are not has not been established.

With or without legislative clarification regarding licensed acupuncturists' authority to diagnose, using Oriental and/or Western medical theory and terminology, the profession and the public would also benefit from increased professional and regulatory attention to the parameters for practitioners to practice not only within their statutory authority but also and always within their professional and individual competency.<sup>12</sup>

## 2. *Ordering and interpreting Western medical diagnostic tests*

Another area of the acupuncturists' legal scope of practice that remains unclear and would benefit from legislative clarification is whether acupuncturists have the legal authority to order and/or interpret Western medical diagnostic tests.

### *Ordering tests and studies*

Whether acupuncturists are authorized within their legal scope of practice to order clinical laboratory tests and imaging studies specifically has also been questioned. These practices are not included in the statute defining the acupuncture practice act. However, like diagnostic authority, the Legal Office of the Department of Consumer Affairs opined in Legal Op. No. 93-11 that licensed acupuncturists are legally authorized to order blood and laboratory tests. The analysis on which this conclusion is based rests on opinions of

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will rely on the diagnosis." Each health care profession either has this controlled procedure in its practice act or not. All professions that have this procedure in their practice acts rely on the same definition. (Ontario Canada, Regulated Health Professions Act 1991, S.O. 1991, Chapter 18)

<sup>12</sup> This would include, for example, more clarity with the proposed regulations regarding curricular requirements. The current proposal regarding hours required includes "(7) Clinical impressions and the formation of a working diagnosis, including acupuncture and Oriental medicine diagnoses, and the World Health Organization's international classification of diseases (ICD-9)". According to the Centers for Disease Control's National Center for Health Statistics, the "ICD-9 is used to code and classify mortality data from death certificates" while the "ICD-9-CM is the official system of assigning codes to diagnoses and procedures associated with hospital utilization in the United States." It would benefit both the public and the profession of acupuncture for the regulations, if they are going to detail curriculum requirements at this level, to do so with clarity; as written, the proposed regulation does not make clear why ICD-9 coding would be taught but ICD-9-CM would not.

the California Attorney General's Office (holding that the authority of licensed practitioners to order laboratory tests depends on whether the tests will aid the licensee in his or her practice and whether the results can be used within the proper scope of practice) and on the previous conclusion of the DCA that acupuncturists are authorized to diagnose. Because the DCA believes acupuncturists may legally diagnose, the DCA is of the opinion that "the use of blood and laboratory tests to assist an acupuncturist in making a diagnosis would be consistent with his or her scope of practice." In addition, the DCA noted that the use of blood or laboratory tests to corroborate or to monitor an acupuncture treatment plan would also be consistent with the acupuncturist's scope of practice.

Legal Opinion No. 93-11 relies on the same analysis to conclude that an acupuncturist may order x-rays.<sup>13</sup>

However, if the authority of acupuncturists to diagnose is questioned or limited in any way, as discussed above, the analyses and conclusions regarding ordering clinical laboratory tests and x-rays may not be on solid ground and/or parameters may need to be set around such authority. The legal opinion offers no other measurable grounds, such as education, training, testing or other demonstration of competency in these areas to justify the authority to order and use the results of laboratory tests and imaging studies.<sup>14</sup>

*Is lab testing included in the training and current practice of acupuncturists?*

The proposed regulations that detail the curricular requirements that approved schools must meet for students entering acupuncture and Oriental medicine training programs on or after January 1, 2005, specifically includes "Procedures for ordering diagnostic imaging, radiological, and laboratory tests and incorporating resulting data and reports" in the 240 hours that must be dedicated to Clinical Medicine, Patient Assessment and Diagnosis (California Acupuncture Board 2003 Notice of Proposed Regulations – Amended Language § 1399.434 (c) (5)). Whether schools were required to teach these skills to students in the past and/or are required to do so now is unclear from the current

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<sup>13</sup> The DCA found silence concerning who may order x-rays in the law governing the use of x-rays on human beings (CA H&S § 25660 *et seq.*) and no opinions of the Attorney General on this issue but thought the Attorney General analysis regarding laboratory and/or blood tests was also applicable to determine who is authorized to order x-rays. Under this reasoning, and based on no other factors such as education, training or competency, a fuller range of Western medical testing (including for example, nuclear testing, EKGs, and EEGs) might be available to licensed acupuncturists.

<sup>14</sup> In contrast, the practice acts and regulations for some other health care professions specifically note the authority for or limitations on licensed practitioners to perform such tests and studies. For example, naturopathic doctors "may order and perform physical and laboratory examinations for diagnostic purposes..." [and] "may order diagnostic imaging studies, including X-ray, [and] ultrasound..., but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results...."(CA B&P § 3642). A chiropractor "may make use of X-ray and thermography equipment for the purpose of diagnosis but not for the purpose of treatment." (CA Code of Regulations Title 16 § 302). If authority to see patients without prior referral or diagnosis implies authority to diagnose, and if authority to diagnose implies authority to order clinical laboratory tests and imaging studies, then one could infer that all health care practitioners who have the right to see patients without a referral or prior diagnosis would have the authority to diagnose and order laboratory tests and imaging studies. Existing statutes and regulations such as these for naturopathic doctors and chiropractors challenge the logic behind this analysis.

regulations regarding California approval of acupuncture and Oriental medicine educational programs (CA Code of Regulations Title 16 §1399.436).<sup>15</sup>

In the most recent Occupational Analysis of acupuncture practice in California (produced by the California Department of Consumer Affairs in November 2001), the following task and knowledge statements were identified as critical job activities performed by licensed acupuncturists in this state. The statements were one of six and two of sixteen task and knowledge statements respectively that together made up the subarea, “Implementing Diagnostic Testing” (this subarea being one of four subareas that made up the Content Area, “Patient Assessment”).

T47. Evaluate results of laboratory panels by reviewing ranges of values.<sup>16</sup>

K74. Knowledge of laboratory panels used for diagnostic purposes.

K75. Knowledge of the clinical significance of laboratory test results in detecting pathology.<sup>17</sup>

The inclusion of these three statements indicate that current practitioners may be incorporating laboratory panel tests into their practices, although to what extent they are doing so is unclear.

#### *Interpreting tests and studies*

Neither the practice act nor Legal Opinion No. 93-11 addresses the authority of licensed acupuncturists to interpret or consider the results of Western medical tests, whether ordered by themselves or other health care professionals. While it could be argued that the *ordering* of tests and studies poses minimal risk of harm to patients (the minimal invasion, safe practice and laboratory regulations, and low costs might be outweighed by the potential diagnostic or monitoring value), the interpretation and communication of results of at least some tests and studies may carry higher potential harm to patients. For examples of other practice acts for health professions that have made distinctions between ordering, performing, and interpreting based on competency, see references cited in footnote 11 above.<sup>18</sup>

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<sup>15</sup> A contrasting example can be found in the regulations regarding chiropractic education and training. In addition to didactic hours, licensed chiropractors must have had “practical clinical laboratory training, including twenty-five (25) urinalyses, twenty (20) complete blood counts (CBCs), ten (10) blood chemistries, and thirty (30) X-ray examinations. Students shall perform ten (10) proctological and ten (10) gynecological examinations...” (CA Code of Regulations Title 16 § 331.12.2 (e))

<sup>16</sup> The “criticality index” for Task Statement 47 was 11.16. The criticality indices for tasks (values for tasks, calculated as the aggregate product of multiplying the importance, frequency and criticality ratings by respondents) ranged into the 20’s (tasks for locating points, prescribing herbs, maintaining patient records and disposing of used needles had criticality indices between 20 and 25); task statements with criticality indices less than 7.33 were determined to be not significant for practice and were eliminated. California Department of Consumer Affairs, Acupuncture Practice. November 2001.

<sup>17</sup> The criticality index for Knowledge Statements 74 and 75 were 3.25 and 3.48 respectively (overall criticality indices for knowledge statements were calculated by multiplying usage and criticality ratings and ranged as high as between 5 and 6; knowledge statements with criticality indices less than 2.85 were eliminated). California Department of Consumer Affairs, Acupuncture Practice. November 2001.

<sup>18</sup> Similarly, the Ontario, Canada Regulated Health Professions Act has made a distinction between the ordering of tests and studies (which is not listed as a controlled act because of the low risk involved to patients) and communicating a diagnosis (which is listed as a controlled act).

*Analysis and discussion: Options to consider regarding ordering laboratory tests and imaging studies*

With nothing in the acupuncture practice act or regulations regarding ordering laboratory tests and imaging studies, the legal basis on which any authority for acupuncturists to order such tests rests with Legal Opinion No. 93-11. Because the analysis within this opinion is based on the previous conclusion that acupuncturists have legal authority to diagnose, and this authority has still not been conclusively determined or defined, the authority for acupuncturists to order clinical blood and laboratory tests is not clear.

If acupuncturists are found to have no diagnostic authority, their authority to order laboratory tests and imaging studies could not be justified on the grounds used in DCA Legal Op. No. 93-11 although other grounds might be found.

If acupuncturists are found to have diagnostic authority that is limited in any way (e.g. within competency or within Oriental medicine theory), authority to order laboratory tests and imaging studies could be found justified based on the DCA analysis but limited to whatever diagnostic limitations or parameters are determined. Parameters should be clearly stated in statute or regulation and guidelines should be developed for practitioners. In addition, education and training for acupuncturists should include attention to working with radiologists and other professionals who perform tests and studies in addition to focus on learning how to use the results of tests and studies.

If acupuncturists are found to have full diagnostic authority (using Oriental and Western medical theory and terminology), their authority to order laboratory tests and imaging studies could be based on the DCA analysis and should clearly be articulated in statute and/or regulation.

3. *Limitations by disease or condition*

During meetings of the Little Hoover Commission Acupuncture Advisory Committee, several questions were raised regarding the authority of licensed acupuncturists to treat certain diseases, including cancer. Although regulation prohibits acupuncturists from *advertising* that they can cure any type of disease, condition or symptom,<sup>19</sup> it appeared that there were no named conditions or illnesses that licensed acupuncturists may not *treat and/or cure*. A specific inquiry was made regarding whether there was anything in the Health and Safety Code, not necessarily limited to acupuncture, regarding the

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<sup>19</sup> “It is improper advertising as provided in Section 4955 of the code to disseminate any advertising which represents in any manner that the acupuncturist can cure any type of disease, condition or symptom.” CA Code of Regulations § 1399.455(b). In a similar vein, the chiropractic practice act prohibits a chiropractor from advertising that he or she can cure diseases. Chiropractic Initiative Act § 10 (b) (1922): “The board may refuse to grant, or may suspend or revoke, a license to practice chiropractic in this state, or may place the license upon probation or issue a reprimand to him, for ...the advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed; ...or the advertising, directly, indirectly or in substance... that the holder of such license ... will treat, cure, or attempt to cure, any venereal disease, or will treat or cure or attempt to cure, any person afflicted with any sexual disease, for lost manhood, sexual weakness or sexual disorder or any disease of the sexual organs....”

treatment of cancer and a request was made to the Department of Consumer Affairs to comment on this issue.

California Health and Safety Code § 109300 *et seq.* limits the diagnosis, treatment, alleviation or cure of cancer unless the application has been approved under the Federal Food, Drug and Cosmetic Act or by the Medical Board of California (an earlier version of CA H&S §109300 was found at H&S § 1707.1 and case law that references the section goes back at least as early as 1979). California DCA Legal Opinion Number 03-07, issued December 12, 2003, concludes that an acupuncturist is not permitted to diagnose, treat, alleviate or cure cancer but that the use of acupuncture and Asian medicine treatments by acupuncturists for patients diagnosed with cancer is permitted if it is intended to relieve the side effects of or protect the body from the damaging effect of the therapies used to treat cancer and if it does not counteract the efficacy of or otherwise interfere with the treatments prescribed for the patient by a physician.

Legal Op. No. 03-07 thus helps clarify the licensed acupuncturist's legal authority regarding the treatment of patients with cancer by interpreting the acupuncture practice act in light of the health and safety code regarding cancer treatment. However, some issues still remain:

- The opinion addresses the use of acupuncture and Asian medicine treatments by acupuncturists “for patients diagnosed with cancer” although the Health and Safety Code addresses the treatment of cancer. The opinion does not address the issue of licensed acupuncturists using acupuncture and other modalities to treat non-cancer related conditions or dysfunctions in a patient who also happens to have cancer. I.e., could a licensed acupuncturist treat non-cancer related pain suffered by a patient who also has cancer?
- The opinion does not indicate how the statute has been applied to other professions; this would be helpful as one would expect the statute to be interpreted equitably across the professions.
- Neither the legal opinion nor the H&S code deals with the question of whether a licensed acupuncturist (or other health care professional) could treat a patient who may have already tried various allopathic treatments for their cancer without success. Is there any point at which alternative therapies may be tried after Western allopathic medicine has failed? While a full study of case law and other interpretations of this section was beyond the scope of this report, those decisions and findings would be of value in a legal opinion on this topic for licensed acupuncturists.

Worth noting on this topic is a memorandum from the California Department of Consumer Affairs, Legal Office to Jonathan Diamond, Acupuncture Examining Committee dated February 14, 1986, regarding the Treatment of Cancer. Addressing how the Acupuncture Committee should respond to an acupuncturist who questioned her authority to treat patients with cancer, this memorandum notes that “...the Acupuncture Certification Act does not authorize nor restrict the treatment of any particular disease or physical conditions by acupuncturists or through the use of acupuncture and other Oriental medical techniques. Legally, a certified acupuncturist is not prohibited from treating any particular diseases nor does the Act require referral to a physician of patients

with any particular diseases or the referral of patients to a physician for diagnosis or concurrent treatment.” After referencing the prohibition in the acupuncture regulations of acupuncturists from advertising that he or she may cure any type of disease, condition or symptom, the memorandum goes on to conclude that, regarding the question at hand concerning the treatment of cancer:

“We believe it would be inappropriate for the Committee to respond to these questions or to undertake to provide guidance to licensees in the performance of their duties as an acupuncturist. To do so may lead a licensee to believe because of the absence of restrictions I noted above or the absence of ‘standards of practice’ that he or she is not culpable for any treatment they may undertake or any acts or omission for which they may be culpable in the course of that treatment. Whether referral to or concurrent treatment by another practitioner is necessary or appropriate is a question of fact which may only be resolved on a case by case basis and is not appropriate for resolution as a policy matter. For these reasons, it would be inappropriate for the Committee to advise licensees on the manner in which they should conduct their practice.

“In the resolution of treatment decisions, licensees should rely on their professional judgment and not on advice from the Committee.”

Aside from this question about cancer, California statute authorizes the holder of an acupuncture license to engage in the practice of acupuncture and also “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...” (CA B&P § 4937 (a)-(b)). There is nothing in this section of the statute, which forms the core of the legal scope of practice, that would limit acupuncturists to treating only some diseases and conditions or restrict them from treating any condition or disease.

However, “acupuncture” is statutorily defined as “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 electroacupuncture, cupping, and moxibustion.” [emphasis added] (CA B&P § 4927(d)).

The use of the modifier “certain” before “diseases” could imply that the Legislature believed that there are only some (certain) diseases and dysfunctions for which acupuncture may be used and there are other diseases that should not be treated with acupuncture. However, no list accompanies this section to define which diseases or dysfunctions would be in which category. Without a list or further clarification, one could interpret the phrase to imply that there are some diseases and dysfunctions for which acupuncture may be an appropriate treatment but the decisions about which diseases and dysfunctions should be treated with acupuncture are left to the practitioner and/or patient.

*Analysis and discussion: options to consider regarding treatment of cancer*

With the enactment of Health and Safety code §§ 109250-109395, the California Legislature has made it clear that it intends to limit the diagnosis, care, treatment and cure of persons with cancer to some practitioners and some treatment modalities, which do not include those listed in the acupuncture practice act. With Legal Opinion Number 03-07, the Department of Consumer Affairs affirms that acupuncturists may not diagnose, treat, alleviate or cure cancer but may provide acupuncture and Asian medicine treatments to patients diagnosed with cancer if those treatments are intended to relieve the side effects of or protect the body from the damaging effects of authorized cancer treatments. It would benefit the profession of acupuncture and the public if this opinion was revised to address the unanswered questions above and clearly incorporated into the acupuncture statute and/or regulation as well as into education, training, examination and continuing education requirements of licensed acupuncturists. In particular, it should be clear to acupuncturists, patients, and other health care professionals what the limits are on seeing and treating patients with cancer and what the proper protocols are for referrals and collaborations among health care practitioners.

It would also be beneficial for the Legislature to either strike the word “certain” before “diseases” in Section 4927(d) in the definition of acupuncture so that any and all diseases (except those covered by H&S § 109250 *et seq.*) could be treated by acupuncturists or to clarify why it used that word with a list or description of diseases and conditions that licensed acupuncturists may treat.

#### 4. *Specific treatment modalities*

The California Department of Consumer Affairs, Legal Office, Legal Op. No. 93-11, which the California Acupuncture Board would have revised and codified, concludes that several other treatments and modalities are within the scope of practice for licensed acupuncturists. State and/or federal legislation and regulation has occurred since 1993 that may affect the interpretation offered in Legal Op. No. 93-11. Interpretations of three of the twelve treatments or modalities included in Legal Op. No. 93-11 may need substantive legal or legislative review due to other legal activity:

- “Drugless substances and herbs” (acupuncture statute no longer uses this term and federal regulation regarding drugs and dietary supplements may now apply);
- “Herbal medicines” (acupuncture statute no longer uses this term and federal regulation regarding drugs and dietary supplements may now apply); and
- “Naturopathy” (CA SB 907 (Burton, 2003) (to license naturopathic doctors), codified at CA B&P §§ 3610-3681, may have an impact on interpretation of acupuncturists’ authority in this field and modality).

#### 5. *Definitions*

Among the definitions, or lack thereof, that are not clear in the statute are the following:

“Acupuncture”

- In the California practice act, the word “acupuncture” is defined specifically as a treatment modality involving the insertion of needles into the body but the practice act itself (which is called the Acupuncture Practice Act) and the practice of acupuncture both include much more than just the treatment modality of inserting needles into the body. This in itself is a significant inconsistency that contributes to confusion. Although the legislative intent section of the practice act (CA B&P § 4926) indicates that “... the Legislature intends to establish in this article, a framework for the practice of the art and science of *oriental medicine* through acupuncture” [emphasis added], it neither defines nor references “oriental medicine” further in the act. It would help the profession as well as the public to include clear reference to and a definition of a broader organizing term, such as “Oriental medicine” (which, in addition to being used in the California practice act, is used widely in the field) that captures all that is included in the practice act (acupuncture, herbs, auxiliary treatments and modalities, theory, etc.) while keeping and defining “acupuncture” more narrowly as a treatment modality.
- It has also been noted that the definition of “acupuncture” includes reference to the “insertion of needles” but not to the removal of needles.<sup>20</sup> This has created some confusion among practitioners who question whether other individuals, unlicensed as acupuncturists, can remove needles that licensed acupuncturists have inserted into patients. It would benefit the public and the profession to clarify that “acupuncture” either includes “insertion and removal of needles” or, in the alternative, to note the training (or lack thereof) and/or supervision required for non-licensed acupuncturists to remove needles.
- The statutory definition of “acupuncture” does not go beyond “diseases or dysfunctions of the *body*” [emphasis added] (CA B&P §4927 (d)).; while the “body” may include both the physical and mental body, it is unclear from the statute that this was the intention. Diseases and dysfunctions of the mind are not mentioned in statutory definition of acupuncture.<sup>21</sup>

The following modalities are included in the list of services that a licensed acupuncturist may provide but are not defined in the statute: oriental massage, acupressure, breathing techniques, exercise, heat, cold, nutrition, diet, and herbs. Several of these items constitute whole fields of study and practice but are not described sufficiently in this statute to be clear for licensed acupuncturists or the public.

Of this list, we place some focus on herbs because the term encompasses a particularly large body of academic and clinical knowledge; the lack of clarity around the term was raised as an issue by members of the acupuncture advisory committee and the term would benefit from more clarification. In particular, several concerns were raised about the

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<sup>20</sup> The references in B&P § 4935(b) regarding “application of a needle” do not help clarify this question.

<sup>21</sup> Although the definition of acupuncture has this reference to the “body”, there are no restrictions on the other modalities (acupressure, oriental massage, breathing techniques, exercise, diet, herbs, etc.) to treating the body only.

current and evolving field of herbs, studies regarding safety and efficacy, and interactions with pharmaceutical drugs.

### *Herbs*

The authorized use of “herbs” without any definition or clarification is noteworthy. Although this is a large body of knowledge and practice that is part of traditional Oriental medicine, it is not included in all other states’ acupuncture practice acts because of the potential risk of harm to patients. About half of the states that regulate acupuncture as a unique profession authorize practitioners to offer or recommend herbs to patients.

In *Legislative Handbook for the Practice of Acupuncture and Oriental Medicine* (1995), which provides model language for acupuncture practice acts, Barbara Mitchell notes that, while the “first, and old, option is to simply include Chinese herbology within the definition of the practice of acupuncture and not set any specific standards for its practice”, this approach may be questionable in terms of public protection. She recommends that setting standards is a better option and specifically recommends that language regarding the regulatory board’s authority to set standards for the use of herbology.

California has established regulatory standards requiring that licensed acupuncturists receive education and training in herbs. However, no legal definition of “herbs” is included in statute or regulation, which could be problematic for practitioners and the public. In particular, it would be helpful to distinguish, if possible, “herbs” from “food”, “drugs”, “plant, animal, and mineral products”, and “dietary supplements”.

An example that is currently in the spotlight regards the U.S. Food and Drug Administration’s recent ruling prohibiting the sale and use of dietary supplements containing ephedrine alkaloids. The ruling has resulted in considerable confusion as to whether ephedra (also known as ma huang) may be used by acupuncturists and herbalists under traditional Oriental medical theory and treatment. The confusion is based in part on lack of consistency in definitions of “herbs” and “dietary supplements”. Although California has included “herbs” separately from “dietary supplements” on the list of treatments licensed acupuncturists may provide, the federal definition of dietary supplement (which is referenced in the California statute as the controlling definition for this term in the California statute) may or may not include herbs.

## 6. *Primary care*

A final issue that has come up repeatedly in discussions about the California licensed acupuncturist’s scope of practice has to do with “primary care”. Specifically, are licensed acupuncturists legally or otherwise considered “primary care practitioners”; if so, under what definition; and does such an appellation have any bearing on the acupuncturist’s legal scope of practice?

A reference to acupuncture as a “primary health care profession” is found in California Business and Professions Code, section 4926, the “legislative intent” section of the practice act. There is no other use of the term in the act. Typically, one would look to the intent language if there was any question about the scope of practice itself. As there is no reference to primary care within the California acupuncture statute itself beyond the intent language in section 4926, there is no obvious need to look to the intent language for clarification of what the term means. And the areas in the practice act that are unclear would not necessarily be made more clear by a term that is undefined in statute and with so many common-use definitions.

In using the term “primary health care profession” in the intent section (CA B&P § 4926) of the acupuncture act but neither defining the term nor referring to again anywhere else in the act beyond this “legislative intent” section, the Legislature perhaps unwittingly or unintentionally created some confusion as to its meaning and relevance to the licensed acupuncturist’s scope of practice.

Confounding the issue has been the evolution of the use of the term “primary care” in the health care environment over the past several decades. During this time, the term has been used both loosely and narrowly when associated with any of the many different definitions in legal, policy and business settings. Some of the definitions,<sup>22</sup> which sometimes overlap, associated with “primary care practitioner” include:

- Independent practitioner; a practitioner who may see patients without the need for a referral or prior diagnosis;
- “First contact” health care practitioner; an independent practitioner but likely with the responsibility or expectation that ordering of tests and referrals to other practitioners or specialists will be made as indicated (may or may not be associated with managed care or reimbursement policies);
- “Gatekeeper” practitioner who determines if a patient needs to see another practitioner, and if so, which type (Most commonly used in managed care settings);
- As distinguished from a specialist; in this meaning, primary care is basic or general health care and may be considered comprehensive when the provider takes responsibility for overall coordination of the care of the patient’s health care problems (Most commonly used in profession of medicine; using this definition, the medical policy discussions around primary care have centered on an articulation of primary care practitioners (family practice, general practice, internal medicine, pediatrics and sometimes obstetrics and gynecology) in contrast to specialists (all others));
- Provider of treatment of routine injuries and illnesses and focuses on preventive care;
- Health care provider who assumes responsibility and accountability for the continuity of all health care of a patient (Generally a physician but increasingly provided by others such as nurse practitioners and physician assistants);

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<sup>22</sup> Sources: Alpha Center; UCSF Center for the Health Professions; California Managed Care Education and Research Network; Barbara Mitchell, LAc, JD (<http://www.aomalliance.org/publications/newsletter/articles/overview.htm>); Institute of Medicine; California B&P Code § 1480(b).

- The Institute of Medicine defines primary care as “the provision of integrated accessible health care by clinicians that are accountable for addressing a large majority of personal health care needs, developing sustained partnerships with patients, and practicing in the context of family and community.”

The legislative intent section of the acupuncture practice act (CA B&P § 4926), referring to acupuncture as a primary health care profession, was enacted in 1980 (AB 3040 – Stats. 1980, Ch. 1313) along with an expanded list of modalities that acupuncturists could use or provide including: electroacupuncture, cupping, moxibustion, oriental massage, breathing techniques, exercise, nutrition, and drugless substances and herbs as dietary supplements.

This legislation came on the heels of AB 1391, enacted in 1979 (Ch. 488), which eliminated the requirement that an acupuncturists obtain a diagnosis or referral from a physician, dentist, podiatrist or chiropractor prior to performing acupuncture on a patient.

Thus, while the reference to acupuncture being a primary health care profession was legislatively linked to an expanded scope of practice, it was also done in an environment in which acupuncturists were only very recently no longer viewed as dependent on referrals from other health care practitioners. With the expanded list of modalities focused on Oriental medicine and complementary or alternative medicine techniques (and not on allopathic or biomedical techniques and modalities), the reference to acupuncture as a primary health care profession appears more associated with an “independent” practitioner definition of primary care than with any of the more comprehensive responsibility and accountability or “gatekeeper” definitions.<sup>23</sup>

As per statements made during hearings and meetings convened regarding acupuncture in California, it appears this reference to primary care was most likely another way to refer to the fact that licensed acupuncturists could be first contact practitioners. Their patients do not need to have first been seen by another health care professional for diagnosis or referral.

However, California Department of Consumer Affairs Legal Op. No. 93-11 (December 14, 1993) notes:

“The codification of legislative intent found in section 4926 references the need to regulate and control acupuncturist [sic] as a ‘primary health care profession.’ A

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<sup>23</sup> Perhaps also of relevance is the enactment in 1982 (three years after the requirement that acupuncturists could only treat following prior diagnosis or referral was eliminated and two years after the “primary health care profession” phrase was included in the acupuncture practice act) of CA Health & Safety Code §§ 123100-123149.5 regarding patient access to patient records (records maintained by health care providers relating to the health history, diagnosis, or condition of a patient, or relating to treatment or proposed to be provided to the patient). In this section of the code, “Health care provider” includes (in addition to delivery institutions) physicians and surgeons, podiatrists, dentists, psychologists, optometrists, chiropractors, marriage and family therapists, clinical social workers, and physical therapists. Acupuncturists are not included in this section.

primary health care professional will possess the ability to diagnose, prescribe and administer treatments.”<sup>24</sup>

Within California law, the term primary health care profession (or provider or practitioner) is sometimes completely absent from a profession where one might expect that it would be (e.g. medicine) and yet present in other statutes and regulations (e.g. naturopathic doctors and nurse practitioners), written more recently (but still with differing or missing definitions).<sup>25</sup>

California’s naturopathic doctors act defines naturopathic medicine as:  
“... a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease.” (CA B&P § 3613 (c))

Under California regulations, a “Nurse Practitioner” means a registered nurse who possesses additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care, and who has been prepared in a program conforms [sic] to board standards as specified in Section 1484 (CA Code of Regulations, Title 16 § 1480(a)).

“Primary health care” is that which occurs when a consumer makes contact with a health care provider who assumes responsibility and accountability for the continuity of health care regardless of the presence or absence of disease (CA Code of Regulations, Title 16 § 1480(b)).

Within other US states’ acupuncture laws and regulations, acupuncturists are very rarely considered primary care professionals. The two notable exceptions are Florida and New Mexico<sup>26</sup>.

The Florida statute states, “Acupuncture means a form of primary health care, based on traditional Chinese medical concepts and modern Oriental medical techniques, that employs acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease....”

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<sup>24</sup> Legal Op. No. 93-11 offers no source or reference for this definition of a primary health care profession.

<sup>25</sup> The term “primary care provider” (or any version thereof) is *not* found in California practice acts for medicine (CA B&P §§ 2050-2079), podiatry (CA B&P §§ 2460-2499.8), physician assistants (CA B&P §§ 3500-3503.5), optometry (CA B&P §§3040-3060), chiropractic (CA B&P §§ 1000-1004; CA Code of Regulations § 302), occupational therapy (CA B&P §§ 2570-2570.32), physical therapy (CA B&P §§2620-2622), or nursing (aside from nurse practitioners noted above) (CA B&P §§ 2725-2742) although many of these professions are considered independent and do not require prior diagnosis or referral. In reporting the location of dental manpower shortage areas that exist in the state (CA B&P § 1636.5), the dental board may report the information required separately for primary care dentists and specialists (distinction is between generalists and specialists within a profession) but dentistry is not referred to as a primary health care profession.

<sup>26</sup> It was beyond the scope of this study to comprehensively research how the references to acupuncturists as primary care providers in Florida and New Mexico have been interpreted in regulation, legal scope of practice, case law and other legal opinions regarding the responsibilities and liabilities that such a definition may bring with it.

New Mexico statute defines “doctor of oriental medicine” as “a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers.” (NM SB 117 (2000); NMSA 61-14A-3.C.)

New Mexico statute defines “primary care provider” as “a health care practitioner acting within the scope of his license who provides the first level of basic or general health care for a person’s needs, including diagnostic and treatment services, initiates referrals to other health care practitioners and maintains the continuity of care when appropriate” (New Mexico HB 394 (2001) amending NMSA Section 61-14A-3 (being Laws 1993, Chapter 158, Section 11, as amended)).

*Analysis and discussion regarding acupuncture as a primary health care profession*

Depending on the definition one is using, individual licensed acupuncturists may consider themselves, or their patients may consider them, primary care practitioners. However, there is no single statutory, policy or common usage definition of this term that always would be applicable to licensed acupuncturists that would have any bearing on their legal scope of practice beyond what is already known and acknowledged, i.e., that licensed acupuncturists may see patients without the need for a prior diagnosis or referral from another health care practitioner. Further, there is no connection between the use of the term “primary care” in the intent language and the legal scope of practice in terms of what licensed acupuncturists can and cannot do. That is, there is no impact of the use of the term “primary health care profession” in section 4926 (the intent language) on sections 4937 and 4927 (the statutory scope of practice). All indications point to the fact that the Legislature, at the time of including the term in the statute, was underscoring the authority of licensed acupuncturists to treat patients without a prior diagnosis or referral from another health care professional. This recognition does not add to or subtract from the legal scope of practice. Nor does it affect the reality that some acupuncturists are serving as primary health care professionals (under some non-statutory definitions) while others are not.

### **III. California acupuncture practice act compared to select other health care professions' practice acts in California**

For perspective, it is interesting to review how the scope of practice for acupuncture (and its related requirements for entry into the profession) compares with the scopes of practice (and their requirements) for other health care professions in California. Of the dozens of health professions that are regulated by the state of California, less than half have statutes that authorize independent practice by licensed members of the profession. This ability to see patients without a prior referral or diagnosis and without concurrent supervision by another health care practitioner is one way to distinguish these professions. In addition to acupuncture, professions with independent practice authority in California include the following<sup>27</sup>:

- Chiropractic
- Dentistry
- Medicine
- Naturopathic doctors
- Nurse practitioners
- Optometry
- Podiatry

As noted above, California, like most states, does not have a standard template for practice acts and entry-to-practice requirements that would make inter-professional comparisons easy. However, as can be seen in the summary table presented in Appendix II, some comparisons and contrasts can be made among these professions.

Most of these professions appear to have entry-to-practice requirements that are more rigorous than those for acupuncture but also have correspondingly “broader” scopes of practice.

Relative to acupuncture and the other health care professions, allopathic medicine has the highest entry-to-practice requirements<sup>28</sup>. And, while California uses no checklist with which one could compare components of the scopes of practice, allopathic medicine appears to have by far the broadest practice act, encompassing all physical and mental health care for humans. At the same time, California physicians are legally constrained in many ways that are not obvious from a summary review of the practice act. Codes of ethics, specialty board certifications, malpractice insurance policies, case law,

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<sup>27</sup> For purposes of this analysis, we did not include the mental and behavioral health professions because of the limitation to mental health care. Other professions, including pharmacy and many of the allied professions such as physical therapy and occupational therapy, have independent practice authority but are predominantly limited in their practices to collaboration and/or co-management with other health care professionals of patients.

<sup>28</sup> Entry-to-practice requirements reviewed included undergraduate prerequisites, pre-professional school examinations, professional education, postgraduate training, and pre-licensure examinations. We did not review other factors such as relative competition for seats in professional schools. Nor did we review factors other than entry-to-practice requirements, such as continuing education requirements and strength of disciplinary activities of the respective boards, that might have considerable impact on the ongoing requirements for practitioners within a particular profession.

institutional guidelines and private credentialing processes, among other factors, all contribute to a social and cultural context in medicine that, despite shortcomings, is highly evolved and complex relative to other health care professions, particularly those in the emerging complementary and alternative fields.

Several of these professions, including dentistry, podiatry and optometry, have entry-to-practice requirements that are higher than those for acupuncture but scopes of practice that are broader in some senses (e.g. some, if limited, prescriptive and/or surgical authority) but much more narrow in other senses (i.e. narrowed to a specific part or area of the physical body).

All of the allopathic professions, including advanced practice nursing, pharmacy and the allied professions that have independent practice authority (such as physical therapy), require undergraduate coursework in the basic sciences (and usually a baccalaureate degree), passage of some sort of entrance examination (ranging from generic tests such as the Graduate Record Examination (GRE) to profession-specific tests), and include considerable amounts of work on the sciences and on allopathic theory in professional level coursework.

The professions of chiropractic and naturopathic medicine are more comparable to acupuncture than allopathic medicine or the professions that are carved out of allopathic medicine to focus on specified areas of the body. They are comparable in the sense that practitioners of these professions can provide care for the whole body but by using approaches or theories that are different from allopathic medicine, and with a limited set of modalities and treatments that are spelled out in the respective practice acts.

Relative to acupuncture, both chiropractors and naturopathic doctors must meet higher entry-to-practice standards, particularly in the prerequisites required to enter professional school and the number of professional school hours. Although the practice acts for these professions differ considerably in terms of definitions used and level of detail, it does appear that naturopathic doctors have practice authority that is broader than that of acupuncturists in some areas (including for example, clear authority to diagnose, to remove foreign bodies located in the superficial tissues and to furnish or order drugs under standardized procedures approved by a supervising physician). On the other hand, the practice act specifies that naturopathic doctors may not practice acupuncture.

In many ways, chiropractic and acupuncture are comparable: members of both professions may see patients without referral or prior diagnosis and offer a wide range of treatment modalities short of the practice of medicine. However, their legal scopes of practice are different: the core service within the chiropractic scope of practice is spinal manipulation while the core service that acupuncturists offer is acupuncture. And, while education and training requirements also differ, it is unknown whether the difference in training hours between the two professions is grounded more in a legitimate difference in length of time necessary to learn the respective knowledge bases and skills or in some other factor.

#### **IV. Comparison of California acupuncture practice act and acupuncture practice acts in other US states.**

Acupuncture was not regulated as a distinct health profession in the United States until 1973, and in 1975, California became the eighth US state to enact a statute recognizing the practice of acupuncture (CA SB 86 (Moscone and Song) 1975; *AOM Laws 2001* Table 1; see also the Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA) website “Boards History (2001)”). As of early 2004, 41 states and the District of Columbia have acupuncture and Oriental medicine statutes.

The laws governing the practice of acupuncture vary tremendously among the US jurisdictions.<sup>29</sup> Definitions of acupuncture vary; legal scopes of practice vary; and regulatory structures vary. Education and examination requirements also vary, but to a lesser degree. For purposes of legal scope of practice comparison, we looked at two significant aspects that California includes in its practice act: independent practice and inclusion of herbs. We defined independent practice as the legal authority for acupuncturists to practice without referral from a medical doctor or other health care practitioner; prior authorization, evaluation or diagnosis; or supervision. We defined the inclusion of herbs in the practice act as the authority of acupuncturists to prescribe or use herbs, herbal poultices, herbal supplements or items in the “Oriental pharmacopoeia”. Of the 41 jurisdictions with acupuncture and Oriental medicine statutes, sixteen states (including California) include both independent practice and herbal authority for acupuncturists.<sup>30</sup>

Of these sixteen states with comparable practice acts, California currently ranks third in total number of hours required in the curricula (FL: 2423; NM: 2400; CA: 2348). With the increase to 3000 in number of hours required for California-approved acupuncture programs, California will rank first in total number of hours required but will not have a legal scope of practice that is significantly broader<sup>31</sup> than other states. In fact, it could be said that Florida and New Mexico, with their specific statutory authority to be primary health care practitioners, have broader scopes. Of the sixteen comparable states, Montana requires the lowest number of curriculum hours (1000 hours but program must also be Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM)-accredited). Most of these states require between 1725 and 1850 curriculum hours in an ACAOM-accredited program and/or National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) certification (which requires completion of a program that meets ACAOM standards).

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<sup>29</sup> For a comprehensive summary of the acupuncture laws of the US states and District of Columbia, see Barbara B. Mitchell, *Acupuncture and Oriental Medicine Laws, 2001 edition*. National Acupuncture Foundation, 2001. For this analysis, we also relied on states’ statutory laws and recent legislation.

<sup>30</sup> Arizona, Arkansas, California, Colorado, Florida, Georgia, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Vermont, West Virginia.

<sup>31</sup> Applicants for licensure as acupuncturists in California will also have increased educational requirements that do not correspond to any expansion in scope of practice in California.

We note that the states *without* independent practice and/or herbal authority also range widely in required curriculum hours; some states with very limited practice authority require a higher number of curriculum hours than other states with more expansive practice authority.

Although the states vary in their specificity regarding curriculum content, the near universal reliance on ACAOM to accredit acupuncture and Oriental medicine programs results in some standardization of the core curricula required (see the companion study on accreditation and approval of educational programs for more details). As noted in the companion study on accreditation, ACAOM requires program compliance with state laws and regulations that may exceed ACAOM's standards. Although only some of the 16 states specify undergraduate prerequisites, the reliance on ACAOM accreditation results in most of the states either directly or indirectly requiring 2 years (60 semester credits) of undergraduate study because this is one of the ACAOM standards. California is a notable exception among the states with neither a state-based requirement of undergraduate work nor reliance on ACAOM accreditation, which requires undergraduate work for admission into a program. New Hampshire is an exception at the other end of the continuum, requiring that applicants not only complete an ACAOM-accredited program but also document completion of a baccalaureate, registered nurse or physicians assistant degree from an accredited institution.

As far as we are aware, there are only limited data available that would speak to any correlation between differences in state licensing requirements (including pre-professional prerequisites, professional education and examination) and competency. For example, we are unaware of published and available data on current differences among the states in rates of complaints by patients, disciplinary actions by boards, or pass rates on standardized tests. The only summaries we have seen regarding disciplinary actions were conducted by the National Acupuncture Foundation and published in 2001 (covering the periods July 1992 – May 1999 and January 1 – December 31, 2000). In both of these time periods, California reported the highest number of complaints and actions against acupuncturists. Among the states with comparable scopes of practice (i.e. with independent practice and herbal authority) for the period between January 1 and December 31, 2000, California also had the highest rate of actions as a percentage of licensees (0.006). However, this is still an extremely low rate and is the “highest” only because most states reported zero actions taken.<sup>32</sup> Furthermore, it is far from clear what, if any correlation exists between these results and licensing requirements; other factors, including access to complaint systems by the public and the strength of disciplinary processes by the state boards, contribute to the results.

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<sup>32</sup> New York, which is not included on our list of states with comparable practice acts because it does not include herbal authority for acupuncturists, had a reported disciplinary action rate of 0.026 for this period, calculated as a percentage of total actions divided by number of licensees.

## V. Comparison of the California acupuncture practice act and the most recent occupational analysis.

Under standard professional examination protocol, occupational analyses are routinely and regularly conducted of a profession. The results of these analyses, which describe in detail what practitioners of the profession are doing in their practices, are primarily used to design, develop and defend professional examinations.

For this report, we reviewed the most recent (2001) occupational analysis conducted on acupuncture practice in California for a secondary purpose: to compare the practice act with the practice of acupuncture, as reported by licensed practitioners. As noted in the 2001 California occupational analysis:

...The purpose of the occupational analysis is to define practice in terms of the actual tasks that acupuncturists must be able to perform at the time of licensure. *The results of the occupational analysis provide a description of current acupuncture practice in California* and serve as the basis of the examination program for acupuncture licensure [emphasis added] (California Department of Consumer Affairs, 2001).

Thus, although driven by a psychometric demand regarding the examination, the occupational analysis provides a snapshot of the practice of acupuncture. Optimally, the occupational analysis would be aligned with the practice act; practitioners would be providing the range of care authorized in the practice act but not going beyond it. In addition, with the significantly higher degree of detail contained in an occupational analysis relative to a legal practice act, the occupational analysis can assist legislatures, policy makers, professionals, and regulators better understand how the practice act is being interpreted by practitioners in their daily practices.

See the table below for a summary comparison of the acupuncture occupational analysis and acupuncture laws. The far left column includes the five broad content areas (*Patient Assessment, Developing a Diagnostic Impression, etc.*) developed by the DCA Office of Examination Resources in conducting the occupational analysis. The middle column includes the subareas that make up each of the content areas along with a summary of the relevant Task Statements and Knowledge Statements that were offered to practitioners as possible areas of practice and which “survived” the critique of practitioners (i.e. were rated high enough in terms of importance, frequency, and criticality (for tasks) and in terms of usage and criticality (for knowledge statements) to indicate being part of current practice. The far right column includes laws and regulations identified by UCSF staff as correlates of the Occupational Analysis areas. Discussion follows the table.

**Table: Acupuncture Occupational Analysis (2001) Compared to Acupuncture Laws**

Occupational Analysis		Laws
Content Area	Subarea	
<p>Patient Assessment (25%)  <i>The practitioner obtains patient's history and performs a physical examination to determine presenting complaint and interrelationship among symptoms. The practitioner determines the effects of Western medications the patient is taking. The practitioner uses modern diagnostic testing procedures to augment traditional assessment methods.</i></p>	<p>Obtaining Patient History (12%)  <ul style="list-style-type: none"> <li>▪ 22 Task and 31 Knowledge Statements covering wide range of topics in Oriental and Western medicine and pathology</li> </ul> <p>Performing a Physical Examination (9%)  <ul style="list-style-type: none"> <li>▪ 16 Task and 31 Knowledge Statements mostly focused on traditional Oriental assessment</li> </ul> <p>Evaluating for Western Pharmacology (2%)  <ul style="list-style-type: none"> <li>▪ 3 Task and 6 Knowledge Statements focused on identifying and understanding commonly prescribed Western medications<sup>33</sup></li> </ul> <p>Implementing Diagnostic Testing (2%)  <ul style="list-style-type: none"> <li>▪ 6 Task and 16 Knowledge Statements including evaluating results of laboratory panels and radiographic imaging tests, performing auscultation, abdominal palpation and neurological exam plus broad understanding of lab tests, imaging studies, vital signs, cardiopulmonary, gastrointestinal, and nervous systems, and more.<sup>34</sup></li> </ul> </p></p></p></p>	<p>[Not included in practice act but presumed to be necessary prior to treating. See e.g. DCA Legal Op. No. 93-11]</p>
Continued...		

<sup>33</sup> Note that task statements that were deleted because they were below the cutoff value included: T49: Evaluate results of electrographic diagnostic tests to identify potential pathology or abnormality; T54: Perform cranial nerve examination by following medical protocols to determine pathology.

<sup>34</sup> Note that knowledge statements that were deleted because they were below the cutoff value included: K76: Knowledge of clinical situations requiring nuclear medicine tests to obtain diagnostic information; K78: Knowledge of clinical situations requiring electroencephalogram (EEG) or electrocardiograph (EKG) testing; K79: Knowledge of the clinical significance of electroencephalogram (EEG) and electrocardiograph (EKG) results in detecting pathology.

**Table: Acupuncture Occupational Analysis (2001) Compared to Acupuncture Laws**  
*continued*

Occupational Analysis		Laws
Content Area	Subarea	
<p>Developing a Diagnostic Impression (20%)  <i>The practitioner evaluates clinical manifestations to determine the relative strength and progression of disease. The practitioner evaluates patterns of disharmony according to theories of Oriental medicine to arrive at a final diagnosis. The practitioner demonstrates knowledge of how pathology in Western medicine relates to disease in traditional Oriental medicine.</i></p>	<p>Forming a Diagnostic Impression (8%)  <ul style="list-style-type: none"> <li>▪ 10 Task and 16 Knowledge Statements focused on traditional Oriental medicine theory</li> </ul> <p>Differentiation of Syndromes (5%)  <ul style="list-style-type: none"> <li>▪ 8 Task and 17 Knowledge Statements based on Oriental medicine theory</li> </ul> <p>Biomedical Disease (4%)  <ul style="list-style-type: none"> <li>▪ 6 Task and 16 Knowledge Statements regarding how Oriental medicine diagnosis relates to Western medicine concepts, understanding how to translate Oriental medicine diagnosis into terminology common to other health care providers, interacting with other health care providers, and identifying life-threatening conditions for emergency referral.<sup>35</sup></li> </ul> <p>Oriental Treatment Planning (3%)  <ul style="list-style-type: none"> <li>▪ 2 Task and 2 Knowledge Statements regarding Oriental treatment planning</li> </ul> </p></p></p></p>	<p>Not included in practice act but presumed to be necessary prior to treating. See e.g. DCA Legal Op. No. 93-11]</p>
<i>Continued...</i>		

<sup>35</sup> Note that the following task statements were deleted because they were below the cutoff value: T79: Perform cardiopulmonary resuscitation by administering breaths and compressions to revive nonresponsive patient; T80: Respond to emergency situations by administering first aid to treat patient in distress.

**Table: Acupuncture Occupational Analysis (2001) Compared to Acupuncture Laws**  
*continued*

Occupational Analysis		Laws
Content Area	Subarea	
<p>Providing Acupuncture Treatment (29%)  <i>The practitioner implements knowledge of the therapeutic effects of points and combinations of points in modifying pain, normalizing functioning, and treating disharmonies. The practitioner uses anatomical landmarks and proportional measurements in locating points on or near body surfaces. The practitioner identifies clinical indications for using alternative treatment modalities.</i></p> <p><i>Table Continues...</i></p>	<p>Point Selection Principles (6%)  <ul style="list-style-type: none"> <li>▪ 12 Task and 17 Knowledge Statements about points and point location</li> </ul> <p>Point Categories in Acupuncture Treatment (7%)  <ul style="list-style-type: none"> <li>• 16 Task and 17 Knowledge Statements about point categories &amp; effects</li> </ul> <p>Point Location and Needling Technique (4%)  <ul style="list-style-type: none"> <li>• 5 Task and 9 Knowledge Statements regarding locating, inserting and manipulating needles</li> </ul> <p>Providing Auxiliary Treatment (4%)  <ul style="list-style-type: none"> <li>• 7 Task and 14 Knowledge Statements regarding moxi-bustion, electroacupuncture, cupping, Oriental soft tissue techniques, adjunctive therapies, lifestyle changes, and diet.<sup>36</sup></li> </ul> <p>Implementing Microsystems in Treatment (1%)  <ul style="list-style-type: none"> <li>• 2 Task and 4 Knowledge Statements regarding scalp and ear points</li> </ul> <p>Treatment Observation and Modification (2%)  <ul style="list-style-type: none"> <li>• 2 Task and 3 Knowledge Statements regarding monitoring and evaluating patient and adjusting treatment</li> </ul> <p>Acupuncture Treatment Contraindications (5%)  <ul style="list-style-type: none"> <li>• 7 Task and 19 Knowledge Statements about conditions contraindicated for needling, electroacupuncture, cupping, moxibustion, Oriental soft tissue techniques, adjunctive therapies, dietary therapy.</li> </ul> </p></p></p></p></p></p></p>	<p>An acupuncturist's license authorizes the holder to engage in the practice of acupuncture, defined as 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 electroacupuncture, cupping, and moxibustion (CA B&amp;P §§ 4937(a), 4927(d)). An acupuncturist may perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets [defined], nutrition, diet, ...[herbs discussed below], plant, animal and mineral products [defined], and dietary supplements [defined] to promote, maintain, and restore health... (CA B&amp;P § 4937(b)).</p>

<sup>36</sup> Note that knowledge statements that were deleted because they were below the cutoff value included: K196: Knowledge of techniques for manipulating affected areas with Oriental Soft tissue techniques; K197: Knowledge of the clinical indications for applying Oriental soft tissue techniques.

Occupational Analysis <i>(continued)</i>		Laws
Content Area	Subarea	
<p>Prescribing Herbal Medicinals (17%)  <i>The practitioner prescribes herbs and formulas based on diagnostic criteria. The practitioner modifies formulas and dosage of herbs according to patient's condition. The practitioner identifies situations and conditions where herbs and formulas would produce undesired effects.</i></p>	<p>Identification of herbs (6%)  <ul style="list-style-type: none"> <li>• 6 Task and 14 Knowledge Statements focused on identification and knowledge of herbs and formulas, including interaction effects of Western medications and herbs</li> </ul> <p>Prescribing and Administering Herbs (11%)  <ul style="list-style-type: none"> <li>• 9 Task and 13 Knowledge Statements prescribing, evaluating and modifying herbs and formulas</li> </ul> </p> </p>	<p>An acupuncturist may perform or prescribe the use of ... herbs... [not defined] (CA B&amp;P § 4937(b)).</p>
<p>Regulations for Public Health and Safety (9%)  <i>The practitioner understands and complies with laws and regulations governing hygiene and the control of pathogenic contaminants. The practitioner applies legal guidelines for office practices and maintenance of patient records. The practitioner adheres to legal requirements for reporting known or suspected child, elder, or dependent adult abuse.</i></p>	<p>Practice Requirements (2%)  <ul style="list-style-type: none"> <li>• 3 Task and 3 Knowledge Statements regarding record-keeping, advertising, and scope of practice</li> </ul> <p>Patient Protection (7%)  <ul style="list-style-type: none"> <li>• 9 Task and 14 Knowledge Statements on laws/policies regarding patient confidentiality, child and elder abuse, informed consent, infectious diseases, clean needle technique, prevention of cross contamination/infection, relevant OSHA requirements</li> </ul> </p> </p>	<p>Numerous laws and regulations including:  <ul style="list-style-type: none"> <li>• CA B&amp;P § 4955(e) [sanctioning a licensee]</li> <li>• CA H&amp;S § 1250.11 [blood-borne infectious diseases]</li> <li>• CA Labor § 6300 <i>et seq.</i> [California OSHA]</li> <li>• CA B&amp;P § 4961 [posting of license, change of address]</li> <li>• CA B&amp;P § 4975-4979 [acupuncture corporations]</li> <li>• California Code of Regulations Title 16: §1399.450 (office condition) §1399.451 (treatment process) § 1399.452 (treatments outside the office ) §1399.453 (record keeping) §1399.455 (advertising) §1399.456 (use of "Doctor")</li> </ul> </p>

*Analysis and discussion regarding comparison of occupational analysis and legal scope of practice.*

This side-by-side look at the most recent occupational analysis and the laws and regulations governing the practice of acupuncture provides some interesting perspective. Overall, it seems that there is very little within the acupuncturist's legal scope of practice that is not being done by practitioners and there is not much being done by practitioners that is beyond the legal scope of practice.

The exceptions are few but informative. Licensed acupuncturists do find the areas of "Patient Assessment" and "Developing a Diagnostic Impression" critical to their practices although these activities are not specifically listed or described in the practice act. Whether by choice or necessity, licensed acupuncturists believe that competence in these areas is required to enter the profession. As discussed above, the focus of these areas in the occupational analysis is assessment and diagnosis within an Oriental medicine framework, not an allopathic framework. However, this focus is not exclusive and some practice does appear to include the use and evaluation of laboratory panels and radiographic imaging test results for example. There is no task or knowledge statement that specifically addresses the need for or the choice of an acupuncturist to make a Western medicine-based diagnosis.

It is also worth noting that many of the "auxiliary treatments" included in the practice act (electroacupuncture, cupping, moxibustion, oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, plant, animal and mineral products, and dietary supplements) are not given much weight in the occupational analysis. The notable exception is herbs, which is included on the list of modalities an acupuncturist may perform but not defined. Licensed acupuncturists reported that this one modality accounts for a significant portion of their practices and that knowledge about herbs was necessary for entry to practice.

An even closer alignment of the legal scope of practice with the practice itself of acupuncture could be considered by policy makers.

- For example, the practice act and/or regulations could acknowledge the role and necessity of knowing how to competently assess a patient's condition and make a diagnosis within the framework and principles of acupuncture and Oriental medicine theory.
- The occupational analysis might also assist policy makers determine the continuum on which the range of elements of Oriental and Western medicine diagnoses are placed. There may be Oriental medicine diagnostic authority that is clearly within the scope of practice for licensed acupuncturists, some Western diagnostic authority that is in the acupuncturist's scope of practice and some Western diagnostic authority that is beyond the competence of acupuncturists and clearly is not expected of them.
- Similarly, the occupational analysis can inform legislators and regulators where the line might be between Western laboratory tests and imaging studies that may be within the scope of licensed acupuncturists and Western-based diagnostic tests

and studies that are beyond the acupuncturist's scope of practice (see, for example, the knowledge and task statements regarding tests and studies that were excluded from the final occupational analysis due to low criticality values).

## **VI. Analysis and discussion: Options and alternatives to consider regarding the legal scope of practice for acupuncturists**

In light of the foregoing discussion and information, policy makers, including legislators, regulators and leaders within the profession might consider the following options and alternatives regarding the legal scope of practice for California licensed acupuncturists:

- Clarify and define the questionable areas outlined above.

As discussed above, there are several areas within the licensed acupuncturist's legal scope of practice that would benefit from direct clarification in statute and/or regulation. As part of this clarification, the Legislature might consider expanding the scope of practice for licensed acupuncturists. From a public policy perspective, expanding the legal scope of practice for licensed acupuncturists in California – for example by granting broader diagnostic authority – could improve or ease access to health care for many people in the state. In particular, the health care skills and knowledge combined with strong multi-linguistic and cultural competency among California acupuncturists are a significant resource for the health needs of Californians. Such a significant expansion of legal scope of practice however would necessitate increased education, training and testing of all applicants for licensure or for any subset of licensed acupuncturists seeking add-on certification.

- Consider benefits of an expanded scope of practice (e.g. one with more biomedical/allopathic diagnostic authority) for practitioners who can demonstrate education, training and competency in the expanded area.

Models for add-on certificates can be found in several health care professions. For example, some licensed optometrists may choose to be certified to use therapeutic pharmaceutical agents. This is not required for all optometrists, but those who choose the option complete additional education and testing requirements. Their add-on certification permits them to use specified therapeutic pharmaceutical agents and to diagnose and treat a number of specified conditions of the eye.

- Consider benefits of providing and disclosing standard information to patients about the qualifications and scope of practice for acupuncturists.

Recently added to the Business and Professions Code are sections 2053.5 and 2053.6 (SB 577, (Burton, 2002)), which provide guidance for practitioners of complementary and alternative health care whose services are not licensed by the state of California. With Section 2053.6, which does not apply to acupuncturists because acupuncturists are licensed in California, covered practitioners must disclose to each client (and obtain written acknowledgement that the client has been provided with the statement) a written statement using plain language that he or she is not a licensed physician; that the treatment is alternative or complementary to health arts services licensed by the state; that the services to be provided are not licensed by the state; the nature of the services to be provided; the theory of treatment upon which services are based; and his or her education, training, experience, and other qualifications regarding the services to be provided.

A modified version of such a disclosure, which focuses on the licensed acupuncturist's education, training and scope of practice might be provided to patients of licensed acupuncturists to help clarify to patients the legal scope of practice of acupuncturists. Such a disclosure would be in addition to current licensing rights and responsibilities; it would not substitute for licensure, which clearly seems indicated given the potential harm to patients through the use of needles and herbs.

- Encourage the development and distribution of clear interpretations of the legal scope of practice and guidelines for practice and referral to licensed acupuncturists.

To address the lack of complete understanding and confusion among practicing acupuncturists as to what exactly the scope of practice is, the state and professional leadership could consider working together to disseminate information about the legal scope of practice, once it has been clarified, to schools and practitioners.

## **Appendix I**

### **Diagnostic Authority within California Health Professions' Practice Acts**

The practice acts of several California health care professions specifically include (or exclude) diagnostic authority:

#### *Medicine*

The California medical practice act (B&P § 2051) authorizes the holder of a physician's and surgeon's certificate (i.e. medical license) "to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions." B&P § 2052 goes on to say that any person who "practices... any system or mode of treating the sick or afflicted in this state, or who *diagnoses*, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition [without having a medical license or authority under another section of the law] is guilty of a public offense..." [emphasis added].

Within the medical practice act, the following definition is offered:

"Whenever the words 'diagnose' or 'diagnosis' are used in this chapter, they include any undertaking by any method, device, or procedure whatsoever, and whether gratuitous or not, to ascertain or establish whether a person is suffering from any physical or mental disorder. Such terms shall also include the taking of a person's blood pressure and the use of mechanical devices or machines for the purpose of making a diagnosis and representing to such person any conclusion regarding his or her physical or mental condition. Machines or mechanical devices for measuring or ascertaining height or weight are excluded from this section." (CA B&P § 2038)

#### *Dentistry*

"Dentistry is the *diagnosis* or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation..." [emphasis added]. (CA B&P § 1625).

#### *Chiropractic*

The scope of practice for chiropractors is found in regulation; B&P § 1000 refers to Initiative of 1922; State of California Board of Chiropractic Examiners provides "Laws and Regulations Relating to the Practice of Chiropractic" which states, part:

§ 302 (a)(1) "A duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process thereof a chiropractor may manipulate the muscle and connective tissue related thereto."

(2) As part of a course of chiropractic treatment, a duly licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including but not limited to, air, cold, diet,

exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques....”

(3) Other than as explicitly set forth in section 10(b) of the Act [regarding advertising to treat certain conditions], a duly licensed chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may *diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine* by exceeding the legal scope of chiropractic practice as set forth in this section.” [emphasis added]

In subsequent sections, it is noted that chiropractors are not authorized to practice surgery or to sever or penetrate tissues of human beings, to deliver a human child or practice obstetrics, to practice dentistry or optometry, to use any drug or medicine included in materia medica, to use a lithotripter, to use ultrasound on a fetus, or to perform a mammography. A chiropractor may make use of X-ray and thermography equipment for the purposes of diagnosis but not for the purposes of treatment and may make use of diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis.

Educational requirements for chiropractors (CA Code of Regulations Title 16, Section 331.12.2), require 792 hours in Group VI courses, which include Diagnosis, including E.E.N.T. and serology, dermatology and sexually transmitted diseases, geriatrics, X-ray interpretation, and neurology. Requirements note that “Classes shall be presented in proper academic sequence. Each student shall be taught micro and gross anatomy, human dissection, and physiology before pathology...; and diagnosis before or concurrent with the study of pathology. Clinic hours shall be taken only after a student completes all hours in or concurrently with diagnosis.”.... “Diagnosis: To include physical, clinical, laboratory and differential diagnosis; E.E.N.T., geriatrics, serology, dermatology, syphilology, roentgenology (technique and interpretation) and the rules and regulations of the Radiologic Technology Certification Committee of the State Department of Health Services.”

#### *Physical Therapy*

“Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The use of roentgen rays, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term ‘physical therapy’ as used in this chapter, and a license issued pursuant to this chapter *does not authorize the diagnosis of disease.*” [emphasis added] (CA B&P § 2620)

#### *Naturopathic medicine*

"Naturopathic medicine" means a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the *diagnosis*, treatment, and prevention of human health conditions, injuries, and disease. [emphasis added] (CA B&P § 3613 (c))

### *Podiatry*

Podiatric medicine is defined as “the *diagnosis*, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot. [emphasis added] (CA B&P § 2472 (b)). The podiatric medicine act also requires that “... the curriculum for all applicants [for a license in podiatric medicine] shall provide for adequate instruction related to podiatric medicine in ... physical and laboratory diagnosis....” (CA B&P § 2483 (b))

### *Nursing*

There is no statutory reference (CA B&P §§ 2725-2742) to diagnostic authority for California’s registered nurses. However, the “practice of nursing” in the statute includes “Observation of signs and symptoms of illness, reactions to treatment, general behavior, or general physical condition, and (A) determination of whether the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or changes in treatment regimen in accordance with standardized procedures, or the initiation of emergency procedures.” (CA B&P § 2725(b)(4).

Statutory scopes of practice for advance practice nurses in California (Nurse-Midwives, Nurse Anesthetists, Nurse Practitioners (including specialization as adult nurse practitioner, pediatric nurse practitioner, obstetrical-gynecological nurse practitioner and family nurse practitioner) and Clinical Nurse Specialists) do not include specific reference to diagnostic authority (CA B&P §§ 2746 *et seq.*, 2825 *et seq.*, 2834, 2838 *et seq.*). However, regulations and other legal sources indicate that advance practice nurses may have some diagnostic capacity and further research may shed more light on this issue. For example, the nurse practitioner regulations include this definition: “‘Nurse practitioner’ means a registered nurse who possesses additional preparation and skills in *physical diagnosis*, psycho-social assessment, and management of health-illness needs in primary health care, and who has been prepared in a program conforms [sic] to board standards as specified in Section 1484.” [emphasis added] (California Code of Regulations Title 16 § 1480(a).

## Appendix II

### California Health Professions Professional Preparation and Scope of Practice Summary

Notes: Summary/overview only; scope of practice includes reference to statute and rules and regulations; case law, legal opinions not included.

Requirements summary is focused on current applicants who are graduates of US or Canadian programs; some requirements have variations for graduates of foreign programs of for individuals whose education, training or examinations were completed prior to particular statutes or regulations being implemented.

California Health Care Professions	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Acupuncture</b>	Completion of high school or passage of a standard equivalency test <sup>37</sup>	None	Completion of an educational (or tutorial) program approved by the California Acupuncture Board. Board approved educational programs must be 4 years long and currently require minimum of 2348 hours (including 800 clinical hours); for students entering programs 1/1/05, minimum hours will be 3000 (including 950 clinical hours). <sup>38</sup>	None	Successful passage of the California Acupuncture Licensing Examination (offered in English, Chinese, and Korean) <sup>39</sup>	The holder of an acupuncture license may practice acupuncture (as defined below) and also “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 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 electroacupuncture, cupping, and moxibustion.” <sup>40</sup>

<sup>37</sup> CA Code of Regulations, Title 16 §1399.436 (d)

<sup>38</sup> CA B&P § 4938; CA Code of Regulations, Title 16 § 1399.436 (a)-(c); CA Acupuncture Board Proposed Regulations 2004 (see companion study on education for details)

<sup>39</sup> CA B&P § 4939 (c); CA Code of Regulations, Title 16 § 1399.440-444.

<sup>40</sup> CA B&P § 4937 (a)-(b); CA B&P § 4927 (d).

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Chiropractic</b>	High school diploma or GED; Ninety or more semester units of pre-chiropractic education meeting the education standards of the Council on Chiropractic Education (CCE) <sup>41</sup>	None	Graduation from a chiropractic college accredited by the Accrediting Commission of the Council on Chiropractic Education (CCE). <sup>42</sup> Education must be minimum of 4400 hours in the subjects listed in Section 5 of the Initiative Act and Title 16, California Code of Regulations §§ 330 <i>et seq.</i> , especially § 331.12.2. Clinical experience is also detailed by description, number of hours and/or number of	None	Passing scores on the National Board of Chiropractic Examiners examination Parts I, II, III, IV and Physiotherapy and passing score on the California Chiropractic Board Examination covering California laws and regulations governing the practice of chiropractic <sup>44</sup>	A chiropractor may manipulate and adjust the spinal column and other joints of the human body and in the process, may manipulate the muscle and connective tissue related thereto. As part of chiropractic treatment, a chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy techniques in the course of chiropractic manipulations. Other than as set forth in section 10(b) of the Act (regarding advertising to cure sexually transmitted and other named diseases), a chiropractor may treat any condition, disease, or injury in any patient, including a pregnant woman, and may diagnose, so long as such treatment or diagnosis is done in a manner consistent with chiropractic methods and techniques and so long as such methods and treatment do not constitute the practice of medicine. A chiropractor may employ the use of

<sup>41</sup> California Board of Chiropractic Examiners. Chiropractic Educational Requirements. <http://www.chiro.ca.gov/factsheets/chiroeduc.pdf>. Accessed 2/26/04. The CCE requires that 48 of the 90 undergraduate hours be completed (with a cumulative 2.50 average GPA) in the following: English language skills (6 semester hours), Psychology (3 hrs), Social Sciences or humanities (15 hrs), Biological sciences (6 hrs), Chemistry (12 hrs), Physics and related sciences (6 hrs). Council on Chiropractic Education. <http://www.cce-usa.org/> accessed 2/27/04.

<sup>42</sup> Chiropractic Initiative Act § 4 (g)

<p><b>Chiropractic</b> (continued)</p>			<p>treatments or procedures.<sup>43</sup></p>			<p>vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are also included in section 4057 of the B&amp;P code, so long as such substances are not included in materia medica as defined in section 13 of the B&amp;P Code. A chiropractor may make use of X-ray and thermography equipment for the purpose of diagnosis but not for the purpose of treatment. A chiropractor may use diagnostic ultrasound equipment for the purposes of neuromuscular skeletal diagnosis. Some functions (e.g. surgery, obstetrics or delivering a human child, dentistry, optometry, use of any drug or medicine in materia medica; ultrasound on a fetus, mammography) are specifically excluded from the authority of chiropractors.<sup>45</sup></p>
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<sup>43</sup> The course of instruction completed by the applicant shall consist of no less than the following minimum hours: Anatomy, including embryology, histology and human dissection (616 hrs); Physiology (must include laboratory work) (264 hrs); Biochemistry, clinical nutrition and dietetics (264 hrs); Pathology, bacteriology, and toxicology (440 hrs); Public health, hygiene and sanitation, and emergency care (132 hrs); Diagnosis, including E.E.N.T. and serology, dermatology and sexually transmitted diseases, geriatrics, X-ray interpretation, and neurology (792 hrs); Obstetrics, gynecology, and pediatrics (132 hrs); Principles and practice of chiropractic to include chiropractic technique, chiropractic philosophy, orthopedics, X-ray technique, and radiation protection (430 hrs); Clinic, including office procedure (518 hrs); Physiotherapy (120 hrs); Psychiatry (32 hrs); Electives (660 hrs); Total: 4400 hours.

<sup>44</sup> CA Code of Regulations Title 16 § 349. Although the regulations note that the California Chiropractic Board examination may cover the laws and regulations governing the practice of chiropractic and/or “other subjects as taught in chiropractic schools or colleges”, the current study guide for the “Chiropractic Law and Professional Practice Exam” exam covers only laws and regulations: <http://www.chiro.ca.gov/examdates/STUDYGUIDEFORLPPE.pdf>.

<sup>45</sup> State of California Board of Chiropractic Examiners. Laws and Regulations Relating to the Practice of Chiropractic. CA Code of Regulations Title 16 §§ 302 - 302 (a)(4).

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Dentistry</b>	May vary by school but generally includes high school diploma and 60 semester units from an accredited college or university.	Dental Admission Test (DAT) (nationally administered test of natural sciences (biology, chemistry, organic chemistry); perceptual ability; reading comprehension; and quantitative reasoning)	Graduation from dental school accredited by the Commission on Dental Accreditation of the American Dental Association. Program must be 4 years; specific courses of didactic curriculum not defined but mix of general and specific competency and skill areas defined. Clinical experience requirements integrated into overall curriculum standards; 14 skill outcomes defined. <sup>46</sup>	None	Passage of 1) National Board Dental Examination Parts I, II, II 2) California Clinical Exam 3) California Law Exam 4) Ethics exam <sup>47</sup>	The diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. <sup>48</sup>

<sup>46</sup> American Dental Association; Commission on Dental Accreditation of the American Dental Association.

<sup>47</sup> Dental Board of California; American Dental Association

<sup>48</sup> CA B&P § 1625

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Medicine (MD surgeons and physicians)</b>	A broad education, including the humanities & social sciences, and premedical courses “deemed essential preparation for completing the medical school curriculum”. Schools generally require a 4-year degree; specific courses vary by school but usually include biology, mathematics, chemistry, physics, English <sup>49</sup>	Medical College Admission Test (MCAT) (nationally administered test of basic sciences, reading and writing abilities, and problem-solving skills)	Diploma from medical school accredited by the Liaison Committee on Medical Education (LCME) of the Coordinating Council on Medical Education. <sup>50</sup> Education must be minimum 4000 hours over 4 academic years (130 weeks of instruction), <sup>51</sup> including 72 weeks of clinical training <sup>52</sup>	Satisfactory completion of at least one year postgraduate training, which includes at least four months of general medicine, in an Accreditation Council on Graduate Medical Education (ACGME) - approved postgraduate training program. <sup>53</sup>	Successful passage of United States Medical Licensing Examination (USMLE) Steps 1-3 <sup>54</sup>	Authorized to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions. Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being [otherwise] authorized ...is guilty of a public offense... <sup>55</sup>

<sup>49</sup> LCME <http://www.lcme.org/functions2004february.pdf>; AAMC <http://www.aamc.org/students/considering/gettingin.htm>, accessed 2/25/04

<sup>50</sup> California Code of Regulations Title 16 § 1314.

<sup>51</sup> Curriculum for all medical license applicants shall provide for adequate instruction in: alcoholism and other chemical substance dependency, detection and treatment; anatomy, including embryology, histology, and neuroanatomy,; anesthesia; biochemistry; child abuse detection and treatment; dermatology; geriatric medicine; human sexuality; medicine, including pediatrics; neurology; obstetrics and gynecology; ophthalmology; otolaryngology; pain management and end-of-life care; pathology, bacteriology, and immunology; pharmacology; physical medicine; physiology; preventive medicine, including nutrition; psychiatry; radiology, including radiation safety; spousal or partner abuse detection and treatment; surgery, including orthopedic surgery; therapeutics; tropical medicine; urology (CA B& P § 2089 (b))

<sup>52</sup> Instruction in the clinical courses shall total a minimum of 72 weeks in length. Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry. (CA B& P § 2089.5 (b) – (c))

<sup>53</sup> CA B&P § 2096; CA Code of Regulations Title 16 § 1321

<sup>54</sup> CA Code of Regulations Title 16 § 1328.

<sup>55</sup> CA B&P §§ 2051-2052(a)

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Naturopathic Doctors</b>	Three-quarters of the credits required for a bachelor's degree from an accredited college or university <sup>56</sup>	None	Degree or diploma based on a minimum of 4100 total hours in basic and clinical sciences, naturopathic philosophy, naturopathic modalities, and naturopathic medicine. Of the total hours, not less than 2500 shall be in academic instruction and not less than 1200 shall be in supervised clinical training <sup>57</sup> . Program must be accredited by the Council on Naturopathic Medical Education, which requires 12 quarters minimum length and specifies some core courses but	None	Passage of the Naturopathic Physicians Licensing Examination (NPLEX) <sup>59</sup>	“Naturopathic medicine” means a distinct and comprehensive system of primary health care practiced by a naturopathic doctor for the diagnosis, treatment, and prevention of human health conditions, injuries, and disease. <sup>60</sup> Naturopathic doctors may order and perform physical and laboratory examinations for diagnostic purposes...; may order diagnostic imaging studies, including X-ray, ultrasound..., but shall refer the studies to an appropriately licensed health care professional to conduct the study and interpret the results; may dispense, administer, order, and prescribe or perform the following: food, extracts of food, nutraceuticals, vitamins, amino acids, minerals, enzymes, botanicals and their extracts, botanical medicines, homeopathic medicines, all dietary supplements and nonprescription drugs as defined by the Food, Drug and Cosmetic Act, hot or cold hydrotherapy; naturopathic physical medicine inclusive of the manual use of massage, stretching, resistance, or joint play examination but exclusive of small amplitude movement at or beyond the end range of normal joint motion; electromagnetic energy; colon hydrotherapy; and therapeutic exercise; devices...; health education

<sup>56</sup> CA B&P § 3623 (a)

<sup>57</sup> CA B&P § 3623 (a) (2)

<p><b><i>Naturopathic doctors</i></b> <i>(continued)</i></p>			<p>focuses mainly on values and competency areas. Clinical experience must be 1200 clock hours minimum; no more than 20% in observation; minimum of 60% in patient care; minimum of 70% supervised by faculty licensed as N.D.<sup>58</sup></p>			<p>and health counseling; repair and care incidental to superficial lacerations and abrasion, except suturing; removal of foreign bodies located in the superficial tissues. A naturopathic doctor may utilize routes of administration that include oral, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, and intramuscular.<sup>61</sup> A naturopathic doctor may furnish or order drugs under standardized procedures approved by a supervising physician and surgeon.<sup>62</sup> Some functions (e.g. anesthesia, surgery, acupuncture) are also listed as not within the authority of a naturopathic doctor.<sup>63</sup></p>
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<sup>58</sup> Council on Naturopathic Medical Education

<sup>59</sup> CA B&P § 3631

<sup>60</sup> CA B&P § 3613 (c)

<sup>61</sup> CA B&P § 3640

<sup>62</sup> CA B&P § 3640.5

<sup>63</sup> CA B&P § 3642

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Nurse Practitioner</b> categories of specialization include: adult nurse practitioner, pediatric nurse practitioner, obstetrical-gynecological nurse practitioner, and family nurse practitioner <sup>64</sup>	[no undergraduate prerequisites but applicant must have active licensure as a registered nurse (RN) in California]	None	Initial nursing (RN) training must be done at a CA BRN-approved program. 3 routes available for NP: 1) Completion of an NP Academic Program of study conforming to BRN standards; <sup>65</sup> 2) Certification by a national or state organization with standards equivalent to board standards; 3) Completion of a non-approved program plus verification of clinical competency and experience.	[incorporated into the Nurse Practitioner Academic Program, which must be completed after having first completed nursing training and obtained an RN license]	Passage of the National Council Licensure Examination (NCLEX-RN) required for RN. No specific examination required for nurse practitioners.	Nurse practitioners function within the scope of practice as specified in the Nursing Practice Act (CA B&P § 2725 <i>et seq.</i> ) but also may furnish or order drugs or devices when done so in accordance with standardized procedures or protocols developed by the nurse practitioner and the supervising physician and other standards are met. <sup>66</sup>

<sup>64</sup> CA Code of Regulations Title 16 § 1481. In addition to certifying nurse practitioners, the California Board of Registered Nurses recognizes and certifies the following advanced practice nurse professions: clinical nurse specialist, nurse anesthetist, nurse midwife, and psychiatric mental health nurse.

<sup>65</sup> Regulatory standards require that programs be comprised of not less than 30 semester units (including theory and minimum 12 semester units of supervised clinical practice), have as primary purpose the preparation of registered nurses who can provide primary health care and curriculum including normal growth and development; pathophysiology; interviewing and communication skills, eliciting, recording and maintaining a developmental health history; comprehensive physical examination; psycho-social assessment; interpretation of laboratory findings; evaluation of assessment data to define health and developmental problems; pharmacology; nutrition; disease management; principles of health maintenance; assessment of community resources; initiating and providing emergency treatments; nurse practitioner role development; legal implications of advanced practice; and health care delivery systems. CA Code of Regulations Title 16 § 1484.

<sup>66</sup> CA B&P § 2836.1

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Optometry</b>	High school graduation. Accreditation Council on Optometric Education requires that accredited programs require applicants to have completed 3 years of post-secondary education in an accredited institution. Admissions standards vary but usually include biology, chemistry, organic chemistry, physics, microbiology, English, college mathematics plus social sciences and humanities. <sup>67</sup>	The Optometry Admissions Test, required by all ACOE-accredited schools, measures general academic ability and comprehension of scientific information. <sup>68</sup>	Optometric Doctorate (OD) degree issued by a school/college accredited by the board <sup>69</sup> . The 19 California Board-accredited schools/colleges are the same 19 accredited by the Accreditation Council on Optometric Education of the AOA. <sup>70</sup> OD programs are 4 years long. (candidates for licensure who graduated prior to specified dates must meet additional diagnostic drug education and exam requirements <sup>71</sup> )	None	Successful passage of National Board of Examiners in Optometry (NCEO) Part I (basic science), Part II (clinical science), and Part III plus Successful passage of the California State Board of Optometry's Laws and Regulations examination (administered by NBEO in conjunction with administration of their Part III exam) <sup>72</sup>	The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and includes examining the human eye, determining powers or range of human vision, prescribing optical devices, prescribing of contact and spectacle lenses, use of topical pharmaceutical agents for examination purposes. Optometrists who are certified to use therapeutic pharmaceutical agents (requiring additional education and testing requirements) may use specified therapeutic pharmaceutical agents and may diagnose and treat a number of specified conditions of the eye. <sup>73</sup>

<sup>67</sup> CA B&P § 3050; Accreditation Council on Optometric Education of the American Optometric Association. Accreditation Manual: Professional Optometric Degree Programs. 10/02. Accessed at <http://www.aonet.org/eweb/Documents/ODManual102002.pdf> 3/22/04; Association of Schools and Colleges of Optometry. [http://www.opted.org/info\\_faq.cfm#1](http://www.opted.org/info_faq.cfm#1)

<sup>68</sup> Association of Schools and Colleges of Optometry. [http://www.opted.org/info\\_faq.cfm#1](http://www.opted.org/info_faq.cfm#1)

<sup>69</sup> California Board of Optometry. Becoming a Licensed Optometrist in California <http://www.optometry.ca.gov/licenses.htm>

<sup>70</sup> American Optometric Association web site <http://www.aonet.org/eweb/DynamicPage.aspx?site=AOAstage&WebCode=CareerGuidance> and California Board of Optometry web site <http://www.optometry.ca.gov/licensurepacket.pdf>

<sup>71</sup> CA Code of Regulations § 1562; California Board of Optometry. Becoming a Licensed Optometrist in California <http://www.optometry.ca.gov/licenses.htm>

<sup>72</sup> California Board of Optometry. Becoming a Licensed Optometrist in California <http://www.optometry.ca.gov/licenses.htm>

<sup>73</sup> CA B&P §§ 3041-3041.3

	Undergraduate prerequisites	Pre-Professional school exam	Professional Education	Postgraduate Training	Pre-licensure examination	Scope of Practice
<b>Podiatry</b>	Completion of courses and programs demonstrating a balanced undergraduate experience, including a minimum of 90 semester hours or equivalent of baccalaureate credit earned in accredited	Medical College Admission Test <sup>75</sup>	Graduation from an approved school or college of podiatric medicine (four academic years, or 32 months of actual instruction for a minimum of 4,000 hours); <sup>76</sup> approval consists of accreditation by the Council on Podiatric Medical	Successful completion of 12 months of approved residency program that conforms with the ACGME's Institutional Requirements of the Essentials of Accredited Residencies in Graduate	Pass all sections of parts I, II and III of the National Board of Podiatric Medical Examiners (NBPME) <sup>79</sup>	The diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot. <sup>80</sup> Passage of the Board of Podiatric Medicine's oral clinical examination on or after January 1, 1 984 or passage of NBPME's Part III examination authorizes licensed podiatrists to perform ankle surgery.

<sup>74</sup> Council of Podiatric Medical Education CPME 120: Standards and Requirements for Accrediting Colleges of Podiatric Medicine. Standard 5. A. (<http://www.apma.org/CPME/cpme120.htm>)

	institutions. <sup>74</sup>		Education plus written documentation that the program meets California law and regulations <sup>77</sup>	Medical Education; is accredited by the CPME and complies with California statutory and regulatory requirements <sup>78</sup>		<sup>81</sup>
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<sup>75</sup> Council of Podiatric Medical Education CPME 120: Standards and Requirements for Accrediting Colleges of Podiatric Medicine. Standard 5. A. (<http://www.apma.org/CPME/cpme120.htm>)

<sup>76</sup> CA B&P § 2483 (a)

<sup>77</sup> California Code of Regulations Title 16, Division 13.9 § 1399.662

<sup>78</sup> CA B&P § 2475.3; California Code of Regulations Title 16, Division 13.9 §§ 1399.667-1399.668

<sup>79</sup> CA B&P § 2486 (b)

<sup>80</sup> CA B&P § 2472 (b)

<sup>81</sup> CA B&P § 2472; CA Code of Regulations Title 16, Division 13.9 § 1399.668.1

