



BILLING / FEES / INSURANCE

Legislative Update: New Laws in California, North Carolina and Oregon

Editorial Staff

In the July and August 2005 issues, the editors of *Acupuncture Today* reported on the status of more than two dozen pieces of legislation related to the practice of acupuncture and Oriental medicine. Since that time, several bills making their way through the legislative process have been passed and signed into law, while others have been vetoed or tabled for future discussion.

In this issue, we report on new legislative developments that have occurred in California, North Carolina and Oregon. We also will provide our readers with an update on HR 818, the Federal Acupuncture Coverage Act of 2005.

California



In something of a surprise, Gov. Arnold Schwarzenegger vetoed Assembly Bill 1113, which would have clarified the ability of a licensed acupuncturist to diagnose patients. Specifically, the bill would have authorized licensed acupuncturists "to diagnose within his or her scope of practice."

Despite widespread support from both the California Assembly (which passed the bill 33-0 on Aug. 25) and the Senate (which passed the bill 74-1 5 days later), Gov. Schwarzenegger dealt a blow to the profession by summarily vetoing the bill in October. In his veto message, Schwarzenegger criticized the bill, saying, "The term 'scope of practice' is vague" - without mentioning the various techniques, therapies and modalities acupuncturists are currently authorized to perform under existing law.

Also vetoed by Schwarzenegger was Assembly Bill 1115, which created a position known as the "acupuncture assistant." AB 1115 defined an acupuncture assistant as "a person who is not licensed to perform acupuncture, who performs basic administrative, clerical, and supportive services" for licensed acupuncturists or corporations. Schwarzenegger called the bill "unnecessary," citing existing law that expressly prohibits all people (aside from licensed acupuncturists or other specified health care providers) from practicing acupuncture.

On the same day Schwarzenegger vetoed AB 1113 and AB 1115, he approved three other bills related to the practice of acupuncture, including Assembly Bill 1114. The bill increases the number of continuing education hours required for licensure renewal from 30 hours every two years, to 50 hours every two years. The bill also stipulates that "no more than five hours of continuing education in each two-year period may be spent on issues unrelated to clinical matters or the actual provision of health care to patients." Continuing education providers will also need to provide to the board information related to course content and test criteria for their courses to be approved. The final version of AB 1114 passed the Assembly and Senate by a combined vote of 113-4 before being signed into law.

Assembly Bill 1117, also approved by Schwarzenegger, revises two sections of the state's Business and Professions Code by changing the terms "Oriental medicine" and "Oriental massage" to "Asian medicine" and "Asian massage," respectively. It also amends section 3642 of the Business and Professions Code, and states that a naturopathic doctor may not "perform acupuncture or traditional Chinese and Asian medicine, including Chinese herbal medicine," unless that person is licensed as an acupuncturist.

Senate Bill 248 - perhaps the most important acupuncture law passed during the 2005-2006 legislative session to date - reorganizes the California Acupuncture Board effective Jan. 1, 2006. Previous law would have rendered the board inoperable on July 1, 2006, and repealed it Jan. 1, 2007. The new law allows the board to continue operating beyond the "inoperable" date, and subjects it to another legislative review in 2008.

Under SB 248, the size of the acupuncture board will be reduced from nine members to seven, and the number of acupuncturist board members will be reduced from four to three. The remainder of the board will be comprised of public members who are neither physicians nor acupuncturists. All three acupuncturist members, and two of the public members, will be appointed by the governor and are subject to Senate confirmation. The Senate Rules Committee and the Speaker of the Assembly will each appoint one public member. Hiring of all board staff, including its executive officer, will require approval from the Director of the Department of Consumer Affairs.

North Carolina

On Sep. 8, 2005, Gov. Michael Easley affixed his signature to House Bill 1357, which clarifies the powers of the state's Acupuncture Licensing Board, establishes new regulations regarding licensure status, and creates a new series of fees for acupuncture schools, continuing education providers, and individual practitioners. Among the bill's highlights:

- New license categories (inactive, suspended, expired, and lapsed) have been created for acupuncturists who do not wish to renew their license or fail to renew their license. The bill also establishes the criteria by which a person with a suspended, expired or lapsed license may renew their license or, if necessary, apply for a new license.
- More than a dozen new licensing fees have been created, including those for issuance of a license and licensure verification. Separate fees have been established for acupuncture schools and continuing education providers.
- Currently, applicants for licensure must submit proof of completion of 40 hours of board-approved continuing education units within each two-year license renewal period. While HB 1357 does not change the number of required units, it allows the board to "set the minimum hours for study of specific subjects within the scope of practice of acupuncture." Language in the bill defines one continuing education unit as "one contact hour or 50 minutes."

Oregon

Following near-unanimous support from both the state House and Senate, Gov. Ted Kulongoski has signed into law Senate Bill 285, allowing licensed acupuncturists and pharmacists to serve on the Oregon Pain Management Commission. The bill also expands the size of the commission from 17 members to 19 members, and requires that licensed acupuncturists complete a "pain management education program" that has been developed either by the commission, or by the commission in conjunction with the appropriate health professional regulatory board or agency. Senate Bill 285 becomes effective Jan. 1, 2006.

HR 818 Update

Introduced by Rep. Maurice Hinchey of New York, the Federal Acupuncture Coverage Act of 2005 would amend two sections of federal law to expand coverage of acupuncture to millions of federal employees and Medicare recipients. Specifically, the bill would amend title XVIII of the Social Security Act (to provide for coverage of qualified acupuncturist services under part B of the Medicare program), and title V of the United States Code (to provide for coverage of acupuncture services under the Federal Employees Health Benefits Program).

At press time, HR 818 is being reviewed by the House Subcommittee on Health. It has garnered 49 co-sponsors from 19 states, along with Guam and the Virgin Islands. California has the most co-sponsors, with 13, followed by New York (seven) and Maryland (four). Acupuncturists and their patients are encouraged to show their support for HR 818 by contacting Robert Marcus, a lobbyist for the Council of Acupuncture and Oriental Medicine Associations, via e-mail at marcus_associates@yahoo.com.

Look for more updates on HR 818 and other laws introduced on the state level in future issues of *Acupuncture Today*.

JANUARY 2006