

## Scope of Practice

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A discussion of the scope of practice for any healthcare profession involves two components. One is how the profession defines itself, which can vary from jurisdiction to jurisdiction (states, provinces, countries, etc.). The other is the legal authority that limits the services a member of the profession may perform and that is determined by the laws of a jurisdiction (and which also varies from jurisdiction to jurisdiction).

What we refer to as Oriental medicine is a big, old map. Specifically, it is a cognitive map. Personally, I think it is very good. However, we must be careful not to confuse the map with reality, or we may encounter problems. Maps are good tools. Possessing the knowledge about different tools and the skill to use those tools allows us to choose the most appropriate tool for the job, and therefore be more effective and experience more enjoyment from our activities. Putting screws in with a hammer, for instance, is frustrating.

Last autumn, the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) organized the meeting of a task force to define Oriental medicine and invited two members from each of the national organizations to participate. One of our decisions was to begin spelling the term "Oriental Medicine" as a proper noun, with the "O" and "M" as capital letters. Our hope was that this would promote consistency, coherence and recognition of national image. We also developed the first draft of a definition of Oriental medicine, which we took back to our respective organizations for input and then would work on together this summer.

For the sake of this article, the definition of Oriental medicine based on the NCCAOM task force definition and amended by the New Mexico Board of Acupuncture and Oriental Medicine follows:

"Oriental medicine is a traditional, dynamically evolving healthcare system involving diagnosis and treatment based on the principles of yin, yang and *qi*. Its purpose is the restoration, maintenance and optimization of physical, mental, spiritual and societal health by promoting and regulating a harmonious balance of yin, yang and *qi*. Some of the therapeutic methods of Oriental medicine include acupuncture-moxibustion, herbal medicine, bodywork therapy, nutrition and *qigong*."

The above definition is a good starting point. Oriental medicine is evolving. It is different today than it was 2,500 or 200 years ago. TCM (traditional Chinese medicine), one approach to Oriental medicine, was developed only 50 years ago. As Oriental medicine is integrated into American healthcare, it will continue to evolve, or it will wither. The most important question for many is how will this be accomplished without the loss of the spirit that is fundamental to Oriental medicine. For some, this question provokes fear. For others, it stimulates excitement. Each of us has a different sensibility. Hopefully we can work together using the principles of Oriental medicine (yin, yang and *qi*) to find a harmonious, free-flowing pathway. If we are unable to do this for our own profession, how can we presume to do so for our patients?

Before explaining the more technical, legal aspects of scope of practice, let me express my understanding that the therapeutic methods of Oriental medicine, such as acupuncture or herbal medicinals, are secondary to the fundamental principles of the cognitive map such as yin, yang and qi. A thousand years from now, piercing the human body with needles may be forbidden, or all the herbs may be extinct. However, the intrinsic clear force of the cognitive map at the foundation of Oriental medicine is vital and will thrive and evolve new therapeutic tools if useful or necessary. Whether any of us approve of this, it is occurring now -- and very quickly -- as Eastern and Western medical systems integrate.

As I stated above, the laws that determine the legal scope of practice for any healthcare profession vary from jurisdiction to jurisdiction. For example, each state has its own medical practice act. This is where most of the legally defined scope of practice is found for "licensed physicians," which is how allopathic medical doctors are often legally defined. However, although the scope of practice for licensed physicians will vary from state to state (which will be discussed later), the practice of medicine, as defined in the medical practice act of each state, is all-inclusive.

Since I am most familiar with the laws of New Mexico, I will use them as the examples for this article. Although the actual language of the laws in your state may vary, the concepts are universal across the country.

The New Mexico Medical Practice Act defines the practice of medicine. It states: "the practice of medicine consists of · (2) offering or undertaking to prescribe any drug or medicine for the use of any other person; · (5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person."

Drug is a very broad term defined in the New Mexico Pharmacy Act and the New Mexico Drug, Device and Cosmetic Act. The Pharmacy Act states "drug means: · (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man or animal; (3) articles, other than food, that affect the structure or any function of the body of man or animal."

Your state will have similar language. It is clearly apparent that the practice of medicine is vast and all-inclusive, and that the term drug is much broader than most of us realize, including just about every "article" except food.

Understanding your state's medical practice act is important because from a political perspective, medical doctors were the first to get organized and establish laws defining and regulating the practice of medicine. Therefore, licensing laws for all other types of healthcare practitioners come after the medical practice act; are more limited than the medical practice act; and are usually excluded from having to comply with the provisions of the medical practice act. Of note is the fact that in most states at this time, doctors of osteopathy have defined themselves the same as medical doctors and so have the same scope of practice.

The scope of practice of DOMs (doctors of Oriental medicine) in New Mexico is determined by an interconnected group of laws and official rules that have the force of law. However, the primary location of the scope of practice is in the definition section of the New Mexico Acupuncture and Oriental Medicine Practice Act. It states: "'doctor of oriental medicine' means 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," and "'Oriental medicine' means the distinct system of primary health care that uses all allied techniques of Oriental medicine, both traditional and modern, to diagnose, treat and prescribe for the prevention, cure or correction of any disease, illness, injury, pain or other

physical or mental condition by controlling and regulating the flow and balance of energy and function to restore and maintain health." "Techniques of Oriental medicine," "acupuncture" and "primary care provider" are also defined. The scope of practice for New Mexico DOMs is further clarified in the rules of the New Mexico Board of Acupuncture and Oriental Medicine. However, the authority granted by a rule can never exceed that of the law.

Your fundamental scope of practice will be found in the law that authorizes you to practice acupuncture or Oriental medicine in your state. It may be in the definition section or another section that defines what you can or cannot do. There may be related rules that further clarify your scope of practice. If there is no law regulating acupuncture or Oriental medicine practice in your state, you will most likely fall under the authority of the medical practice act. This means that legally, you would be considered to be practicing medicine without a license if you perform acupuncture. In some cases, people have gone to jail for unauthorized acupuncture practice. In other cases, acupuncture was determined not to be the practice of medicine. Just like reality, law is not black and white.

There is another aspect of scope of practice that also involves gray tones, even in states that have very strong scopes. Let's use medical doctors as an example. Even though the practice of medicine is all-inclusive, an individual medical doctor may lose his or her license for practicing outside the scope of practice or for malpractice. Generally there would be a complaint, followed by an investigation, followed by a hearing in front of the licensing board, at which expert witnesses would be asked to testify on both sides. In New Mexico, similar language exists for all healthcare professions created to help guide those judging whether or not a healthcare practitioner is guilty of malpractice or of practicing outside their scope. Specifically, a doctor of Oriental medicine may have his or her license suspended or revoked if the doctor "fails, when diagnosing and treating a patient, to possess or apply the knowledge, or to use the skill and care ordinarily used by reasonably well-qualified doctors of Oriental medicine practicing under similar circumstances, giving due consideration to the locality involved." Who determines the above? Expert witnesses from the profession hired to testify at a hearing (after a complaint has been filed, etc.).

Even though New Mexico DOMs enjoy the largest scope of practice "umbrella" in the nation, an individual DOM has a personal responsibility to only practice within the limits of what they are educated, trained and therefore qualified to do, and also within the limits of what is considered appropriate for the area. What is appropriate for a DOM to do in New Mexico may be very inappropriate in Texas. If you are unclear about your scope of practice, the consequences could be severe. If you provide healthcare services outside your scope of practice, your license may be suspended or revoked. There could also be civil consequences.

Of relevance here is a discussion about entry-level practice. Some members of our profession get confused by a belief that scope of practice is limited to what is taught in our accredited schools. This is actually education designed to be appropriate for entry level into the profession. All healthcare practitioners evolve over their professional careers. The concepts of the language above were created because of the awareness that the scope of practice of an individual healthcare practitioner will evolve as that individual evolves. In New Mexico, we have created additional certification, after successful completion of appropriate education and training, for DOMs who want to add injection therapy or the prescription of transdermal bioidentical hormones to their scope of practice. Several possibilities exist for creating evolving, modular and responsible scopes of practice for our profession.

To summarize and clarify, a scope of practice is composed of three primary components. They are:

1. The services or procedures you are authorized to do to evaluate or diagnose a patient.

2. The conditions you are authorized to treat.
3. The services or procedures you are authorized to do to treat the diagnosed condition.

Scope of practice in the world of insurance reimbursement is defined and categorized by two codebooks created by the AMA (American Medical Association). Since the AMA created these books they are not really appropriate for our profession, but they are the "language of the industry" and therefore are important to be aware of at this time. A new standard is currently being created that is much more CAM (complementary alternative medicine) friendly, but that is another topic. The first book is *CPT - Current Procedural Terminology*, which lists the services or procedures you are authorized to do regarding evaluation, diagnosis and treatment. The second book, *ICD - International Classification of Diseases*, lists the conditions you are authorized to treat. Get them, understand them and use them, and you will be better able to participate in the American healthcare system.

My next article will explore education in our profession, with suggestions for a national master plan regarding education; testing; licensure; and scope of practice that is inclusive and modular.

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