

STATE OF CALIFORNIA

**Memorandum**

To:

Acupuncture Committee

From: Department of Consumer Affairs

Legal Office

Subject: Performance of Acupuncture by Other Healing Arts Professionals

You have received an inquiry concerning whether other licensed healing arts professionals may perform acupuncture. You have requested a legal opinion on the following questions which we have restated as follows:

1. Is a physician authorized to practice acupuncture without having to pass an examination which demonstrates his or her competency in acupuncture?
  2. May a physical therapist or registered nurse perform acupuncture under a physician's supervision?
  3. Section 4947 of the Business and Professions Code authorizes dentists and podiatrists to practice acupuncture if they have completed a course of instruction in acupuncture.
- A. Do the Dental and Podiatry Boards regulate the study of acupuncture by their licensees?
  - B. If so, what standards are used for acupuncture training and are such standards set in consultation with the Acupuncture Committee ("Committee") or any other knowledgeable body of oriental medicine practitioners.
  - C. If these boards do not regulate the study and practice of acupuncture by their licensees, why is it not done?

All section references used herein are to that code unless otherwise indicated.

Date: June 30, 1994  
Telephone: (916) 445-4216  
ATSS: 8-485-4216  
FAX: (916) 323-0971

CONCLUSIONS

1. A physician is authorized to practice acupuncture without having to pass an examination which demonstrates his or her competency in acupuncture.

2. A registered nurse may perform acupuncture under the supervision of a physician provided that the both the physician and the nurse are each competent in the practice of acupuncture. A physical therapist is not authorized to practice acupuncture under the supervision of a physician.

3. A. The Dental and Podiatry Boards regulate the study of acupuncture by their licensees.  
B. The Dental and Podiatry Boards have established regulations which specify the course of instruction to be completed by their respective licensees as precondition for their practice of acupuncture.

ANALYSIS

Physicians

Section 2051 defines the scope of practice for a physician as follows:

"The physician's and surgeon's certificate authorizes the holder 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."

Acupuncture is defined by section 4927 to mean the stimulation of 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. Acupuncture includes the techniques of electroacupuncture, cupping and moxibustion. The definition found in section 2051 is broad and comprehensive. The practice of acupuncture would fall within a physician's scope of practice as defined in section 2051. There is no further requirement that a physician demonstrate his or her competency to practice acupuncture prior to rendering acupuncture services. Of course, to the extent that a physician was grossly negligent or incompetent while rendering acupuncture, he or she could be charged with unprofessional conduct under section 2234.

Registered Nurses

We next consider whether a registered nurse may perform acupuncture under the supervision of a physician. In determining whether a registered nurse may lawfully perform acupuncture treatment under the supervision of a physician, we examine the authority granted to registered nurses under the Nursing Practice Act. Section 2725 defines the scope of practice for nurses, in relevant part, as follows:

"...The practice of nursing within the meaning of this chapter means those functions, including basic health care, which help people cope with difficulties in daily living which are associated with their actual or potential health or illness problems or the treatment thereof which require a substantial amount of scientific knowledge or technical skill, and includes all of the following:"

\* \* \*

"(b) Direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment, disease prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician, dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety Code."

Based upon the definition of acupuncture, as cited above, it is clear that acupuncture can be considered a therapeutic agent. The Attorney General's Office has opined that the authority granted under section 2725(b) "is limited to orders by the doctor on an individualized patient basis and is based on the doctor's judgment as to the treatment necessary for a particular patient. Once the doctor has evaluated the patient's condition there is nothing in the statute which would limit the orders which the doctor might give a nurse as to the kind of medications and therapeutic agents to use to implement a course of treatment." (b) 67 Cal. Atty. Gen. Ops 122,139 (1984) Section 2725, subdivision would appear to authorize a registered nurse to administer acupuncture treatments ordered by a physician.

However, section 2725(b) requires that the ordered therapeutic agent be within the scope of licensure of physician. As discussed above, the practice of acupuncture is technically included within the practice of medicine and a physician is legally authorized to practice acupuncture. While a physician is legally authorized to practice acupuncture, the physician must also be competent to practice acupuncture. We believe it would

be a departure from the standard of care if a physician were to order a nurse to administer acupuncture and the physician did not possess the knowledge and skill of acupuncture to direct and supervise the nurse. In determining whether the physician has the requisite skills in acupuncture, a court would consider whether the use of acupuncture is consistent with the physician's specialty or usual and customary practice and his or her prior training and experience. In addition, we believe that a physician would be departing from the standard of care if he or she were to order a nurse to perform acupuncture where the nurse is not competent to perform acupuncture. In assessing a nurse's competency to perform acupuncture tasks assigned by a physician, consideration should be given to the nurse's education, training and experience.

### Physician Therapist

With regard to whether a physician therapist may provide acupuncture under the supervision of a physician, we examine section 2620 which defines the scope of practice for physician therapist:

"Physician 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 radioactive materials, for diagnostic and therapeutic purposes, 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)

In addition, section 2620.5 authorizes a physical therapist, under limited circumstances, to perform tissue penetration. That section provides in relevant part as follows:

"A physical therapist may, upon specified authorization of a physician and surgeon, perform tissue penetration for the purpose of evaluating neuromuscular performance as part of the practice of physical therapy..."

In comparing the scope of practice for a physical therapist with the four acupuncture modalities which require licensure, (i.e., needling, electroacupuncture, cupping and moxibustion), we start with acupuncture techniques of needling and electroacupuncture.

Both needling and electroacupuncture involve the insertion of needles into the body to stimulate acupuncture points. A physical therapist is authorized to penetrate tissue only for an evaluative rather than therapeutic purpose. The acupuncture techniques of needling and electroacupuncture involve the penetration of tissue for therapeutic purposes. Therefore, a physical therapist is not authorized under his license to perform needling or electroacupuncture.

Cupping is a therapy involving vacuum suction to stimulate acupuncture points. Specifically, a vacuum is created in the cup by either heating the air in the cup or by a vacuum pump. The cup is quickly applied to the body surface creating a suction contact causing the local vasodilation and mechanical expansion of the underlying tissue which stimulate the acupuncture points under the cup region. There is no modality or procedure specified within section 2620 which authorize a physical therapist to perform cupping.

Moxibustion involves the application of heat to acupuncture points by burning moxa. It involves either the direct application of heat without direct contact of the moxa to the skin to produce heat penetration and permeation of the skin and muscle at an acupuncture point or acupuncture meridian. Physical therapists are authorized to use heat as part of their physical therapy regime. The heat used in physical therapy is created through infra-red radiation, through conduction (as in whirlpools and through inductive electrical current (as in diathermy). The use of heat in physical therapy is for rehabilitation of any bodily or mental condition of a person. That is, heat is used as a general rehabilitative treatment. In acupuncture, moxibustion uses heat for the purpose of stimulating an acupuncture point. We believe that since the use of heat by a physical therapist is not directed at the stimulation of an acupuncture point, a physical therapist is not authorized under his or her license to practice moxibustion.

Thus, a physical therapist does not possess the authority under his or her license to practice acupuncture.

We next consider whether a physical therapist may perform acupuncture tasks under the supervision of a physician. Section 2621 provides as follows:

"Nothing in this chapter shall be construed as authorizing a physical therapist to practice medicine, surgery, or any other form of healing except as authorized by section 2620."

Section 2620 does not authorize a physical therapist to perform upon the order of a physician, tasks which fall outside of the physical therapy scope of practice. Therefore it is our opinion that a physical therapist is not authorized to perform acupuncture either independently or under the supervision of a physician.

### Dentists and Podiatrists

Section 4947 authorizes a dentist or podiatrist to practice acupuncture if they have completed a course of instruction. It provides, in part, as follows:

"(a) Nothing in this chapter shall be construed to prevent the practice of acupuncture by persons licensed as a dentist or a podiatrist, within the scope of their respective licenses, if the licensee has received a course of instruction in acupuncture. This course material shall be approved by the licensing board having jurisdiction over the licensee. The committee shall assist the licensing boards in providing information as requested by the individual licensing boards."

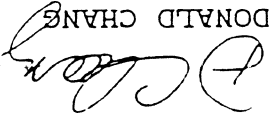
In accordance with this section the Board of Dental Examiners ("Dental Board") adopted as a regulation section 1064 of Title 16, CCR. This regulation authorizes a dentist to practice acupuncture as part of his or her practice of dentistry after completing an acupuncture course of instruction which consists of at least 50 hours of didactic instruction and 30 hours of clinical training. The course must include instruction in the following subjects: 1) theoretical foundation of acupuncture, with emphasis on current physiological concepts as they relate to traditional Chinese medicine; 2) acupuncture anatomy and physiology; 3) acupuncture techniques, including instruction in the use of needling techniques; moxibustion, electroacupuncture and other noninvasive techniques for stimulating acupuncture points; precautions (e.g. sterilization of needles); contraindications and complications, including adverse systemic effects; and 4) application of acupuncture to the practice of dentistry. In addition, each instructor shall be either a licensed acupuncturist or a dentist who has completed a course in acupuncture and has used acupuncture prior to July 1, 1982. The course of instruction must be obtained from a dental school approved by the Dental Board or from an acupuncture school approved by the Committee.

The Board of Podiatric Medicine ("Podiatry Board") has adopted as a regulation section 1399.672 of Title 16, CCR which authorizes a podiatrist to practice acupuncture as part of his or her practice of podiatry if he or she completes a course of instruction which

consist of at least 25 hours of training in the following areas:  
1) survey of traditional oriental medicine; 2) acupuncture points  
of the lower extremities; and 3) acupuncture techniques. The  
course of instruction must be obtained from a school of podiatric  
medicine approved by the Podiatry Board or an acupuncture school  
approved by the committee.

Therefore, both the Dental and Podiatry Boards regulate the  
course of instruction which is required of their licensees to  
practice acupuncture. It is noted that dentists and podiatrists  
may only practice acupuncture within the scope of their practice  
or license. Section 4947 does not authorize a dentist or  
podiatrist to practice acupuncture separate and apart from their  
respective license. In addition, to the extent that a dentist or  
podiatrist incorrectly uses acupuncture in his or her practice,  
he or she would be subject to discipline by his or her respective  
licensing board for negligence, repeated negligent acts or  
unprofessional conduct.

We trust that the foregoing is responsive to your inquiry.

DERRY KNIGHT  
Deputy Director  
Legal Affairs  
  
BY DONALD CHANG  
Staff Counsel