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**Report
Of the Commissioner of the Department of Professional and Financial
Regulation**

**To the Joint Standing Committee on Business, Research and Economic
Development**

Sunrise Review of L.D. 263

“An Act to Define a Scope of Practice for Acupuncture”

January 1, 2004

*John Elias Baldacci
Governor*

*Robert E. Murray, Jr.
Commissioner*

I. Introduction

Under current Maine law, acupuncture means “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.” The statutory definition continues by stating that “[t]he practice of acupuncture is based on traditional Oriental theories and serves to normalize physiological function, treat certain diseases and dysfunctions of the body, prevent or modify the perception of pain and promote health and well-being.” 32 MRSA § 12501(1).

LD 263, “*An Act to Define a Scope of Practice for Acupuncture*,” was considered by the Joint Standing Committee on Business, Research and Economic Development (“the Committee”) during the First Regular Session of the 121st Legislature. The proposed legislation would amend the current scope of practice by specifically listing several techniques associated with Oriental medicine, including Chinese herbology, that do not involve the insertion of fine metal needles into the body.

The proponent of the bill, the Maine Association of Acupuncture and Oriental Medicine (“MAAOM”) testified at the committee’s public hearing that the bill was necessary to clarify the scope of practice for licensed acupuncturists. MAAOM asserted that the bill did nothing more than explain in greater detail the specific modalities and techniques that acupuncturists utilize in their profession. In contrast, the Maine Medical Association and the Maine Chiropractic Association asserted that the proposed legislation would permit activity by licensed acupuncturists that is beyond the education and training of most acupuncturists and therefore, expands the scope of practice currently authorized by statute.

Having determined that the legislation could be viewed as expanding the current scope of practice, the committee directed that a sunrise review be undertaken by the Department of Professional and Financial Regulation.

II. Sunrise Review

Pursuant to 5 MRSA § 12015(3), “sunrise review” is required of any legislation that proposes to regulate professions not previously regulated, or that proposes to expand existing regulation. Sunrise review is a systematic review of new or expanded regulation undertaken to ensure that the purpose of the regulation is to protect the health, safety, and welfare of the public.

The sunrise review process consists of applying the evaluation criteria established by statute, 32 MRSA § 60-J, to the proposed system of regulation to determine whether the

occupation or profession should be regulated, or whether current regulation should be expanded.

Under the law, the sunrise review process may be conducted in one of three ways:

1. The Joint Standing Committee of the Legislature considering the proposed legislation may hold a public hearing to accept information addressing the evaluation criteria;
2. The committee may request the Commissioner of Professional and Financial Regulation to conduct an independent assessment of the applicant's answers to the evaluation criteria and report those findings back to the committee; or
3. The committee may request that the commissioner establish a technical review committee to assess the applicant's answers and report its finding to the commissioner.

Copies of 5 MRSA § 12015(3) and a summary of the sunrise review process are included in Appendix A.

III. Charge from Committee

In a memorandum dated March 11, 2003, the Joint Standing Committee on Business, Research and Economic Development requested that the Commissioner of Professional and Financial Regulation conduct an independent assessment of LD 263, "*An Act to Define a Scope of Practice for Acupuncture,*" in accordance with the state's sunrise review procedures. A copy of the committee's request is attached as Appendix B.

IV. Independent Assessment by Commissioner

The requirements for an independent assessment by the commissioner are set forth in 32 MRSA § 60-K. The commissioner is required to apply the specified evaluation criteria set forth in 32 MRSA § 60-J to all answers and information submitted to, or collected by, the commissioner. After conducting the independent assessment, the commissioner must submit a report to the committee setting forth recommendations, including any draft legislation necessary to implement the report's recommendations.

The commissioner's report to the Joint Standing Committee on Business, Research and Economic Development must contain an assessment as to whether final answers to the evaluation criteria are sufficient to support some form of regulation. In addition, if there is sufficient justification for some form of regulation, the report must recommend an agency of state government to be responsible for the regulation and the level of regulation to be assigned to the applicant group. Finally, the recommendations must reflect the least restrictive method of regulation consistent with the public interest. Copies of 32 MRSA §§ 60-J and 60-K are included in Appendix A.

V. Evaluation Criteria

As part of the independent assessment process, the commissioner must review the responses to the evaluation criteria submitted by the applicant group and interested parties. In this instance, the Maine Association of Acupuncture and Oriental Medicine (“MAAOM”) is considered the “applicant group.” Because other professional associations became involved in the discussion of LD 263, the commissioner solicited and received information from those groups, including the Maine Chiropractic Association, the Maine Medical Association, the Board of Complementary Health Care Providers (Acupuncture and Naturopathic Medicine) and the Board of Chiropractic Licensure.

The department’s analysis is structured utilizing the evaluation criteria set forth in 32 MRSA § 60-J, and is presented in this report as follows:

1. The evaluation criteria, as set forth in the statute;
2. A summary of the responses received from the applicant group and interested parties (full responses are included in Appendix C); and
3. The department’s independent assessment of the response to the evaluation criteria.

Evaluation Criterion #1: Data on group proposed for regulation. A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to expanded regulation; the names and addresses of associations, organizations and other groups representing the practitioners; and an estimate of the number of practitioners in each group.

Responses:

The bill, as drafted, would add techniques and modalities to the statutorily permitted practices of acupuncturists. Information provided by the applicant group indicates that there are currently 95 acupuncturists in Maine licensed by the Board of Complementary Health Care Providers. All licensed acupuncturists may be affected in some way by the proposed legislation. MAAOM is the only professional association for acupuncturists in the state, and it currently has 50 members.

Passage of this bill may also impact an unknown number of unlicensed individuals who may be legally practicing Chinese herbology and other related techniques that do not involve inserting metal needles. Because non-invasive Oriental medical techniques are unregulated, the number of individuals in this category cannot be estimated.

Finally, enactment of the bill could have an impact on individuals who hold licenses to practice other allied health professions. For example, Maine chiropractors who use Chinese herbs in their practices may request similar amendments to the state statutes so that Chinese herbology is included in the chiropractic scope of practice.

Department assessment:

As stated above, the committee should be aware that this legislation may be perceived to impact not only the 95 currently-licensed acupuncturists, but also an unknown number of unlicensed individuals who may be legally practicing non-invasive health techniques. In addition, other currently-licensed health providers who utilize these techniques in their practices may feel that their scopes of practice statutes should be amended, in order to avoid the issue of whether those health care providers are conducting unlicensed practice.

Evaluation Criterion #2: Specialized skill. Whether practice of the profession or occupation proposed for expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.

Responses:

There is agreement among the respondent groups that the practice of acupuncture as it is currently defined in statute requires individuals to have specialized skills, education and training. There is also general agreement that for purposes of public protection, licensees of this profession must satisfy minimum standards of competence. The Maine legislature acknowledged the need to protect the public in this area by establishing a licensing program for acupuncturists in 1987.

The MAAOM asserts that current licensure requirements for acupuncturists, including educational and experiential requirements, provide adequate assurance to the public that licensees have met minimum standards of competency to practice. In addition, MAAOM asserts that the current licensure standards that require prospective licensees to obtain an advanced degree at an educational institution accredited by the National Certification Commission for Acupuncture and Oriental Medicine (“NCCAOM”) provides acupuncturists licensed in Maine with the specialized skill needed to safely practice their profession including the techniques and modalities that go beyond the use of fine metal needles and which are the subject of this sunrise review.

The Maine Chiropractic Association (“MCA”), in contrast, presents the view that the practice of “acupuncture” is not synonymous with the practice of “Oriental medicine.” The MCA asserts that acupuncture is only one of several modalities that comprise the practice of Oriental medicine. Accordingly, the MCA questions whether acupuncturists licensed in Maine today have obtained the necessary training and experience needed to provide these non-invasive treatments and related techniques associated with Oriental medicine in a safe manner.

The Maine Medical Association (“MMA”) expresses similar concerns about the adequacy of current education and training requirements for acupuncturists who utilize related non-invasive techniques. In addition, the MMA asserts that each technique under review is a separate practice, and as such, should receive individual sunrise review.

Department assessment:

There is a broad range of educational programs and learning opportunities for individuals interested in becoming proficient in Oriental medicine and alternative treatments. The World Health Organization has been particularly active in establishing standards of practice in the fields of acupuncture and other modalities associated with Oriental medicine. In the United States the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) was founded in 1982 to establish comprehensive educational and institutional requirements for acupuncture and Oriental medicine programs, and to accredit programs and institutions that meet those requirements. ACAOM has been recognized by the U.S. Department of Education as a specialized accrediting agency.

The Maine legislature has previously determined that the public requires protection because of the invasive nature of needle acupuncture and that to obtain a state license, acupuncturists must obtain specialized education and training to ensure the provision of safe services to the public. The Board of Complementary Health Care Providers regulates the practice of acupuncture and naturopathic medicine. Current law requires applicants to have obtained a bachelor’s degree and pass a national examination in acupuncture. To be eligible to take the national exam, applicants must document 1,725 hours of classroom and clinical study at an educational institution accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (“ACAOM”) or approved by the board. The required 1,725 hours must include at least:

- 47 semester credits (705 hours) in Oriental medical theory, diagnosis, and treatment techniques in acupuncture and related studies,*
- 22 semester credits (660 hours) in clinical training; and*
- 24 semester credits (360 hours) in Western biomedical clinical sciences.*

*Clinical hours may include internship, treatment hours in a supervised clinical setting, and observation.*¹

The issue to be addressed in this report, however, is not whether acupuncturists, as currently defined, must be qualified; rather, the issue is whether the specific **additional** currently unregulated activity of utilizing Oriental treatments and modalities requires specific legal and regulatory attention. The issue of specialized skill, therefore, relates closely to other determinations such as 1) whether the materials and techniques are widely available without seeking the assistance of a professional; 2) whether public

¹ Information regarding examination eligibility from the ACCREDITATION COMMISSION FOR ACUPUNCTURE AND ORIENTAL MEDICINE (ACAOM).

safety is jeopardized by the materials or techniques used; and 3) the incidence of consumer complaints. Each of these categories is addressed in more detail below.

Evaluation Criterion #3: Public health; safety; welfare. The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this state within the past 5 years.

Responses:

The proposed legislation would add explicit reference to several techniques that the proponents assert are integral to the practice of acupuncture. They include electrical stimulation; magnetic therapy; moxibustion and other forms of heat therapy; sound and vibrational therapy; light therapy; cupping and gua sha; Chinese herbology; lifestyle and dietary counseling; bodywork therapies including acupressure, shiatsu, sotai, tuina, qi gong, and zero balancing.

MAAOM has provided explanations of the purpose and public safety considerations for each of the identified techniques.

MMA and MCA have alluded to the potential for public harm with regard to these techniques but have presented no specific evidence of actual harm to the public. MMA is concerned that licensing appears to legitimize "untested modalities" and could delay traditional medical treatment and put patient health in jeopardy, particularly if the condition could have been cured or treated successfully had the patient been seen initially by a physician. MCA comments that the US Food and Drug Administration has issued warnings regarding the interaction between certain drugs and herbal substances so there is a possibility of harm to the public if acupuncturists use Chinese herbs without appropriate training. MCA further alludes to the potential for certain manipulation techniques to result in bone fractures and dislocations in situations in which the practitioner has not received appropriate training.

Department Assessment:

The issue raised by the proposed legislation, and this evaluation criteria in particular, is whether the public is placed at risk if licensed acupuncturists and other unlicensed individuals are permitted to practice one or more of the Oriental treatment techniques associated with acupuncture without a greater degree of regulation.

Information provided by the interested parties does not substantiate a significant risk to public safety. The Board of Complementary Health Care Providers indicates that since 1990 it has received a total of six consumer complaints, four of which involved the practice of acupuncture. These four complaints were dismissed for lack of evidence of a violation of the Board's statute and rules. None involved treatment utilizing the types of Oriental techniques or modalities under consideration in LD 263.

The techniques under consideration are part of an overall treatment process that is based on a holistic view of the patient and the patient's symptoms, and encompasses a range of practices, including acupuncture, moxibustion, herbal medicines, manual therapies, exercises, breathing techniques and diets. There is no evidence that the patient is placed in physical danger or harm by the specific practices. For example, Gua Sha is described as an ancient Chinese healing art that is used to treat pain by removing congestion of qi (energy), blood and fluid in the body. To administer Gua Sha, the practitioner applies oil to the skin and then uses a smooth-edged tool to scrape and apply friction to the skin. The purpose is to bring congestion to the surface of the skin, thereby reducing pain. Gua Sha is a treatment practiced in many Asian homes as part of a family's self care. Patients receiving this treatment or practicing self-treatment cannot be said to be placed at risk.

Electrical stimulation as a treatment technique is included in the current statutory framework. It involves low levels of pulsating electric current as a means of pain control. The proponents of LD 263 would extend the current definition to include magnetic therapy. Magnets typically used in this technique are small with low electromagnetic qualities. The strength of the electrical and electromagnetic qualities of these two techniques does not present a public safety risk.

Moxibustion involves the burning of moxa, dehydrated mugwort leaves shaped like a small cigar, over specific acupuncture points. The practitioner holds the moxa over the acupuncture point until the skin is warm. The moxa is then drawn away, allowing harmful energy to be directed away from the site. This technique and other related forms of heat therapy enhances the flow of energy and does not present a public safety risk.

Sound, light and vibrational therapies involve the use of tuning forks, colored lights, or gel filters, and low-level lasers and may be used separately or in combination. These are gentle, non-invasive therapies and do not appear to present a threat to the patient's safety. Low level lasers are those that have between five and 20 milliwatts in radiant power. In comparison, a red beam pointer has a radiant power of five milliwatts.

Cupping therapy involves the creation of suction using a small cup on the skin which moves blood and removes stagnation from the body. Like Gua Sha, cupping is used as a home remedy and does not pose a health risk to the patient.

The use of Chinese herbs by acupuncturists has been identified by the MCA as a source of potential risk to the public. Chinese herbs may be used singly or in combination to correct an imbalance in a patient. Whether the patient's imbalance can be rectified by the

ingestion of these herbs depends on the individual patient. The potential risk to the patient is that his or her ailments or pains are not alleviated but ingestion would not exacerbate the patient's medical condition. Chinese herbs are currently available to the public in pill or capsule form in many health food and drug stores. Their use is not regulated by the US Food and Drug Administration or the US Drug Enforcement Administration.

Lifestyle and dietary counseling incorporates traditional Oriental theories on foods and nutrition as a means of adjusting a patient's food preferences. Similar theories are used by other health care professionals including dietitians, nutritionists and wellness specialists.

Bodywork therapies are Asian in origin and involve non-invasive touching, stretching, pressing or holding the body along meridians primarily with the hands. These therapies do not present risks to the public.

Shiatsu is a system of balancing the body's energy by applying pressure to specific points to release tension and increase circulation. It is similar to acupuncture except that finger pressure rather than needles is used to redirect energy.

Sotai techniques focus on realigning the body by relaxing tight muscles that hold tension. Muscles that become relaxed provide for greater range of motion.

Tuina is a method of Asian bodywork that focuses on soft tissue manipulation at acupuncture points to treat musculoskeletal disorders. In contrast to chiropractic manipulation, tuina is used to redirect energy, not to realign skeletal structures.

Qi Gong integrates physical postures, breathing techniques and focused intention and is similar to meditation. Qi Gong movements are designed to enhance cardiovascular and respiratory functioning.

Zero balancing balances body energy with body structure through touch. It uses finger pressure and held stretches, and hands-on body work that is non-invasive to create a feeling of relaxation.

The techniques described above do require a general understanding of Oriental medicine techniques and theories. However, none present dangers to the public that would require practitioners to maintain a higher level of training and experience than is currently required by law.

Evaluation Criterion #4: Voluntary and past regulatory efforts. A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public.

Responses: The parties did not proffer information on this criterion.

Department Assessment:

The National Certification Commission on Acupuncture and Oriental Medicine provides national qualifying examinations in three areas: Acupuncture, Chinese herbology and Asian bodywork. Acupuncturists in Maine who desire to obtain advance training, education and certification in any of these areas are free to do so. To date this program of voluntary self-education appears to have been effective in preventing any evident harm to the public.

Evaluation Criterion #5. Costs and benefits of regulation. The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.

Responses:

MAACOM asserts that the bill would have a cost neutral impact on licensees and on the public.

MMA asserts that increased costs will result from the monopoly created by the license, and that consumers would be required to pay not only for the services of the acupuncturist but also for the services of a physician if the acupuncture treatment is not effective. In addition, it asserts that delayed treatment by an appropriate physician results in higher costs.

MCA asserts that although the cost of service to consumers might not increase as a result of the legislation, the potential for insurance reimbursement by health insurance providers would add expense to the cost of health insurance policies.

Department Assessment:

Any conclusion based on the information submitted would be speculative.

Evaluation Criterion #6: Service availability under regulation. The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public.

Responses:

MAACOM asserts that extending the scope of practice in statute would make Maine more attractive to prospective applicants, thus increasing service availability.

MCA notes that the bill would increase the range of services that acupuncturists could provide to the public and, at the same time, would produce a scope of practice that overlaps with some services provided by other professions.

MMA notes that additional licensure requirements would be expected to decrease supply since some current practitioners would be unable to meet new requirements.

Department Assessment:

In general, increasing licensing requirements typically results in a decrease in licensee numbers. If this expansion in scope of practice is subsequently developed into requirements for additional qualifications, the result may decrease the availability of services to the public in the area of Oriental medicine not directly related to acupuncture as it is currently defined. A decrease in the availability of services caused by making current requirements more stringent, in the absence of compelling documented safety issues and concerns, does not result in a benefit to the public.

Evaluation Criterion #7: Existing laws and regulations. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from non-regulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners.

Responses:

MAAOM states that the existing licensing law for acupuncturists should be amended to include specific reference to those services for which a license is required. This way, the state will be in a better position to protect the public from incompetent and unsafe practitioners.

MMA states that existing legal remedies are adequate to address potential harm.

MCA asserts that the Board of Complementary Health Care Providers has authority to provide adequate redress to harmed consumers.

Department Assessment:

The Department is confident that the Board of Complementary Health Care Providers has broad authority under current law to regulate and discipline licensed acupuncturists. The fact that very few complaints have ever been received by the Board against licensed acupuncturists and 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.

Evaluation Criterion #8: Method of regulation. Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate.

Responses:

MAAOM's objective is to provide acupuncture licensees of the Board with certainty with regard to legally permissible practices in Maine.

MMA suggests that the objective of the proponents of the bill is, at least in part, to obtain health insurance reimbursement.

Department Assessment:

The Department does not see strong justification for establishing a certification process internal to the Board of Complementary Health Care Providers to address the Oriental principles and techniques that are the subject of this review. The Department has not received information indicating that licensees or members of the public are confused or unclear about services permitted or prohibited by current statute.

Evaluation Criterion #9: Other states. Please provide a list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis.

Responses:

The parties submitted similar or overlapping exhibits.

Department Assessment:

The applicant MAAOM has provided overview information on licensing and scopes of practice of acupuncturists in other states. MAAOM summarizes as follows:

- *40 states regulate the practice of acupuncture. The remaining 10 states have no legislation authorizing practice of acupuncture, thus, no restrictions;*

- 17 of the 40 states expressly include Chinese herbology in the statutory scope of practice;
- 27 of the 40 states include techniques related to acupuncture and Oriental principles in their scopes of practice;
- 4 of the 40 states require passage of a national exam in herbology to practice acupuncture and 2 states require additional proof of herbal education.²

Licensing methodology for professions and occupations in other states is generally driven by the political climate in existence at the time a profession is first subject to regulation. Changes in licensure requirements occur in the same political context. Maine law already references “Oriental theories” in its statutory definition of acupuncture. Maine is currently aligned with the majority of states that have not included specific items, such as Chinese herbology in their scopes of practice nor established specific herbology educational requirements.

Evaluation Criterion #10: Previous efforts to regulate. Please provide the details of any previous efforts in this state to implement regulation of the profession or occupation.

Responses: None submitted on this criterion.

Department Assessment:

Maine first regulated the practice of acupuncture in 1987. The enabling statute was later repealed and replaced by the current statute, 32 MRSA § 12501, *et seq.* in 1995, for reasons unrelated to the regulation of the practice of acupuncture.

Evaluation Criterion #11: Mandated benefits. Please indicate whether the profession or occupation plans to apply for mandated benefits.

Responses:

MAAOM states that it does not seek mandated benefits, nor does it have any current plans to apply for mandated benefits.

MMA states its belief that the legislation was proposed, in part, to lay the ground work for reimbursement of the costs of mandated benefits.

Department Assessment:

² Summary state licensing information contained in MAAOM’s Exhibit H.

Acupuncture treatment currently is not a mandated benefit in Maine, and the proposal by the applicant does not seek to change that status.

Evaluation Criterion #12: Minimal competence. Please describe whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are.

Responses:

MAAOM supports legislation that would permit the existing regulatory board to set the licensing standards for an expanded scope of practice for acupuncturists and to adopt rules to establish competency.

MCA supports legislation for similar reasons.

MMA responded that each modality should be licensed and regulated separately.

Department Assessment:

The current licensing statute and board rules provide for adequate minimum standards of competence for the practice of acupuncture as currently defined. Given the overall assessment we have reached, additional licensing measures and regulation of the Oriental modalities related to acupuncture that are the subject of LD 263 are not recommended. Further, the information submitted by the interested parties does not suggest the minimum licensing requirements that would be appropriate if regulation were expanded. If the Legislature is inclined to approve an increase in licensing requirements as a result of the proposed legislation, setting those minimum standards should not be left to the current licensing board as the proponents of LD 263 suggest. Decisions regarding appropriate minimum licensing standards for an occupation or profession raise significant public policy issues that are within the purview of the Legislature, not a licensing entity.

Evaluation Criterion #13: Financial analysis. Please describe the method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

Responses: None submitted on this criterion.

Department assessment:

Licensing programs within the Department of Professional and Financial Regulation are dedicated revenue agencies and must be self-supporting through license fees. Any increase in costs associated with a new licensing requirement would be reflected in increased licensing fees.

VI. Recommendations of the Commissioner

State sunrise review law requires the commissioner to engage in a two-step evaluation process guided by 13 evaluation criteria. First, the commissioner must evaluate the information provided by the applicant group in support of its proposal to regulate or expand regulation of a profession. Second, the commissioner must recommend whether the committee should take action on a proposal. If the commissioner's recommendation supports regulation or expansion, the report must include any legislation required to implement that recommendation. The recommendation must reflect the least restrictive method of regulation consistent with the public interest.

In sum, the department finds that 1) Oriental medicine materials and techniques other than "acupuncture" as it is currently defined and regulated by Maine law, are available in an unregulated environment; 2) the public safety is not unreasonably jeopardized by the use of these additional modalities; and 3) complaint records do not reflect any Oriental medicine-related complaints. Whatever specialized skills may be necessary to practice the components of Oriental principles other than acupuncture, the lack of specific statutory reference to those skills has not resulted in public confusion, alarm or harm; therefore, current licensure requirements appear to be adequate to provide public protection.

Based on information submitted by interested parties as well as information developed by the department, the department recommends that the committee not adopt the proposed legislation. The department believes that the current licensure requirements for acupuncturists administered in the public interest by the Board of Complementary Health Care Providers provide meaningful protection to the public against unsafe and unethical practices of licensees. The current licensure requirements, including undergraduate and graduate study of acupuncture and Oriental techniques related to acupuncture, and the passage of a recognized national examination used by many other states, provides the correct balance between appropriate regulation and public protection.

The department did not receive, nor is the department aware of, documented health or safety concerns related to the use of the additional types of Oriental treatment techniques that the proponents contend should be regulated. Our recommendations that the proposed expansion of the licensed acupuncturist scope of practice is unnecessary, will, nonetheless, allow practitioners of these methods of Oriental medicine to continue to provide those services.

We affirmatively emphasize that our recommendation not to revise the statutory scope of practice for acupuncturists should not be interpreted as placing any restriction on the practice of acupuncture as it is currently defined. To be clear, it is our view that licensed practitioners of acupuncture should be free to engage in their profession without

limitation or restriction, provided the modality that may be used does not encroach on scope of practice of another profession. Acupuncturists may use techniques and modalities not specifically included in the current scope of practice. The absence of discussion of related Oriental techniques in the current statute does not prohibit acupuncturists from using those techniques. Nor does it prevent other professions from using the same techniques provided their practice law does not prohibit the use of such modalities.

Absent evidence of threats to public safety resulting from the provisions of the current licensure program, and absent any information that would demonstrate a potential health and safety threat from the use of related Oriental techniques, there is no reason to revise the current scope of practice.

The proponents of the legislation assert that while the bill does not reflect an expansion of the current scope of practice, the statute should include a special certification requirement for licensees in certain areas. The department understands that licensed acupuncturists in Maine may be seeking to shield their practices from challenges from other health professions that have similar or overlapping scopes of practice. In the department's view, however, protection of licensees from challenges by other professions does not justify statutory increases in licensure requirements. Increasing regulation, either through expanding statutory scopes of practice or by adding more licensing requirements, must be reserved for those occasions where the health, welfare and safety of the public are threatened in a tangible way.