



report stating that "very few complaints" had ever been received by the state's Board of Complementary Health Care Providers against licensed acupuncturists, and that "the fact that none of the complaints received has related directly to the providing of services using Oriental techniques and modalities indicates that the public is at low risk" of being harmed by acupuncturists. Nevertheless, the department recommended against passage of the proposed legislation because no public safety issues had been identified, given the educational preparation of licensed acupuncturists. In effect, the department's argument was that since there were no safety issues with the practice of acupuncture, the current law was sufficient, and any further legislation would therefore be unnecessary.

In addition, both the Maine Chiropractic Association (MCA) and the Maine Medical Association (MMA) opposed the bill. While the MMA refused to negotiate and maintained the bill gave legitimacy to an "unproven" form of health care,<sup>1</sup> the MCA agreed to sit down with representatives of the acupuncture profession and develop wording to the bill that met with the approval of both groups. By February 2004, the MCA had become supportive of the acupuncturists and the bill.

The Maine Association of Acupuncture and Oriental Medicine (MAAOM), although happy about its work with the MCA and the department's endorsement regarding public safety, nevertheless disagreed with the department's conclusion. As a result, the MAAOM reached out to the American Acupuncture Council (AAC), a national malpractice insurer. In this case, the AAC elected to strongly support MAAOM's legislation.

AAC Vice President and General Counsel Michael Schroeder stated, "After discussions with the MAAOM, we became convinced that this was an appropriate area for us to weigh in on. It was not just a scope of practice issue, it was also a malpractice issue. Malpractice policies cannot cover an acupuncturist for something that is not legal for him or her to do. By convincing the legislature to expand the legal scope of practice for acupuncturists in Maine, we were also expanding coverage that we could provide to our insureds. The MAAOM did a great job of carrying the ball on this legislation."

The AAC also provided the following written testimony:

Malpractice insurance policies for acupuncturists written in the United States only cover acupuncturists for those treatments and/or diagnostic modalities that are legally and specifically included within their state's legal scope of practice. Specifically in Maine, an acupuncturist is only covered for "the insertion of fine metal needles through the skin at specific points on or near the surface of the body with or without the palpation of specific points on the body and with or without the application of electric current or heat to the needles or skin, or both." This is the definition of legal scope of acupuncture in Maine found in 32 MRSA Section 12501(1). The proposed legislation in L.D. 263 would expand the definition of the legal scope of acupuncture in Maine to include the usual scope of practice for acupuncturists in most states, including such things as moxibustion, heat therapy, sound, light, vibrational therapy, cupping techniques, diet, and herbology. All of these things are not currently covered by malpractice insurance for acupuncturists in Maine but will be covered if this legislation passes.

It appears to us that the primary bases for the recommendation against this legislation is that there will be no increase in public protection if this legislation passes. We respectfully disagree with this conclusion. The fact that acupuncturists will have malpractice

protection for these treatment modalities if they are explicitly included within their scope of practice would appear to dramatically increase public protection. In addition, very little in the way of valid conclusions can be deduced from the fact that there is no evidence that the failure to license these modalities has not yet resulted in any public harm. Since these modalities are not currently legal in Maine, there are very few, if any practitioners who are willing to risk criminal prosecutory license discipline and/or uncovered malpractice claims for practicing these unauthorized treatment modalities.

Since the report also concludes that "the public safety is not unreasonably jeopardized by the use of these additional modalities" and because public safety will, in fact, be increased by explicitly authorizing these modalities and obtaining malpractice insurance for these modalities, we believe that there is no reason that this legislation should not be adopted.

The MAAOM also wanted to avoid problems states such as Ohio and Texas had encountered recently with undefined scopes of practice. As a result, it decided to push ahead and heavily lobbied the committee assigned to LD 263 to consider the bill as an economic development issue.

In February, the committee revisited the legislation and approved the bill with a 12-1 vote. It was then sent to the legislature for a full vote. The MAAOM mounted a massive lobbying effort at this point. With only about 90 acupuncturists in the state (most located in the southern part of the state or on the coast), educating and convincing the entire legislature of the bill's merits was a daunting task. The bill eventually passed through the Senate, where the acupuncturists thought they would be most vulnerable. Later that day (April 7), it was soundly rejected by the House 81 to 44 when legislators, influenced by the MMA, promoted the bill as dangerous.

In a conference call that night, Sen. Bromley urged the MAAOM leadership not to give up. She thought that many of the "nay" votes were a result of the legislators not understanding the bill, and promised to have the Senate send the bill back to the House for a re-vote, giving Maine's acupuncturists about five days to get 40 additional votes.

"Only late in the process, we began to realize the freedom of speaking up for the right to be a fully recognized as a force to be dealt with and owning our own power in the arena of healing," said MAAOM Legislative Chair Jolinda Rockett, MAc, LAc. "Once the MMA broke the veil and pointed a finger at the issue of Chinese herbs, we were given the boldness to break our polite silence. We had to speak up to address the herb issue without apology. We educated the legislators and won their confidence (by) citing our extensive education and records of safety. Legislators, we discovered, can be educated, influenced by reason, or otherwise swayed when approached personally with valid arguments. Our efforts were further assisted by unexpected passionate testimony on the floor by representatives who had personal stories about acupuncture experiences."

A grassroots lobbying effort that involved 45 acupuncturists, along with every patient and friendly medical supporter they could find, netted unexpectedly positive results. On April 15, the House voted to pass LD 263 by a vote of 83 to 56. The following day, it was enacted by a voice vote in the Senate and again challenged on enactment in the House, where it squeaked through again (with many MAAOM supporters absent) in a close 68-62 vote, before finally being sent to Gov. Baldacci's desk for his signature.

The MMA continued strong lobbying efforts seeking a veto from the governor even after the bill

passed both the House and Senate. After the bill was signed into law, the MMA declared Gov. Baldacci had imposed a "double standard" by heavily emphasizing patient safety and evidence-based medicine for traditional medicine but not doing the same for practitioners of alternative medicine.<sup>2</sup> Officials with the Baldacci administration rejected the MMA's assertions, noting that several states have already passed similar laws.<sup>3</sup>

### *References*

1. Croasdale M. Empowered by insurers and states, nonphysicians push practice limits. *American Medical News* Feb. 9, 2004.
  2. Governor signs acupuncture bill; legislature returns tomorrow. Maine Medical Association press release, April 26, 2004.
  3. Gov. signs acupuncture bill. *Portland Press Herald* April 28, 2004.
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*Editor's note:* *Acupuncture Today* would like to thank the Maine Association of Acupuncture and Oriental Medicine and the American Acupuncture Council for their assistance in the writing of this article.

JULY 2004