

August 4, 2019

David Dolan  
Susan Miller, MD  
U.S. Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Dr. Miller and Mr. Dolan:

On behalf of the California Acupuncture and Traditional Medicine Association (CalATMA), our members, and the 12,185 licensed acupuncturists in the state of California, we commend the efforts by CMS to study the effects of acupuncture for chronic low back pain (cLBP) in populations covered by Medicare. We would like to thank the CMS for its consideration of this topic which represents an important step towards the incorporation of acupuncture into national health care.

California licensees represent nearly one-third of all licensed acupuncturists (LAc) in the USA<sup>1</sup>. Along with other relevant stakeholders who will be affected by the decisions made based on the outcomes of these planned studies, we are concerned about problems created by the language of the proposed decision memo and inconsistencies with existing law. We are seeking clarification on several issues as outlined below.

While 2,147 licensed California acupuncturists are additionally certified by the NCCAOM<sup>2</sup>, current state law does not require NCCAOM certification for licensure or practice, nor does it require supervision by an MD. The California Acupuncture Licensing Exam (CALE) has been certified to be equivalent to the NCCAOM certification exams by the NCCAOM itself, following extensive independent authentication.<sup>3</sup> Our current educational requirement of 3,000 hours of didactic and clinical training exceed the minimum NCCAOM requirements as adopted by 47 states and District of Columbia. Although California has more licensed acupuncturists than any other state, more required training than most other states, and certified exam equivalency, the current framing excludes 10,038 qualified active California licensed acupuncturists while creating ambiguity with use of the term “auxiliary personnel” in its proposed decision memo.

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<sup>1</sup> Fan AY, Stumpf SH, Faggert Alemi S, Matecki A. Distribution of licensed acupuncturists and educational institutions in the United States at the start of 2018. *Complementary Therapies in Medicine*. 2018; Dec(41):295-301. <https://www.ncbi.nlm.nih.gov/pubmed/30477857>

<sup>2</sup> NCCAOM® CERTIFIED ACUPUNCTURISTS BY STATE, Updated May 1, 2019. Accessed August 4, 2019 <https://www.nccaom.org/wp-content/uploads/pdf/2019%20Diplomates%20per%20state.pdf>

<sup>3</sup> National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM®) Fact Sheet <https://www.nccaom.org/wp-content/uploads/pdf/NCCAOM%20Fact%20Sheet%20CA%20Updated%20Final%206-03-2018.pdf> Updated June 3, 2018. Accessed August 4, 2019.

State laws and regulations designate our LAcS as primary healthcare physicians in the arena of Workers Compensation<sup>4</sup> in Labor Code Division 4 §3209.3<sup>5</sup> and specifically allow acupuncturists to practice autonomously as independent providers without direct or indirect supervision by an MD or any other supervisor. Only five designated licensures are permitted to practice acupuncture in California: LAcS, physicians and surgeons (without additional certification), and dentists and podiatrists who have also completed a certification course in acupuncture<sup>6</sup>. All other licensures are prohibited from practicing acupuncture unless they also hold an acupuncture license. This prohibition includes Physical Therapists, Physician Assistants, nurse practitioners, and clinical nurse specialists. State law also specifically prohibits supervision of acupuncturists by physicians, dentists, or podiatrists for training or tutorial purposes unless they are also a licensed acupuncturist. Thus, the use of “auxiliary providers” seems to attempt to allow participation by providers who would not otherwise qualify for inclusion unless they were already LAcS, while excluding 10,038 qualified LAcS who have met and/or exceeded licensing and education standards in California. This represents an exclusion of about 26% of all eligible, qualified acupuncturists in the USA.

Therefore, regarding the following text of the proposed decision memo, as follows:

- *Physician assistants, nurse practitioners/clinical nurse specialists (as identified in 1861(aa)(5)), and auxiliary personnel may furnish acupuncture if they meet all applicable state requirements and have:*
  - *A masters or doctoral level degree in acupuncture or Oriental Medicine*
  - *from a school accredited by the Accreditation Commission on*
  - *Acupuncture and Oriental Medicine (ACAOM);*
  - *a current certification by the National Certification Commission for*
  - *Acupuncture and Oriental Medicine (NCCAOM); and*
  - *maintained licensure in a U.S. state or territory to practice acupuncture.*

we propose alternate language for this section ***in toto*** as follows:

- Licensed acupuncturists or state equivalents who carry an active and unrestricted license in the state of practice may provide acupuncture.

We strongly object to the term “auxiliary personnel” as the default term for licensed acupuncturists, who have obtained the unique Bureau of Labor Statistics (BLS) designation 29-1199.01 Acupuncturist, especially since we collectively have more training in this specialty than any other designation. We request that the term “licensed acupuncturists” be used and included, where appropriate, in all data collected and reported from these studies and in all documentation related to recruiting, study methods, and other coverage based on the outcomes of the studies requested by CMS, so that those decisions should be based on the actual provision of care which would include not only the number of treatments and the techniques prescribed, but also the training, licensure and proper designation of the

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<sup>4</sup>Chapter 4.5. Division of Workers' Compensation § 9792.24.1. Acupuncture Medical Treatment Guidelines  
[https://www.dir.ca.gov/t8/9792\\_24\\_1.html](https://www.dir.ca.gov/t8/9792_24_1.html)

<sup>5</sup>California Labor Code, Division 4 §3209.3,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=3209.3](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=3209.3).

<sup>6</sup>LAWS AND REGULATIONS RELATING TO THE PRACTICE OF ACUPUNCTURE published: July 2019  
[https://www.acupuncture.ca.gov/pubs\\_forms/laws\\_regs/laws\\_and\\_regs.pdf](https://www.acupuncture.ca.gov/pubs_forms/laws_regs/laws_and_regs.pdf)

providers of this service. The State of California performs a periodic occupational analysis of acupuncturists and has determined that adequate safety, training, performance and experience exists to protect the public in the areas of Patient Assessment, Diagnostic Impression, Acupuncture Treatment, Herbal Therapy, and Regulations for Public Health and Safety<sup>7</sup>.

While we understand the need for direct supervision by a physician during the official research study, it is inconsistent with California state law and with every other state law that licensed acupuncturists be under the direct supervision of physician assistants, nurse practitioners or clinical nurse specialists. As mentioned previously, certain aspects of California law prohibit supervision of acupuncturists by professionals who are not themselves licensed acupuncturists. There is no precedent for the inclusion of these professionals as supervisors of acupuncturists, nor does it improve patient safety, study design or provision, or *any other* aspect of the validation, assessment, or decision-making process of this effort. Licensed acupuncturists have an outstanding safety profile documented in all states regulating licensure. We ask that the terms “physician assistant” and “nurse practitioner/clinical nurse specialist” be removed in order to revise this portion for consistency with state laws.

Thank you for your consideration of our comments and for providing this opportunity. Acupuncture stands as one of the most promising options for the non-pharmacological treatment of pain when practiced by licensed acupuncturists, and we are exuberant to see CMS begin its diligent work in this study.

Sincerely,

The Board of Trustees of California Acupuncture and Traditional Medicine Association

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<sup>7</sup> OCCUPATIONAL ANALYSIS OF THE ACUPUNCTURIST PROFESSION, California Acupuncture Board, January 2015 [https://www.acupuncture.ca.gov/about\\_us/materials/2015\\_occanalysis.pdf](https://www.acupuncture.ca.gov/about_us/materials/2015_occanalysis.pdf) , accessed August 4, 2019.