California Medical Association
Physicians dedicated to the health of Californians

September 25, 2003

Little Hoover Commission
Acupuncture Regulation Subcommittee
925 "L" Street, Suite 205
Sacramento, CA 95814

Members of the Subcommittee:

Thank you for inviting the California Medical Association (CMA) to testify before the Commission concerning its inquiry into the appropriate education and training and scope of practice of acupuncturists in California. We appreciate the opportunity and commend the Commission for its effort to understand the important work of acupuncturists and to distinguish their practice from that of physicians in California. As a pain management specialist, I personally value acupuncture as an adjunct to my practice. I apologize for being unable to testify in person on September 25, but I had a prior commitment that prevents me from doing so.

The CMA believes that acupuncturists play an important role in health care. Physicians in California frequently refer patients to acupuncturists, particularly in the area of pain management, and we look with great interest toward the results of many studies currently attempting to clarify what benefit acupuncture may provide of such conditions as asthma, addiction, stroke rehabilitation and others. To that end it should be stressed that when, and under what circumstances, acupuncture is a desirable and effective treatment modality is still in debate. Indeed, the NIH Consensus Development Panel on Acupuncture received data from twenty-five experts in the field and reviewed an extensive bibliography of 2302 references and concluded:

> Although there have been many studies of its potential usefulness, many of these studies provide equivocal results because of design, sample, size and other factors. The issue is further complicated by inherent difficulties in the use of appropriate controls, such as placebos and sham acupuncture groups.[1]

Having said that, we do not believe that acupuncturists are sufficiently trained or legally authorized to act as "primary health care providers" in the sense that term is widely understood in the current managed care environment. Particularly given the holistic philosophical structure of acupuncture, we do not believe it is appropriate to suggest that acupuncturists can "diagnose" disease in the sense that word is understood in medicine. Furthermore, medical school training in the U.S. is nationally accredited and is accepted by every medical board in the country for licensure. The standards for admission to acupuncture schools are not comparable to those for medical schools, and even if they were, would not justify transforming acupuncture into a health profession capable of independently diagnosing or treating conditions that require medical treatment. Nor is any acupuncture curriculum currently in existence or proposed equivalent to

[1] *See* JAMA, November 4, 1998, Vo. 280, No. 17, *NIH Consensus Development Panel on Acupuncture*.

the training received by medical school students, and it cannot be made so by adding hours to the curriculum.

California's Licensure Scheme Governing Health Professionals

California's Legislature has set up critical licensure distinctions governing the provision of health services by the various health professionals. In doing so, the Legislature granted physicians and surgeons a plenary license to practice medicine, which gives them unrestricted authority "to use drugs or devices in or upon human beings and to sever and 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." (Business & Professions Code §2051.) The Legislature granted the remaining 28 health professions licensed pursuant to Division 2 of the Business & Professions Code a "limited" license to practice only an aspect of medicine in light of the (1) different scope of services that these health professionals perform, (2) limited training and experience that these professionals are required to receive in order to be licensed, and (3) different philosophic approaches to treatment.[2] In light of these differences between physicians and the other practitioners that are able to provide care to patients, the Legislature has carefully set forth restrictions on the latter's scope of practice to insure that the different philosophical structures between the professions are maintained, that the public is not confused about these professionals' roles vis-à-vis their own health care, and that the public health is protected. These legislative distinctions are presumed valid.[3]

Primary Care Physicians

[2] Thus, because the practice of psychology involves the application of mental (as opposed to biologic) processes, psychologists are precluded from the application of physical instrumentalities in their practices, such as prescribing drugs, performing surgery, or administering electro-convulsive therapy. (Business & Professions Code §2904.) Psychologists are licensed to render "psychological services" which has been defined as "the science of mind or of mental phenomena and activities; a method of obtaining knowledge about the mental processes." (Citations omitted.) (66 Ops.Cal.Atty.Gen. 302 (1983).) In light of this definition, the Attorney General previously clarified Section 2903 of the Business & Professions Code was interpreted as being concerned only with "mental as opposed to physical or organic matters." (*Id*.) As the Attorney General opined:

> Accordingly, we do not believe the Legislature ever intended the practice of licensed psychology to include the diagnosis and treatment of either (1) physical or organic disorders by means of physical or nonphysical instrumentalities; or (2) *mental disorders* by investigations and analyses of the body's organic as opposed to mental processes (citation omitted). Those endeavors, which would constitute the practice of medicine, would have to be performed by licensed physicians and surgeons (citations omitted) who are proficient in performing them and have been authorized by statute to do so.

[3] *See Brandwein v. California Board of Osteopathic Examiners* (9th Cir. 1983) 708 F.2d 1466 (stating that in a legislative classification challenge, a plaintiff must prove that the facts on which the Legislature may have relied "could not reasonably be conceived to be true *Brandwein v. California Board of Osteopathic Examiners* (9th Cir. 1983) 708 F.2d 1466 (stating that in a legislative classification challenge, a plaintiff must prove that the facts on which the Legislature may have relied "could not reasonably be conceived to be true by the governmental decisionmaker" and that even "arguable" facts are enough to justify the legislative judgment); *see also National Association for the Advancement of Psychoanalysis v. California Board of Psychology* (9th Cir. 2000) 228 F.3d 1043 (holding that California's mental health licensure laws did not implicate any fundamental rights and was rationally related to California's interests in protecting the mental health and safety of its citizens after determining that the licensing scheme had a "conceivable basis" on which it "might survive rational basis scrutiny").

Under most managed care models in the United States, patients have a "primary care" physician (in California this will be an internist, family and general practitioner, or ob/gyn). Based on their broad knowledge of medicine, these individuals provide patients with the first line of care and are responsible for recognizing, treating and monitoring diseases or conditions that do not require other specialized training and experience for treatment. The care that rests with the primary care physician includes diagnosis and treatment of diseases or conditions that have serious consequences if not treated appropriately, such as diabetes, high blood pressure, infections and the like. The role of the primary care provider is not simply diagnosis and referral. Treatment of disease and injury are basic to the role of the primary care provider, which in the United States generally and California in particular, requires direct or supervisory involvement of a licensed physician and surgeon.

Beyond primary diagnosis and treatment, primary care physicians are trained in medical schools and residencies with significantly higher admissions standards and more rigorous curriculum and practice demands than acupuncturists experience, including clinical experience in history and physical, laboratory and diagnostic testing and disease management, that enable primary care physicians to diagnose conditions or diseases that require more specialized care and treatment and to refer patients to appropriate specialists. Furthermore, the primary care physician frequently manages the care recommended by a specialist increasing their understanding of disease symptoms, progress and process.

These are not the competencies or philosophical structures of acupuncturists.

Medical Diagnosis

To "diagnose" is a term of art in medicine different from its sense in ordinary language of recognizing a problem and formulating a plan to solve that problem. Every person diagnoses many things in the ordinary sense of that word to solve problems in work or daily life. However, to diagnose a medical condition may require a complex analysis of symptoms and biological systems, and, among health care practitioners, that activity has traditionally been reserved to physicians and surgeons who have the highly specialized training necessary to those complex tasks. Clearly, ordinary people "diagnose" colds, flu and other simple conditions for themselves and their families. The law, however, does not allow such individuals to hold themselves out to the public and be paid as medical diagnosticians. And, appropriately, the law does not confer that authority on acupuncturists who, while they have training in acupuncture and in general principles of Western medical science, do not have the extensive undergraduate, graduate or clinical training that is necessary to engage in sophisticated medical analysis that has been deemed fundamental to medical diagnosis.

Physician & Surgeon Training

Medical Doctorate and Medical Licensing Requirements[4]

4-year undergraduate degree with emphasis in basic science
?Average GPA 3.6
Medical College Admission Test
? 5.75 hours testing in physical sciences, verbal reasoning, biological sciences and writing
?51% of applicants do not matriculate to medical school
4 years post-graduate medical school training (B&P Code Section 2089)
?4,000 hours (chemical dependency, anatomy [including embryology, histology and neuroanatomy], biochemistry, child abuse detection and treatment, dermatology, geriatric medicine, human sexuality, medicine [including pediatrics], neurology, ob/gyn, ophthalmology, otolaryngology, pain management & end-of-life care, pathology, bacteriology, immunology, pharmacology, physical medicine, physiology, preventive medicine, nutrition, psychiatry, radiology & radiation safety, spousal or partner abuse detection and treatment, surgery, therapeutics, tropical medicine, urology)
Residency training
?1 year for licensure.[5]
? 3,000+ training hours per each year of post-graduate residency
?Three to nine years for board certification, depending on specialty. ?Internal Medicine and Family Practice board certification = 3 years.
?In California somewhere between 71% and 90%[6] of licensed physicians are board certified.

Philosophical Structure of Acupuncture

California's Legislature has properly recognized that the core of acupuncture involves a "holistic" approach. (Business & Professions Code §4926.) According to the Journal of the American Medical Association:

> ACUPUNCTURE is a component of the health care system of China that can be traced back for at least 2500 years. The general theory of acupuncture is based on the premise that there are patterns of energy flow (Qi) through the body that are essential for health.

[4]Information on GPA and MCAT and medical college matriculation can be found at http://www.aamc.org/students/mcat/start.htm

[5] In California medical schools, residents are required to be licensed after the first year of residency.

[6] According to the Medical Board of California (MBC), its recent post-graduate training study (due for publication soon) estimates 71% of licensees are Board certified. The MBC believes their data underestimates the actual number due to a conservative interpretation of data available to them. The MBC indicates that the American Board of Medical Specialties (ABMS) estimates board certified licensees at 90%, a number MBC believes is somewhat inflated, due to a liberal interpretation of ABMS data.

> Disruptions of this flow are believed to be responsible for disease. Acupuncture may correct imbalances of flow at identifiable points close to the skin.[7]

This system of practice takes into consideration the system as a whole and is based on discerning harmony within the body. To accomplish the goals of acupuncture, the California Legislature provided acupuncturists with limited authority to practice acupuncture and "to perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plants, animal and mineral products, and dietary supplements" (but not dangerous drugs). (Business & Professions Code §4937.)

This scope properly reflects the philosophical structure of acupuncture and ensures that the carefully crafted distinctions set up by the Legislature are maintained.

Scope of Practice and Increased Training for Acupuncturists

Current training for acupuncturists is consistent with their current scope of practice as described in The Acupuncturists Practice Act. Expanding acupuncture school training in "Western Medicine" is both inappropriate to that scope of practice and inadequate to prepare non- MD acupuncturists to diagnose or refer to Western medical practitioners. The suggestion has been made that an acupuncture school can simply increase training hours to 4,000, (to be called "doctoral training"), and that would be sufficient to prepare acupuncturists to serve as primary care providers, to make appropriate medical diagnoses and to refer patients with serious medical conditions to physicians for follow-up.

Acupuncture schools are not medical schools. They teach from a different philosophical bent. The admissions standards are significantly lower and neither the training nor the curriculum is designed to match that of accredited medical schools in the United States. Even if acupuncture schools can achieve American Council of Graduate Medical Education (ACGME) accreditation, the training will remain inadequate to the ambitions of acupuncturists who urge a change in their scope of practice to include primary care and diagnosis. This training would not change the acupuncturists "deep structure" which is not rooted in the medical tradition and thus would not equip acupuncturists to become primary care providers.

Consumer Protection

Californian citizens trust that the State will carefully scrutinize and appropriately regulate the individuals it licenses to provide services to them. It is important that this committee assure that consumers are not misled to believe that acupuncturists can provide them either with medical care or medical evaluation for which acupuncturists are neither adequately trained nor orientated , or for which there still remains considerable debate. This is of concern both for consumers who have experience with traditional Chinese medicine in China and may believe that acupuncturists in California are similarly trained and for those who have experience with Western medicine and may believe that acupuncturists are trained equivalent to primary care physicians.

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[7] *See* JAMA, November 4, 1998, Vol. 280, No. 12, *NIH Consensus Development Panel on Acupuncture*.

Conclusions

The collaboration of western medicine with acupuncture appears to be a desirable goal. To that end, it is critical that consumers not be misled into believing that acupuncture serves as a substitute for medicine. Under these circumstances, CMA believes there should be statutory amendments clarifying that acupuncturists cannot and do not serve as primary care providers, ensuring that consumers are aware of the differences between acupuncture and western medicine, and any limitations thereof, and requiring appropriate referral to a physician when indicated.

Thank you for considering this commentary. We would be happy to discuss any of these matters further with you.

Sincerely,

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Chair, CMA Council on Legislation