

Colorado Acupuncture Licensure

News Update 2003

*State of Colorado
Department of Regulatory Agencies
Bill Owens, Governor
Richard F. O'Donnell, Executive Director
Rosemary McCool, Division Director
Kevin D. Heupel, Program Director*

WHAT'S NEW

Renewing your license every other year does have one drawback – a great deal of time passes between newsletters! Many changes have taken place since the 2001 newsletter was issued: new personnel, new license fee amounts, new rules, and our office moved yet again! So, to recap events over the past two years:

- ❖ In January 2002, the Colorado General Assembly reviewed the Acupuncture Practice Act, which was officially scheduled to “sunset” on July 1, 2002. On March 13, 2002, the new Practice Act went in to effect. Colorado acupuncturists officially became “licensed” instead of “registered,” and a provision was added to the law to permit licensure by endorsement.
- ❖ Linda Fleming, formerly Program Administrator, transferred to a different position within the Department in October 2001 and then retired from state employment a year later. Kevin Heupel, formerly with the Colorado Attorney General’s Office, has been in charge of the Acupuncture Licensure since November 2001.
- ❖ M. Michael Cooke, formerly Executive Director of the Department of Regulatory Agencies (DORA) was appointed to a new position in January 2003 and was replaced by Richard F. O’Donnell.
- ❖ Project T – the “business re-engineering” project that has been ongoing for about two years – is now in place. Business functions within the Division have been centralized, and acupuncture licensing is now handled by Betty Esquibel. Linda Lawson is still here, handling complaints and discipline and general practice questions. Linda has a new telephone number and you can reach her directly at 303-894-7429. We are now on the 13th floor -- our office suite number is 1340, but the rest of our mailing address remains the same: Colorado Acupuncture Licensure, 1560 Broadway, Suite 1340, Denver, Colorado, 80202. We also have a new fax number, which is 303-894-7764.
- ❖ Your license will have a new look this year so don’t be alarmed when you don’t see the familiar green-and-white mountain backdrop. The new licenses are wallet size and printed on red paper.

- ❖ The Division of Registrations no longer sells paper mailing lists or diskettes of Colorado acupuncturists. The only format now available is a CD of our licensed professions. The fee is \$13 and must be accompanied by a request form, available on our website at www.dora.state.co.us/acupuncturists. Click on the button marked "Licensee Database Request."

RENEWAL INFORMATION

License renewal fees have dropped again, and this year we have instituted different fees for active and inactive licensees. Active renewal is now \$110, and inactive is \$105. This small difference will hopefully alleviate issuing anyone a license with an incorrect status code. (Your renewals are processed by a bank depository, and the bank employees are not familiar with our licensing categories.) This fee differential will alert them to any problems and all such renewals should be forwarded to our office for handling.

If you wish to change from active status to inactive, or vice versa, please call our office at 303-894-7851.

RULE CHANGES

To be consistent with the changes made by the new Acupuncture Practice Act, and to correct errors and clarify other issues, a new set of Acupuncture Rules and Regulations went into effect on September 25, 2002. Perhaps the most significant addition was Rule 5, "Use of Title and Restrictions." Briefly stated, this Rule warns acupuncturists that becoming licensed does not automatically entitle them to use the title "Doctor." This distinction must be awarded by an academic institution authorized to grant this title. Another important point is the necessity for acupuncturists to avoid using the title "Doctor" if their doctoral education is not in the field of acupuncture or oriental medicine.

NEW LICENSEES

Since November 1, 2001, this office has licensed 216 acupuncturists. That brings the total number of licensees to 864. Of that number, 672 hold active status.

COMPLAINTS AND DISCIPLINE

Between November 1, 2001 and late October, 2003, 24 new complaints were filed against acupuncturists in Colorado. The allegations include unlicensed practice, practicing beyond the scope, improper use of the title "Doctor," sexual misconduct, and publishing misleading claims. In the same time period, 11 complaints were dismissed. The following individuals were disciplined:

Name	Date	Conduct	Disciplinary Sanction
Fox, James	July 10, 2003	Practicing on expired license	Stipulation to admonition
Fu, Zhong Jun	April 23, 2002	Felony conviction	Probation 5 years
Joel, Alan	October 18, 2002	Unlicensed practice	Injunction
Krenk, Larry	August 21, 2002	Unlicensed practice	Injunction
Magdaleno, Jacob	October 15, 2001	Unlicensed practice	Stipulation: jail, fine
Song, Kee Woon	July 8, 2002	Unlicensed practice	Injunction

In addition, five Notices of Unlawful Conduct were issued.

INJECTION THERAPY

This issue has been raised several times since the last newsletter was printed, and is sufficiently complicated that it will be addressed in a rulemaking hearing in the near future. The question was first raised in 1999 regarding whether injection therapy was within the acupuncture scope of practice. The board attorney determined that it was. However, at that time no one had asked what substances were appropriate for injection.

Since then we have accumulated a thick file of material on the subject and have determined at this time that very few substances are permissible for injection. Oriental herbs, saline, vitamin B-12, and homeopathic-type substances such as Traumeel and Sarapin are permitted. If any of you have questions about other substances, please contact this office before performing injection therapies with those substances.

Two major issues that need further discussion are (1) whether a specific substance is properly used to enhance the effect of point stimulation, rather than to inject a therapeutic dose into a patient; and (2) how injectable substances are obtained by acupuncturists. Although homeopathic pharmacies will accept the authorization of the Program Director in order to sell substances to acupuncturists, this runs counter to the opinion of the Colorado Board of Pharmacy which stands firm on the fact that acupuncturists lack prescriptive authority in Colorado.

We will be soliciting further input from licensees about this topic, and once we have determined a date and time for a rulemaking hearing, this information will be posted to our website at www.dora.state.co.us/acupuncturists.

OFFICE OF THE INSPECTOR GENERAL

In September Frances Borin, Investigations Analyst for the Kansas City Regional Office of the U.S. Inspector General, visited the Division. She brought a bulletin issued by the OIG in April 2003, and we have reprinted it here for your information.

INFORMATIONAL BULLETIN FROM THE OFFICE OF INSPECTOR GENERAL

Facts You May Need To Know About Your Employment

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services has the authority to exclude from participation in the Federal health care programs any individuals and entities who have been convicted of certain offenses, sanctioned by other governmental agencies, or who have participated in inappropriate activities related to the provision of health care items and services as detailed below. Federal health care programs include Medicare, Medicaid, Tricare, Veterans Affairs, and all other programs that provide health benefits and are funded directly, in whole or in part, by the United States government (except the Federal Employees Health Benefits Program).

The Social Security Act (Act) authorizes the OIG to exclude individuals and entities based on particular circumstances. The Act specifies when the OIG must exclude and when the OIG may exclude. The OIG must exclude an individual or entity who has been convicted of:

1. Medicare- or Medicaid-related crimes (misdemeanor or felony)
2. Patient abuse or neglect (misdemeanor or felony)
3. Felony health care fraud (not related to Medicare or Medicaid)
4. Felony controlled substance violations

The OIG may exclude in several other instances. For example, the OIG may impose exclusions based on:

1. Convictions for misdemeanor health care fraud (not related to Medicare or Medicaid)
2. Convictions for misdemeanor controlled substance violations
3. Disciplinary actions taken by licensing boards or other Federal or State health care programs
4. Quality of care issues related to denial of services, excessive/unnecessary services, or substandard care
5. Prohibited activities such as false claims, fraud, kickbacks (with or without a conviction)
6. Defaults on health education assistance loans

Once a person is excluded, Federal health care programs will not pay for anything that the person furnishes, orders, or prescribes, regardless of what that person's job is. The exclusion affects, among others, the excluded person, anyone who employs or contracts with the excluded person, or any hospital or other provider where the excluded person provides services. The exclusion applies regardless of who submits the claims or requests for reimbursement and applies to all items or services, including administrative and management services, furnished by the excluded person. An excluded person may not be employed by a provider to perform functions for which the provider is paid, in whole or in part, by any Federal health care program. As a result, an excluded person generally may not be employed by a hospital, nursing home, or other institutional provider which participates in Federal health care programs. **The exclusion is nationwide in scope and applies to all health care professions and occupations.**

For example, if a nurse is excluded, he or she will be precluded from many types of employment in the health care field. Items or services furnished by the excluded nurse cannot be reimbursed, either directly or indirectly, by a Federal health care program. A nurse cannot work at a hospital, nursing home, or other institutional provider if the nurse's salary or fringe benefits are paid directly to the nurse or indirectly through the employer on a Federal health care program's cost report. These prohibitions apply regardless of whether the person excluded as a nurse now has a different license within the nursing field (e.g., LPN instead of RN), or changes fields and is now employed as a physician, secretary, administrator, information clerk, cafeteria worker, or any other position where the salary is reimbursed by Federal health care programs directly or on a cost report.

Once excluded, an individual or entity is not able to participate in Federal procurement and non-procurement programs and activities. For example, an excluded person cannot be granted Federal student loans or housing loans, nor will any excluded party be able to enter into any contract with the Federal government.

An exclusion does not affect an excluded individual's, or his/her family's, rights to receive personal benefits as a beneficiary of Medicare, Medicaid, or any other Federal health care program.

More information about exclusions, Frequently Asked Questions, and a Special Advisory Bulletin about the Effect of Exclusions, may be found on the OIG's Website at <http://oig.hhs.gov>. Then click on EXCLUSIONS DATABASE, and choose the information you wish to access.

April 2003

NOTICE TO ACUPUNCTURISTS REGARDING SOCIAL SECURITY NUMBERS

Section 24-34-107(1) of the Colorado Revised Statutes requires that every application by an individual for a license issued pursuant to the authority set forth in title 12, C.R.S., by the Department of Regulatory Agencies, shall require the applicant's social security number. Disclosure of your social security number is mandatory for purposes of establishing, modifying, or enforcing child support under § 14-14-113 and § 26-13-126, C.R.S.; locating an individual who is under an obligation to pay child support as required by § 26-13-107(3)(a)(I)(A), C.R.S.; and reporting disciplinary actions to the Health Integrity and Protection Data Bank as required by 45 CFR §§ 61.1 et seq. Failure to provide your social security number for these mandatory purposes will result in the denial of your licensure application. Disclosure of your social security number is voluntary for disclosure to other state regulatory agencies, testing and examination vendors, law enforcement agencies, and other private federations and associations involved in professional regulation for identification purposes only. Your social security number will not be released for any other purpose not provided for by law.

NOTICE TO LICENSED ACUPUNCTURISTS REGARDING HIPAA



The Privacy Rules pertaining to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) became effective on April 14, 2003, and are creating some anxiety and misinformation among healthcare practitioners.

In a nutshell, HIPAA was created to standardize electronic transmission of patient information.

Does HIPAA apply to me?

Many practitioners believe that if an acupuncture office has fewer than 10 employees, HIPAA regulations do not apply. This may be marginally true – and you should consult an attorney knowledgeable about HIPAA to know for certain – but in most cases, if you are practicing in the United States and using a computer, you need to comply.

Myth or Truth? It has also been suggested that practitioners of “Five Element Acupuncture” do not need to comply with HIPAA because their practice is more akin to that of psychologists than practitioners of traditional oriental medicine. The theory is that because conversation and listening techniques are utilized more than diagnosis, they are exempt from HIPAA.



Again, this is unlikely. A brief review of the long list of potential situations on the United States Department of Health and Human Services (HHS) website in which HIPAA comes into play contradicts this assumption.

The official website of HHS states that healthcare providers who conduct “certain financial and administrative transactions electronically” must comply with the new privacy standards. In today’s world, that’s just about everyone. To see for yourself, visit: www.cms.hhs.gov/hipaa



You and us

What do I need to do?

Now that we have established the necessity for compliance on the part of the practitioner, what are you to do? The Acupuncture Association of Colorado’s website offers a number of sources: websites, seminars, and a sample explanatory document for your patients. Their web site is www.acucol.com.

To ensure that your particular situation is included in HIPAA, again, it would be best to consult an attorney specializing in HIPAA or federal regulations.

The Colorado Office of Acupuncture Licensure is a “health oversight agency” under federal regulations. As such, the Office has the legal right to patient information in order to conduct its regulatory activities. In the case of investigations, disciplinary actions, judicial and administrative proceedings initiated by the Office, you are required to disclose protected information even without the consent or authorization of the patient when requested by the Office. Please be assured that when this Office receives confidential patient information, it will be carefully safeguarded and remain exempt and confidential under the Colorado Open Records Act.