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## The Spirit Moves Her



## Politics As Unusual

# A Needling Concern

Should acupuncturists be allowed to perform comprehensive disability examinations?

BY LAUREL DiGANGI

**IS AN ISSUE** that evokes strong feelings for both physicians and acupuncturists: SB 1705, authored by California Senate President Pro Tem John Burton (D-San Francisco), would have allowed acupuncturists to perform comprehensive disability exams within the workers' compensation system.

The bill died in the Assembly Insurance Committee, but the issue may be incorporated into other legislation in the near future. Not surprisingly, the California Medical Association strongly opposes the bill.

"The CMA is very concerned about expanding acupuncturists' scope of practice, and I basically support that concern," says David Ingram, MD, an occupational medicine specialist in San Diego County and chair of CMA's Workers' Compensation Committee.

"If acupuncturists want to perform comprehensive disability evaluations and do what a medically trained physician does, then they should go to medical school," adds Bryce Docherty, CMA's associate director of government relations.

But acupuncturists view the issue as leveling the playing field. Under the California Labor Code, not only MDs and DOs, but psychologists, optometrists, dentists, podiatrists and chiropractors, can perform comprehensive disability evaluations. Yet the code specifically states: "Nothing in this section shall be construed to authorize acupuncturists to determine disability..."

"The bill would have expanded the scope of practice in workers' compensation only," says licensed acupuncturist Brian Fen-

nen, executive director of the Council of Acupuncture and Oriental Medicine, and a member of the committee that brought the legislation to Burton. "It lifts a prohibition that only exists within workers' compensation and replaces it with an allowance to do that."

Acupuncturists argue they already handle 95% of what any physician can do within the workers' comp system. SB 1705 would merely have given them the final authority to perform comprehensive disability exams to determine whether a worker is eligible for benefits.

But it's the expansion of acupuncturists' scope of practice in any form that is worrisome to Docherty. SB 1705, or a similar bill within the California Labor Code, opens a Pandora's box that could lead to other acupuncture-related changes within the Business and Professions Code, he says. (Another sticky-wicket for medical doctors is that, for purposes of discussion, the Labor Code lumps physicians, acupuncturists and other non-MD practitioners together, calling them all "physicians.")

"From CMA's perspective, there are other bills that acupuncturists are trying to get passed," Docherty says. "I think they were using this bill as another way to expand and leverage an expansion of their scope."

Another bill acupuncturists support is SB 573, also authored by Burton, which would require insurance companies to offer acupuncture as a benefit.

### Hurdles and Delays

The goal of the workers' comp system is to treat individuals injured on the job and return them to work. Acupuncturists—as well as physicians, osteopaths, chiropractors, dentists, podiatrists and psychotherapists—have been treating injured workers for years under the system and within the scope of their specific practices.

When a worker faces a long-term injury, the treating practitioner must determine level of disability and whether long-term treatment is needed. Based on the practitioner's report, the Industrial Medical Council determines how much work-

ers will be compensated.

Acupuncturists, under law, can write these reports. So can physicians, osteopaths and the other aforementioned practitioners. When this report is disputed—either by an employee or employer who feels the compensation is unfair—a qualified medical examiner (QME) evaluates the patient, reviews all reports and provides an unbiased second opinion.

With required training, acupuncturists, like physicians, can be QMEs. But under the California Labor Law, acupuncturists cannot evaluate a patient's level of disability. So, according to acupuncturist Fennen, if a patient sees him or one of his peers for a final QME report and disability is one of the issues to be addressed, the patient must be referred to a chiropractor or physician.

"The insurer has to pay for both our exam and that second exam," Fennen says. "It doubles the cost, makes the injured worker go through an extra hurdle, and delays the final report."

Because he is unable to determine dis-

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ability under the Labor Code, Fennen has decided not to renew his QME.

"Basically, I was disturbed by the fact that [my patients] had to get a *second* second opinion," he says.

### Lack of Training

An acupuncturist's scope of practice is clearly defined by state law. According to Section 4937 of the Business and Professions Code, an acupuncturist's license authorizes him to practice acupuncture and "perform or prescribe the use of Oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain and restore health."

Many physicians believe this limited scope of practice, coupled with a lack of medical-school training, renders acupuncturists unqualified to administer comprehensive disability exams.

"In order to do a comprehensive disability exam, you have to determine whether the patient's injury was the result of a preexisting condition, what future medical treatment a patient is going to need and what the patient's level of disability is," says the CMA's Docherty. "An acupuncturist is not trained to make that diagnosis."

SB 1705 would have required acupuncturists who want to perform comprehensive disability exams to take 300 hours of postgraduate training approved by the Industrial Medical Council, which would be a prerequisite to taking the QME exam.

Acupuncturists are currently required to take only one 12-hour education standard that all workers' compensation practitioners must complete.

Yet most physicians believe 300 hours of additional education is no comparison to the rigorous training required to earn a medical degree, particularly if one is a residency-trained specialist. Dr. Ingram also worries that a bill similar to SB 1705, if passed, could put a patient's health at risk.

"The thing that's always worrisome in paramedical evaluations is the value of a negative diagnosis," says Dr. Ingram. "One of the things that MDs and DOs

spend a huge amount of time doing is assessing what's normal and what's not normal. So, if an MD or DO says the patient does not have a hernia, cancer, an aneurysm or a heart attack, there is some confidence that this is an accurate statement. But if a nonphysician says this, then one has to be critical of the value of that statement in making a diagnosis. And this is one of the most sensitive, most technically complicated things that we, as physicians, learn to do. Therein lies the danger. It's not that an

acupuncturist will overstate a disability. Basically, the biggest concern is that they'll miss something."

That said, Dr. Ingram acknowledges acupuncturists play an important role.

"There's no doubt they provide substantial treatment benefits," he says. "The difficulty comes in their establishing diagnoses." ♦

*Laurel DiGangi is a Burbank-based freelance writer and regular contributor to Southern California Physician.*



Mark Lawson stuffs a 26th hot dog into his mouth, just enough to win an annual contest held in Beachwood, NJ.

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