

**SUNSET REVIEW**

**ACUPUNCTURIST REGISTRATION**

**Submitted by  
The Colorado Department of Regulatory Agencies  
June 1991**

# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES  
Office of the Executive Director  
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Roy Romer  
Governor

May 15, 1991

The Honorable Bob Schaffer  
Joint Sunrise/Sunset Review Committee Chairman  
Room 348, State Capitol Building  
Denver, Colorado 80203

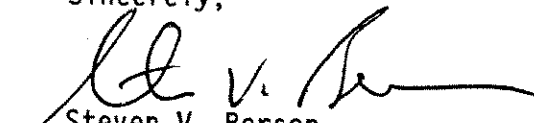
Dear Senator Schaffer:

We have completed our evaluation of the Acupuncture Registration Program and are pleased to submit this written report which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to section 24-34-104(21), Colorado Revised Statutes, which states in part:

The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section . . . . .  
The department of regulatory agencies shall submit a report and such supporting materials as may be requested, to the sunrise and sunset review committee, created by joint rule of the senate and house of representatives, no later than July 1 of the year preceding the date established for termination . . . . .

The report discusses the question of whether there is a need for the regulation provided under the Acupuncture Act pursuant to C.R.S. 12-29.5-101 et. seq., as amended. The report also discusses the effectiveness of the regulatory program in carrying out the intention of the statute and makes recommendations for statutory and administrative changes if the program is continued.

Sincerely,

  
Steven V. Berson  
Executive Director

SVB/pf  
Attachment

## EXECUTIVE SUMMARY

The Department of Regulatory Agencies has completed its review of acupuncturist registration in the Division of Registrations. The Department recommends that the regulation of acupuncturists continue.

The Department makes numerous recommendations to improve the effectiveness of the acupuncturist registration law. The Department recommends that the term "licensure" instead of "registration" be used to describe the authorization to practice. To further clarify the authorization to practice, the Department recommends that the requirement for registration in order to practice be qualified to allow acupuncturists to practice as physician extenders.

The Department is also recommending an exemption from registration requirements for students or trainees who are involved in an educational program. Currently these students cannot legally use needles unless they have completed their education and become registered.

The Department has made recommendations to amend registration and mandatory disclosure requirements. It is also recommended that the disciplinary section of the statute be amended to include more effective grounds for discipline.

The Department recommends that inspections no longer be done on a routine and mandatory basis, but on a complaint basis only. Current inspections have produced no evidence of problems with acupuncturists not being in compliance with the law. Inspections on a complaint basis will also be more cost-effective.

## 1991 SUNSET REVIEW OF ACUPUNCTURE REGISTRATION

### BACKGROUND

#### The Sunset Process

The registration of persons with the Director of the Division of Registrations in accordance with article 29.5 of title 12, C.R.S., otherwise known as the acupuncturist registration program shall be terminated on July 1, 1992, unless continued by the General Assembly (24-34-104(21)(b)(VIII)). During the year prior to this date, it is the responsibility of the Department of Regulatory Agencies to conduct an analysis and evaluation of the performance of the acupuncturist registration program pursuant to 24-34-104(9)(b).

During this review, the Director of the Division of Registrations must demonstrate that there is a need for the continued existence of the acupuncturist registration program, and that this regulation is the least restrictive regulation consistent with the public interest. The department's findings and recommendations are submitted to the Joint Legislative Sunrise/Sunset Review Committee of the General Assembly. (Statutory criteria used in sunset reviews may be found the Appendix.)

The sunset review process includes an analysis of the Colorado statute and rules, and research of related statutes and procedures in other states. A brief overview of the practice of acupuncture is also presented. The research process also includes interviews with staff, the Director of the Division of Registrations, and representatives of the profession.

## SUMMARY OF CURRENT STATUTE

The current statute, requiring the registration of acupuncturists, was passed by the General Assembly in 1989. It went into effect July 1, 1989, but acupuncturists were given until January 1, 1990 to comply. The Office of Acupuncturist Registration was established administratively by the Director of the Division of Registrations to carry out the functions of the act.

Definition Acupuncture is defined by Colorado statute as the insertion of needles into the human body by piercing the skin of the body at specific locations based on traditional oriental concepts of evaluation and treatment. (This does not mean that needles are the only component of acupuncture practice. Please refer to the discussion of the practice of acupuncture on page 5 for more information.)

Requirements for Registration In order to register, an acupuncturist must have successfully completed an education program for acupuncturists which conforms to standards approved by the Director of the Division of Registrations. Those qualifications can be the standards of a professional organization whose membership includes not less than one-third of the persons registered in the state. The qualifications can also be education, training, and experience which are substantially equivalent to those described above if accepted by the Director.

Every applicant has to disclose any act which would be grounds for disciplinary action. The information required to be contained in the written mandatory disclosure form must also be submitted to the Department.

Every applicant or registrant has to pay an annual registration fee established by the Director.

Mandatory Disclosure of Information to Patients Acupuncturists are required to provide certain disclosures to all of their patients. The disclosures include the following information:

- Name, business address and phone number;
- Fee schedule;
- Listing of education, experience, degrees, membership in a professional organization;
- Certificates or credentials related to acupuncture;
- Length of time required to obtain degrees or credentials;
- Statement identifying any license, certificate, or registration in the health care field which was revoked by any local, state, or national health care agency;

- Statement that the acupuncturist is complying with rules and regulations of the Department of Health, including those regarding the cleaning and sterilization of needles;
- Statement indicating that the practice of acupuncture is regulated by the Department of Regulatory Agencies along with the address and phone number of the Complaints and Investigations Section of the Division of Registrations.

Mandatory Inspection The Director has the duty to inspect acupuncture offices on a routine and mandatory basis to ensure compliance with rules and regulations promulgated. The purpose of inspection is also to ensure that acupuncturists are complying with Department of Health rules and regulations regarding the cleaning, sterilizing, and disposal of needles, and the sanitation of acupuncture offices.

Discipline The Director may take administrative action against an acupuncturist who fails to maintain a registration; fails to provide mandatory disclosure; fails to provide the information required or provides false information; fails to refer to an appropriate practitioner when the problem of the patient is beyond the competence of the acupuncturist; fails to comply with rules and regulations of the Department of Health; or fails to comply with the rules and regulations of the Director.

Administrative action can also be taken against an acupuncturist's registration for abuse of health insurance laws or for accepting or offering commissions and rebates for referrals. The Director also has administrative recourse against an acupuncturist in the case of sexual misconduct.

Penalties The act includes both civil and criminal penalties. A first violation is a Class 3 misdemeanor. A subsequent violation within three years after the date of conviction is a Class 5 felony. There are criminal penalties for sexual contact (Class 1 misdemeanor) and for sexual intrusion (Class 4 felony) during the course of patient care.

In civil actions, no action can be maintained by an acupuncturist against a patient for a breach of contract involving the rendering of acupuncture services if the acupuncturist has violated any of the prohibited acts under section 12-29.5-106(1). When an acupuncturist has violated any of the acts prohibited under section 12-29.5-106(1), the payment of any fees by a patient for services provided, as well as attorney fees, may be recovered in an action at law against the offending acupuncturist.

## SUMMARY OF CURRENT REGULATIONS

The Director has promulgated rules establishing the education, training, and experience requirements for registration as an acupuncturist.  
(4 CCR 738 - 1)

To become registered, an applicant must show current certification by the National Commission for the Certification of Acupuncturists (NCCA). An NCCA certification means that the acupuncturist has been certified by passing the NCCA's comprehensive written examination and given actual certification.

### Requirements for Becoming An Acupuncturist

According to the NCCA, an acupuncturist may become eligible to sit for the examination and become certified in several ways. One is to graduate from a school or college that can document an acupuncture program providing approximately 1,000 hours of entry level acupuncture education or at least 700 didactic hours and 300 clinical hours. This would constitute graduation from an approved school or college.

Another avenue of qualifying for the examination is to qualify for self-directed study. The person qualifying for the examination must demonstrate that this method of education is equivalent in time, content, and scope to formal schooling.

A third method of qualifying for the examination is through the completion of an apprenticeship. An apprentice is one who works with a tutor or preceptor who assumes the responsibility for the theoretical and practical education and training of the apprentice. An apprenticeship includes 4,000 contact hours under the direct supervision of the preceptor or tutor in no less than three years and no more than six years.

The preceptor's practice must include 500 patient visits in general health care practice per year. After the first year, the apprentice must be given increasing responsibilities in patient contact. This includes the final stages of diagnosis and treatment.

## THE PRACTICE OF ACUPUNCTURE

Section 12-29.5-103(1), C.R.S. defines acupuncture as the insertion of needles into the human body by piercing the skin of the body at specific locations based on traditional oriental concepts of evaluation and treatment. An acupuncturist is defined as a person providing acupuncture services.

According to the Colorado Acupuncture Association, acupuncture is based on an ancient Chinese system of medicine. Central to this system is the belief that illness is caused by some imbalance of energy in the body. This vital energy of the body or the body's life force travels along pathways called meridians. The organs of the body are interconnected in the delicate balance of energy. A blockage in the flow of this energy causes illness. When the body becomes ill, the acupuncturist may intercede with needles at certain points along the meridians to restore the balance of energy.

Moxibustion, the burning of mugwort or moxa above the skin at points on the body, and Chinese herbal therapy may be used in addition to, or instead of the insertion of needles during acupuncture treatments. Herbal therapy constitutes a large part of an acupuncturist's practice.

Defining the Practice in Other States Other states that regulate acupuncture have attempted to define acupuncture in terms more broad than the State of Colorado does. Those definitions can take in some or all of the "adjunctive therapies" mentioned above.

For example, Florida defines acupuncture as "a form of primary health care based on traditional Chinese medical concepts, 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. Acupuncture shall include, but not be limited to, the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body." (Chapter 457, Florida Statutes)

The State of Washington defines acupuncture as "a health care service based on a traditional Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes but is not necessarily limited to the following techniques:..." (Chapter 18.06, R.C.W.)

The techniques included in the statute are the use of acupuncture needles to stimulate acupuncture points and meridians; the use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians; moxibustion; acupuncture; cupping; dermal friction technique; infra-red; sonopuncture; laserpuncture; dietary advice based on traditional Chinese medical theory and point injection therapy.

## Uses of Acupuncture

Acupuncture has been commonly known for its ability to relieve pain. The Chinese have used such treatment for the past 2,000 or more years. A recent article in New Woman magazine (September 1990) reported the findings of a medical doctor whose research attributed pain relief to the release of endorphins which are hormones that are produced by the human body and responsible for pain relief.

The most recent success with the use of acupuncture has been in substance abuse treatment programs. Such programs have been successful in reducing cravings and other side effects of withdrawal.

One of the most notable programs in the country is the Lincoln Hospital Substance Abuse Program in the Bronx, New York. The program began in 1982 and has been a model for others. In an address to a Congressional committee in 1989, Michael O. Smith, M.D., D. Ac., Director of the Substance Abuse Program, provided testimony regarding the success of acupuncture in the treatment of substance abuse.

According to Dr. Smith, clients are referred from the criminal justice system. Successful treatment makes possible probation rather than incarceration. This impacts positively on jail and prison overcrowding and the costs of internment. "Crack" mothers with addicted infants left in hospitals have been successfully treated, saving the city more than \$3 million in "boarder baby" hospital costs and foster care costs in 1987.

Such programs around the country have been receiving public support for their efforts. The Boston Globe (March 27, 1989) reported that the State of Massachusetts was contributing public funds to pilot acupuncture/addiction projects. Similar reports of successes at detoxification and substance abuse clinics have been reported by the New York Times, the Minneapolis-St. Paul Star Tribune, and the Chicago Tribune.

Locally, the Rocky Mountain News (October 22, 1988) reported that persons in the Boulder County judicial system were being referred to participate in acupuncture treatments for offenses such as drunk driving and other alcohol related problems. Currently, the Alcohol Recovery Center operated by Boulder County Department of Health is involved in developing an acupuncture program for treatment of alcohol problems.

Another special use of acupuncture and traditional Chinese medicine is in the treatment of Acquired Immune Deficiency Syndrome (AIDS) and AIDS-Related Complex (ARC) patients. While there is no cure for AIDS, patients have been able to live longer and better handle the problems of the disease. A New York physician and acupuncturist, Naomi Rabinowitz, M.D., D.Ac., reported in 1987 (American Journal of Acupuncture, January-March 1987) that after treating AIDS patients since 1982 several benefits for these patients could be attributed to acupuncture.

Acupuncture treatment made patients calmer and more centered and better able to cope. It relieved symptoms such as debilitating fatigue,

impaired breathing and sinus drainage, night sweats, and swollen lymph nodes.

Similar successes were reported in East/West magazine (September 1990). Clinics are found around the country in cities such as Los Angeles, San Francisco, Long Beach, Chicago, New York, Boston, Portland, Austin, New Orleans, and Santa Fe.

## REGULATION IN OTHER STATES

According to the Colorado Acupuncture Association and the American Association for Acupuncture and Oriental Medicine, acupuncture is regulated in all of the states in some form. However, only twenty-one states, including Colorado and the District of Columbia, license, certify, or register acupuncturists and allow them to practice independently or under some type of physician supervision or referral. Other states allowing such practice are Alaska, California, Florida, Hawaii, Maine, Maryland, Massachusetts, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, and Wisconsin.

The remaining states do not license, certify, or register acupuncturists. Some allow acupuncturists to practice under the supervision of a physician. Some states allow only licensed physicians to practice acupuncture.

In particular, since this is a new regulatory program in Colorado, the Department of Regulatory Agencies has reviewed the statutes of selected states and presents highlights from these statutes for purposes of comparison. The fact that a state licenses, certifies, or registers acupuncturists does not imply independent practice. Colorado is one of the few states where the acupuncturist is an independent practitioner.

### District of Columbia

An acupuncturist must be licensed by the Board of Medicine. Non-physician acupuncturists may practice only in general collaboration with a physician. Before initiating treatment, the acupuncturist must have written authorization by a physician. (17 DCMR 4712)

### Florida

Florida requires acupuncturists to be certified by the Florida Board of Acupuncture. Acupuncturists may practice independently. (F.S. 1989 Ch. 457)

### Hawaii

Acupuncturists are licensed under the Department of Commerce and Consumer Affairs. They may practice independently. (HRS 436E-3, HRS 436E-7)

### Maryland

An acupuncturist who is not a physician may perform acupuncture under the general supervision of a physician. Under general supervision, the physician must review the results of a recently performed medical diagnosis of a patient before being treated by an acupuncturist and may place conditions and restrictions on the course of treatment. (Health Occupations Article 14-605, Annotated Code of Maryland)

### Massachusetts

Acupuncturists are licensed by the Committee on Acupuncture of the Board of Registration in Medicine. In order to begin treatment of any patient, regulations require that a patient has a written referral from a physician for acupuncture treatment. (112 M.G.L. 148-162)

- Montana The Board of Medical Examiners licenses acupuncturists. They may practice independently. (Mont. Code Ann. 37-13-301)
- Nevada The Nevada State Board of Oriental Medicine licenses and regulates all acupuncturists in Nevada. Nevada has two levels of licensing for acupuncture. Three years of formal training plus six years in practice is required to apply for a masters license. Having a M.D. or a D.O. does not automatically qualify a person for a license. (NRS 634A-110) There is also a license offered for acupuncture assistants. These people may only treat patients under the direct supervision of a licensed Doctor of Traditional Oriental Medicine or a Doctor of Acupuncture who is on the same premises where the treatment is to be given. (NRS 634A-150)
- New Jersey Acupuncturists are certified by the Acupuncture Examining Board, under the State Board of Medical Examiners. Once certified, they may practice independently. (64 NJSA 2 (1985) 45:2C-6)
- New Mexico Acupuncturists must be licensed by the New Mexico Acupuncture Board. They can practice independently. (N.M. Stat. Ann. 61-14A-3)
- Oregon Oregon statutes require an acupuncturist to register with the Board of Medical Examiners. The Board determines the qualifications for practice. A person must be certified by the National Commission for the Certification of Acupuncturists. Oregon statutes also include a provision defining a person's right to acupuncture treatment. A person is entitled to such treatment if the person has been referred to an acupuncturist by a physician or the person has consented to the release of medical records. (O.R.S. 677.750, et. seq.)
- Pennsylvania An acupuncturist must register with the Pennsylvania State Board of Medicine. A registered acupuncturist must practice under the direction and supervision of an acupuncturist who is a licensed physician (medical doctor only). (18 P.S. 11, et. seq.)
- Utah An acupuncturist must be licensed by the Acupuncture Board. An acupuncturist may only practice under the direction, supervision, and responsibility of and in association with a physician licensed to practice medicine and surgery, or an acupuncture practitioner who has at least 3 years experience as determined by the board. (58-12-66, Utah Code Ann.)
- Vermont Acupuncturists may practice independently after registering with the Secretary of State. (26 VSA sec. 3252(a))

Washington

Acupuncturists are certified by the Washington Department of Licensing to practice independently. The acupuncturist must file a written plan for consultation, emergency transfer, and referral to other health care practitioners when the situation necessitates referral. For patients with certain disorders, a consultation and diagnosis from a physician is necessary. If the patient refuses such consultation, acupuncture treatment must be stopped. (Chapter 18.06 R.C.W.)

ACUPUNCTURE REGULATION IN COLORADO  
CONTINUATION OF ACUPUNCTURIST REGISTRATION

Recommendation 1: The General Assembly should continue the registration of acupuncturists under the Director of the Division of Registrations.

The acupuncturists registration program is a new program administered by the Director of the Division of Registrations. The program has only been in effect since July 1, 1989, so regulation of this profession is still a very recent phenomenon in Colorado. The Department of Regulatory Agencies recommends the continuation of regulation of this occupation under the Director of the Division of Registrations.

The Department of Regulatory Agencies makes this recommendation because the practice of acupuncture, as defined by statute, is part of the practice of medicine. By puncturing the skin with needles, vital organs could be at risk. To allow anyone to practice acupuncture may endanger the health and safety of consumers. There have not been any such instances of harm reported to the Department. However, the risk is still present.

The Department also makes this recommendation because there is a health and safety threat to the public concerning the spread of disease through the use of improperly cleaned and sterilized needles. According to the Colorado Department of Health, bloodborne infections may be transmitted by any contaminated instrument which enters the sterile tissue of a patient or client. The infections which have received the most publicity from the use of needles in recent years are hepatitis and AIDS.

Benefits of Regulation

Needle Sterilization One benefit of regulation has been that the Colorado Department of Health has now promulgated regulations on the cleaning and sterilization of needles as the acupuncture statute requires. (6 CCR 1009 - 1) The rules became effective October 30, 1990. Those regulations require acupuncturists to clean needles thoroughly with a detergent and water to remove adherent, organic material prior to sterilization. Needles must be sterilized by steam, gas, or dry heat sterilization. Sterilizers must be maintained and operated according to manufacturer specifications. The adequacy of sterilization must also be verified through testing and records must be kept showing the frequency and results of testing.

Under the Colorado Department of Health regulations, needles are considered infectious waste. Prior to disposal, needles must be placed in puncture-resistant containers. Other solid waste which is contaminated with blood or other body fluids must be placed in sealed, sturdy, impervious bags and disposed of in a manner consistent with the regulations of the Board of Health regarding infectious waste disposal. (6 CCR 1009 - 1) (25-15-401, et. seq.)

Inspections The Department of Regulatory Agencies also conducts "routine and mandatory" inspections of offices to see that the statute and regulations are being followed. While such inspection is not likely to identify all possible violations, it has provided the opportunity to find out if all of the physical elements of safe practice are in place.

Inspections have been conducted since October 1990. There have been approximately 29 inspections completed through mid-March, 1991. Inspection has not produced any incidents of non-compliance. The Division staff responsible for inspection have found disposable needles being used in all offices inspected. This report recommends that inspections continue, but only on a random or complaint basis as the Director deems necessary.

Legal Issues Regulation has clarified the legal problems that have existed in the practice. Prior to regulation, the acupuncturist had to practice under the supervision of a physician as a physician extender. It was difficult for an acupuncturist to comply because there were very few physicians in the state that could provide such supervision. Consequently, the practice of acupuncture continued to exist without the legally required supervision. Consumers were demanding such services and acupuncturists were supplying such services with and without supervision.

Under current regulation, acupuncturists now meet consumer demand for services as independent practitioners or in a medical setting where the acupuncturist still works with a supervising physician. Consumers no longer have to seek acupuncture services from a practitioner who is not authorized by the state to practice. Consumers now have the benefit of knowing that registered acupuncturists practicing independently now have to meet certain standards.

Complaints The establishment of the Office of Acupuncturist Registration also provides consumers with a place to lodge complaints if they feel they have been harmed. In 1991, there were three complaints relating to sexual misconduct and a complaint alleging misrepresentation as a medical doctor, all against one practitioner. The complaints are currently being investigated and further action is pending. The number of complaints can be expected to rise as consumers become aware of the existence of the Office of Acupuncturist Registration. No other complaints have been received to date, including complaints of "unlicensed" activity.

#### Costs of Regulation

The one drawback to regulating such a small group of practitioners is that the per unit cost is extremely high. There were 72 registered acupuncturists as of March, 1991. The fee for an original license is \$628 and a renewal is \$300. Normally such expenses get passed on to the consumer as a cost of doing business. However, since acupuncturists are often not reimbursed by health insurance and operate outside of the mainstream of the traditional health care system, this becomes a significant cost.

It is difficult to assess whether the cost of registration has affected the number of people who should be registered. As the practice of acupuncture in the state grows and the number of registrants rises, the cost of registration should be reduced, thus relieving the burden that higher registration fees may have caused.

## STATUTORY RECOMMENDATIONS

In addition to recommending the continuation of the acupuncturist registration program, the Department of Regulatory Agencies makes additional recommendations which are necessary to the efficient and effective functioning of the program. Other recommendations are designed to further protect the consumer in areas that are now statutorily deficient.

### Registration Terminology

The term "registration" is used in the statute to describe the authorization to practice that is granted by the state to acupuncturists. The act does not allow the practice of acupuncture without registration (except by MD's, D.O.'s or chiropractors with special approval). Registration is only possible for those who meet specific education, training and testing requirements. Therefore, this is, in fact, a licensure act.

Calling this program registration is misleading. The term "registration" implies that one may practice after merely providing basic personal information. The intent of the law is often misunderstood. The term "licensure" should be used to describe the requirements of the act.

Recommendation 2: The General Assembly should amend the act to incorporate the term "licensure" in the place of the term "registration."

### Registration Requirements

Scope. Section 12-29.5-106 makes it unlawful for any acupuncturist to practice acupuncture without a valid and current registration. This paragraph should be clarified to provide two exceptions. One exception is needed for physician extenders and another is needed for students in training or educational programs. The student exemption will be discussed in Recommendation 4 which follows.

A person should be registered in order to practice acupuncture in Colorado unless such acupuncturist is practicing under the physician extender provisions of the Colorado Medical Practice Act. If an acupuncturist is practicing under the supervision of a physician as required by the rules and regulations of the State Board of Medical Examiners, and the physician and acupuncturist are providing services within those parameters, no further registration should be necessary.

The Division of Registrations has received conflicting legal opinions on this matter, necessitating statutory clarification. The intent of the law should not be to take away acupuncture as part of the practice of medicine, but to allow for the practice of acupuncture in a manner that is least restrictive and most beneficial to the citizens of the state. The General Assembly should amend the statute to make this clear.

Recommendation 3: The General Assembly should amend section 12-29.5-105, C.R.S. to read, "It shall be unlawful for any acupuncturist to practice acupuncture without a valid and current registration on file with the Division of Registrations, unless such acupuncturist is practicing according to the provisions of 12-36-106(3)(1), C.R.S. or is otherwise exempt." (See Recommendation 4 for exemption.)

Exemptions for Educational Purposes Currently, an acupuncture student in a school setting, an internship setting, a preceptorship, an apprenticeship, or a tutorial program cannot use needles unless registered. If a student or intern cannot use needles, it makes it impossible for a student to learn the healing art of acupuncture.

Currently, the Private Occupational Schools Section of the Department of Higher Education has licensed an acupuncture school in Colorado. There are also interns and others in training situations that have been placed with registered acupuncturists in Colorado. It is currently illegal for an unregistered person to use needles. Therefore, it is not possible at the present time for a person to train legally in Colorado if that training requires the use of needles on a patient.

The statute should allow exemption for those that are in the process of becoming an acupuncturist. Such persons would have to be under the direct supervision of a registered acupuncturist. The student would participate in acupuncture acts and services only as part of the supervised training program.

The registered acupuncturist should be required to submit to the Director the names of persons in training that he or she is supervising. The registered acupuncturist would be responsible for all acts performed by the student. The acupuncturist would be responsible for ensuring that all acts performed by students are performed with the same skill and safety that an acupuncturist should use when performing such acts.

Recommendation 4: The General Assembly should amend the acupuncture law to allow persons in training to be able to perform acupuncture acts and services as part of a supervised educational program as long as all such acts and services are performed under the direct, on site supervision of a registered acupuncturist. The statute should require that the acupuncturist be responsible for all acts performed by students or trainees and that the acupuncturist report to the Director all persons engaged in such training.

Required Information Section 12-29.51-104, C.R.S. requires that the information on the disclosure statement also be submitted to the Director in order to become registered. Paragraph (2) of the section requires the reporting of any changes within 30 days of the change.

Included in this reporting requirement would be the necessity to report fees and fee schedules and any changes in fees and fee schedules within 30 days. An acupuncturist's fees may change and different persons may be charged different rates for a variety of reasons. Reporting these could become a monumental task.

It is not the function of the Division of Registrations to regulate fees, nor should it be entering in any fee discussions or disputes with acupuncturists. The Division does not regulate fees in other areas of health care, and in some instances, is specifically prohibited from regulating fees or entering fee disputes. Submitting fee information to the Director should not be a requirement for registration.

Recommendation 5: The General Assembly should amend section 12-29.5-104, C.R.S. to remove the requirement that fees or fee schedules be submitted to the Director as part of registration requirements.

#### Mandatory Disclosure

Regulatory Information Section 12-29.5-103(1)(f), C.R.S. requires that the mandatory disclosure statement include a statement indicating that the practice of acupuncture is regulated by the Department of Regulatory Agencies and the address and phone number of the Complaints and Investigations Section of the Division of Registrations. The Complaints and Investigations Section reference needs to be deleted from these requirements.

Complaints should go to the acupuncture registration section of the Division of Registrations or the Director. Complaints are then referred by the Director when necessary to the Complaints and Investigations Section of the Division. To publish the mandatory disclosure statement in the manner required at present, necessitates more referral because the Complaints and Investigations Section does not handle initial complaints.

Recommendation 6: The General Assembly should amend the acupuncturists mandatory disclosure form by deleting "Complaints and Investigations Section of the Division of Registrations," and replacing it with the "Director of the Division of Registrations".

Treatment Information Section 12-29.5-103(1)(b), C.R.S. requires the disclosure of a fee schedule. This is the only information the patient is required to be given that even indirectly relates to the treatment that he or she will be receiving.

To provide the greatest benefit to the patient or client, the information needs to be more useful and complete. Use of the model from the mental health licensing law regulating psychotherapist disclosures in section 12-43-214, C.R.S. would accomplish such a task.

The acupuncturist should be required to give the patient or client information about the methods of treatment and the techniques used in addition to the fee schedule. The acupuncturist registration law should be amended to provide for these disclosures. This is particularly important due to the non-traditional nature of acupuncture services and to accomplish the legislature's intent of allowing acupuncture patients to make informed choices.

Recommendation 7: The General Assembly should amend section 12-29.5-103(1)(b), C.R.S. to require that information about the general methods of treatment and the techniques used be disclosed to patients.

Records of Disclosure Under current law, there is no way of verifying whether any disclosure statement was ever provided to a given acupuncture patient. The acupuncturist registration law should be amended to include a requirement that a signed disclosure form should be kept by the acupuncturist in the patient's file during the patient-acupuncturist relationship and for three years after treatment has been discontinued. In this way, if any question is raised as to the fact or adequacy of disclosure, the statement bearing the patient's signature will be on file. This will also help protect the acupuncturist from wrongful claims.

Recommendation 8: The General Assembly should amend section 12-29.5-103, C.R.S. to require that a disclosure form, signed and dated by the acupuncturist and the patient, be kept in the patient's file during the patient-acupuncturist relationship and for three years after the relationship has been terminated.

Other Licenses Section 12-29.5-103(1)(d), C.R.S. requires an acupuncturist to disclose to the patient any license, certificate, or registration in the health care field which was revoked by any local, state or national health care agency. Patients do need to be aware of such circumstances in order to make informed choices of health care providers.

However, the patient should also be informed of any licenses, certificates, registrations, or authorization to practice that were issued by other jurisdictions in acupuncture or other health care fields. For example, if an acupuncturist is also licensed as a nurse in Colorado and two other states, these should be disclosed. It gives the consumer more information about the practitioner they are seeing and more avenues of consumer recourse if harm occurs.

Recommendation 9: The General Assembly should amend section 12-29.5-103(1)(d), C.R.S. to include a requirement to disclose to patients information about any licenses, certificates, registrations, or other authorizations to practice that were issued by other jurisdictions in acupuncture or other health care fields.

## Inspections

Section 12-29.5-110 requires the Director to inspect acupuncture offices on a routine and mandatory basis to determine compliance with the law and the regulations adopted. Acupuncture offices have been inspected and no violations have been found. Proper needle sterilization has not been an issue because all acupuncturists inspected have been using disposable needles. Sanitation in offices has not been a problem.

Routine inspections are time-consuming and costly and inspections conducted have shown that acupuncturists practice in a safe manner and do not threaten public health and safety. Since inspections appear to have had no effect on enhancing public health and safety, the General Assembly should repeal the requirement for routine and mandatory inspections. Instead, the Director should conduct inspections on a complaint basis only. If such an inspection produced evidence of a violation, the matter could be referred for further investigation.

The Department of Regulatory Agencies does not routinely inspect the offices of other regulated health care practitioners for purposes of determining compliance with laws and the sanitary standards of offices. The Department has no evidence that public health and safety is being compromised by not doing so. Regulatory standards for acupuncturists should be similar.

Recommendation 10: The General Assembly should repeal section 12-29.5-110(1)(d) requiring the Director to conduct routine and mandatory inspections and require the Director to conduct such inspections on a random or complaint basis only.

## Renewal Provisions

Section 12-29.5-104(4), C.R.S. requires every registrant to pay an annual registration fee established by the Director according to the provisions of 24-34-105, C.R.S. The statute, however, does not contain provisions for reinstatement if an acupuncturist allows his or her registration to lapse.

The statute should be amended to allow a registration to lapse upon expiration. The acupuncturist should be able to reinstate a lapsed registration within two years of the date of expiration. If an acupuncturist allows a registration to lapse for more than two years, he or she would have to re-apply as a new applicant.

Recommendation 11: The General Assembly should amend section 12-29.5-104(4), C.R.S. to provide for reinstatement of licenses which have lapsed. A registration should lapse on the expiration date and the acupuncturist should be given two years to reinstate the registration or be required to re-apply as a new applicant.

## Discipline

Substandard Care The Director is given no authority to discipline a registrant for rendering substandard care or for acts or omissions which fail to meet generally accepted standards of care. Such grounds for disciplinary action should be added to the statute in section 12-29.5-106, C.R.S.

Recommendation 12: The General Assembly should make any act or omission which fails to meet generally accepted standards of care grounds for disciplinary action.

Violations Sections 12-29.5-106(h) and 12-29.5-106(i), C.R.S. make failure to comply with lawful rules and regulations of the Executive Director of the Department of Health and failure to comply with the rules and regulations of the Director of the Division of Registrations, grounds for disciplinary action. These grounds are not comprehensive enough to incorporate all violations that may arise.

The grounds for discipline in both sections should include, in addition to any violations of the act and rules and regulations, any violations of lawful orders issued by the Department of Health or the Director, and aiding and abetting an acupuncturist in such violations.

Violations of the act, rules and regulations, or orders of the Director should also be grounds for the denial of a registration. The introductory part of section 12-29.5-106 reads, "The Director may take disciplinary action against an acupuncturist...." It should be amended to read, "The Director may deny a registration or take disciplinary action against an acupuncturist...."

Recommendation 13: The General Assembly should amend section 12-29.5-106(h), C.R.S. to include, in addition to any violations of the act, rules and regulations of the Executive Director of the Department of Health by an acupuncturist, violations of lawful orders of the Department, as grounds for disciplinary action. Any acupuncturist aiding and abetting in such violations should also be subject to disciplinary action.

Recommendation 14: The General Assembly should amend section 12-29.5-106(i), C.R.S. to include, in addition to any violations of the act, rules, and regulations of the Director of the Division of Registrations by an acupuncturist, violations of lawful orders of the Director, as grounds for disciplinary action. Any acupuncturist aiding and abetting in such violations should also be subject to disciplinary action.

Recommendation 15: The General Assembly should amend section 12-29.5-106, C.R.S. to allow the Director to deny a registration for violations of the act, rules and regulations, or orders of the Director. The introductory paragraph should read, "The Director may deny a registration or take disciplinary action against an acupuncturist...."

Sexual Contact Section 12-29.5-106(j), C.R.S. makes sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a patient during the course of patient care, grounds for disciplinary action. The language "during the course of patient care" is vague and should be clarified.

The phrase should be amended to read "while a patient-acupuncturist relationship exists." For these purposes, a patient-acupuncturist relationship should be defined as "the period of time beginning with the initial evaluation through the termination of treatment."

Recommendation 16: The General Assembly should amend section 12-29.5-106(j), C.R.S. to clarify the "course of patient care" by substituting the language "while a patient-acupuncturist relationship exists." The patient-acupuncturist relationship should be further defined as "the period of time beginning with the initial evaluation through the termination of treatment."

Substance Abuse The Director cannot take disciplinary action against an acupuncturist that engages in any kind of substance abuse. The statute should be amended to include such grounds.

Other health care practice acts include such grounds for disciplinary action. If a physician or nurse, for example, has a substance abuse problem, the health and safety of the patient can be compromised. The standard should be the same for the acupuncturist.

Recommendation 17: The General Assembly should amend section 12-29.5-106, C.R.S. to make substance abuse grounds for disciplinary action by incorporating the following language: "Has a dependence on or addiction to alcohol or habit forming drug, as defined in section 12-22-102(13), or abuses or engages in the habitual or excessive use of any such habit forming drug or any controlled substance, as defined in section 12-22-303(7)."

Physical or Mental Disability The Director is unable to take any disciplinary action against an acupuncturist for physical or mental disability which would be sufficient to affect the safety of patients. The Director should have the authority to take action when an acupuncturist has a physical or mental disability which renders him unable to treat with reasonable skill and safety to the patient or which

may endanger the health or safety of persons under his care. The Director should not have to prove that such impairment has affected the acupuncturist's practice or harmed a specific patient as a prerequisite to taking action.

The Director should also have the authority to order an examination of an acupuncturist if he has reasonable cause to believe that a practitioner is physically or mentally impaired without first having to prove that patients have been affected by such impairment. In this way the Director is given an effective tool for protecting the public against an impaired practitioner.

Recommendation 18: The General Assembly should amend section 12-29.5-106, C.R.S. to include as grounds for disciplinary action any physical or mental disability which renders an acupuncturist unable to treat with reasonable skill and safety to the patient or which may endanger the health or safety of persons under his care.

Recommendation 19: The General Assembly should give the Director the authority to order physical or mental examination of an acupuncturist if he has reasonable cause to believe that a practitioner is so impaired without first having to prove that patients have been affected by such impairment.

Convictions The Director cannot discipline a registrant or deny a registration if the acupuncturist has been convicted of a felony or pleaded guilty or nolo contendere to a felony that is related to the acupuncturist's ability to practice without being a threat to public health, safety, and welfare. The Director should have this authority, which is commonly provided in many other licensing acts.

Recommendation 20: The General Assembly should make the conviction of a felony or a plea of guilty or nolo contendere to a felony that is related to the person's ability to practice acupuncture grounds for disciplinary action or denial of a registration.

False and Misleading Advertising The Director is not able to discipline an acupuncturist for any false or misleading advertising under current law. Such grounds should be added to section 12-29.5-106, C.R.S.

Recommendation 21: The General Assembly should make false or misleading advertising grounds for disciplinary action.

Adverse Actions in Other Jurisdictions The Director has no authority at present to accept as prima facie evidence of a violation of Colorado law actions taken against acupuncturists in other states. The Director should be able to deny a registration or take disciplinary action if the acts committed in other jurisdictions are also a violation of Colorado

law. An acupuncturist who is a threat to the public in other states is also a threat to the citizens of Colorado.

Recommendation 22: The General Assembly should amend the acupuncturist registration law to allow the Director to accept as prima facie evidence of a violation of Colorado law, any disciplinary action that has been taken by another jurisdiction against an acupuncturist's license or other authorization to practice, and to take disciplinary action or deny a registration on the basis of these actions if such actions are also a violation of Colorado law.

#### Good Faith Immunity

There is currently no good faith immunity granted to persons making complaints or to those who might assist the Director in any investigative or administrative proceeding. The General Assembly should amend the statute to give good faith immunity to those making complaints or those acting as consultants or expert witnesses for the Director.

Recommendation 23: The General Assembly should amend the acupuncturist registration law to grant good faith immunity to any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding under the act.

#### Reporting by Acupuncturist

An acupuncturist should be required to report to the Director any claim, judgment, or settlement against the acupuncturist involving malpractice or the improper practice of acupuncture. Such reporting is also required in other health care practice acts. It is a source of information on harm to the public which could be a useful tool in protecting the public from incompetent practitioners.

Recommendation 24: The General Assembly should amend the acupuncturist law to require practitioners to report to the Director any claims, judgments, or settlements against the acupuncturist involving the malpractice of acupuncture arising in Colorado or in another jurisdiction.

#### Reporting to the National Practitioner Data Bank

A National Practitioner Data Bank for adverse information on physicians and other health care practitioners, has been established by the U.S. Public Health Service in the U.S. Department of Health and Human Services, under the Health Care Quality Improvement Act of 1986 (P.L. 99-660, as amended.) When the federal regulations become effective and the reporting of adverse actions against the registration of acupuncturists is required, the Director should be required to report

according to federal law. Eventually, this system will help the several states track offending practitioners from state to state.

Recommendation 25: The General Assembly should amend the acupuncturist law to require the Director to report all adverse actions taken against the registration of an acupuncturist to the National Practitioner Data Bank as required by federal law.

## APPENDIX

### SUNSET STATUTORY EVALUATION CRITERIA

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulations;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.