

Acupuncture Profession Scores a Victory in California

NEW LAW EXPANDS CURRENT SCOPE OF PRACTICE

Editorial Staff

On Wednesday, September 26, California governor Gray Davis signed into law Senate Bill 341, amending the state's Acupuncture Licensure Act. The bill, authored by senator Don Perata of Oakland, expands the scope of practice for thousands of licensed acupuncturists and marks a significant legislative victory for members and advocates of the profession.

"This legislation is most important to the profession," remarked Steve English, director of government relations for the Council of Acupuncture and Oriental Medicine Associations (CAOMA), which sponsored the bill and played a significant role in having it introduced before the legislature. English added that the state's Acupuncture Board will begin to revise its policies and procedures once the bill goes into effect on January 1, 2002.

Prior to the passage of SB 341, acupuncturists in California already enjoyed a rather wide scope of practice, giving them the right to engage in the practice of acupuncture, and to perform or prescribe Oriental massage; acupressure; breathing techniques; exercise; nutrition; and drugless substances, such as herbs, to promote health. However, many modalities commonly used by acupuncturists to treat patients (such as a person's diet, magnet therapy, and hot and cold packs) were not included in the original legislation, and there had been concern among some members of the profession that the Western definition of "herb" was not broad enough to legally allow all of the substances acupuncturists prescribe.

The amended law expands and strengthens the scope of practice even further, giving acupuncturists the ability to perform or prescribe the use of heat; cold; magnets; herbs; and plant, animal and mineral products. Definitions of magnets and plant, animal and mineral products are included in the bill for clarification.

SB 341 also specifies that in addition to health promotion, a licensed acupuncturist is authorized to "maintain and restore health." Furthermore, the new bill deletes language in the original act which specified that nutrition included the incorporation of "drugless substances and herbs as dietary supplements." The amended law not only removes that nebulous language; it adds dietary advice to the acupuncturist's scope of practice and allows acupuncturists to prescribe dietary supplements as defined under federal law.

The full text of SB 341 is as follows:

The People of the State of California Do Enact as Follows:

SECTION 1. Section 4937 of the Business and Professions Code is amended to read:
4937. An acupuncturist's license authorizes the holder thereof:

(a) To engage in the practice of acupuncture.

(b) To perform or prescribe the use of Oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(c) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section only, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(e) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

The passage of SB 341 marks the culmination of an eight-month odyssey through the California legislature. After being introduced by Senator Perata and read for the first time in February, it was assigned to the Business and Professions Committee, which voted unanimously for its passage. The bill was then sent to the state Assembly (where it was amended and approved 66-10) and Senate (which approved the amended version 29-9) before being signed by Governor Davis on September 26.

Following its passage, *Acupuncture Today* asked attorney Michael Schroeder, counsel for the American Acupuncture Council and an expert on scope of practice laws for alternative health care providers, to comment on the new legislation. "This is a very positive development for the acupuncture profession," he said. "The inclusion of 'heat' and 'cold' are particularly significant. These two modalities significantly broaden the legal scope of practice for California acupuncturists."

Assembly Bill Vetoed

Not all of the pro-acupuncture legislation introduced in California has proceeded as hoped, however. On October 9, the profession suffered a slight setback when Governor Davis vetoed Assembly Bill 249, authored by Assemblywoman Barbara Matthews. If passed, the bill would have amended the state's tax laws to provide a partial exemption for any herb, herbal formula, vitamin, mineral, dietary supplement, orthotic device, or any other naturally occurring substance included in the *Encyclopedia of Chinese Materia Medica* used or furnished by an acupuncturist in the performance of professional services. Current laws already provide similar exemptions for physicians, chiropractors, dentists and podiatrists.

Although the bill received substantial support from the legislature, being passed by both the Assembly and Senate in September, it was vetoed by Davis on the grounds that it would have a severe impact on the state's economic well-being. In his veto message to the Assembly, Davis stated:

"I am returning Assembly Bill No. 249 without my signature. Notwithstanding the merits of this

measure, given the rapid decline of our economy and a budget shortfall of \$1.1 billion through the first three months of this fiscal year alone, I have no choice but to oppose additional general fund revenue losses."

While the veto of AB 249 will be viewed by some as a blow to the progress of acupuncture and Oriental medicine in California, it should be noted that the bill received unanimous support from members of the Assembly and Senate when it was brought to a vote in September. This means that should the legislation be re-introduced during a future session, it stands a strong chance of being approved and signed into law by the governor provided the state's economy is in better standing at that time.

Acupuncture Today will continue to update the profession on these and other legislative developments throughout the country as the news become available.

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