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Division of Professional Licensing  
Attn: Larry Marx  
160 East 300 South  
Salt Lake City, UT 84111

Dear Mr. Marx,

I am writing concerning the Division's supervision of the acupuncture profession in Utah. In particular, we are looking for clarification and guidance for several acupuncture students who are seeking to do some or all of their clinical internship hours here in Utah. These students are currently attending acupuncture schools out of state, but reside in Utah, and plan to become licensed acupuncturists in Utah upon graduation.

I will begin my inquiry with some background information, which includes several key acronyms.

Most, if not all, of the acupuncture schools in the United States are accredited by ACAOM, the Accreditation Commission for Acupuncture and Oriental Medicine. Recognized by the U.S. Department of Education as a "specialized and professional" accrediting agency, ACAOM's primary purposes are to establish comprehensive educational and institutional requirements for acupuncture and Oriental medicine programs, and to accredit programs and institutions that meet these requirements.<sup>1</sup> Once these schools have been approved by ACAOM, the National Certification Commission for Acupuncture and Oriental Medicine, NCCAOM, establishes which students are allowed to sit for the national board examinations. The primary route to eligibility to sit for the NCCAOM boards is graduation from an ACAOM-approved school.

Under Utah law, in order to be qualified for an acupuncture license in Utah, one must pass the NCCAOM boards as well as meet other requirements. See Utah Code Ann. § 58-72-302(4), (5) (setting forth qualifications for acupuncture licensure, including "meet the requirements for current active certification under guidelines established by the National Commission for Certification of Acupuncture and Oriental Medicine (NCCAOM), as demonstrated through a current certificate or other appropriate documentation" and "pass the examination required by division by rule"); Utah Admin. Code R156-72-302a ("In accordance with Subsection 58-72-302(5), the examination requirement for licensure is a passing score as determined by the National Commission for Certification of Acupuncture and Oriental Medicine (NCCAOM) on all examinations for certification by NCCAOM... in acupuncture or oriental medicine").

<sup>3</sup> As set forth above, NCCAOM, establishes which students are allowed to sit for the national board examinations, once they are ACAOM approved.

Based upon this statute and regulation, attending an acupuncture school that is approved by ACAOM, and thus, allows its acupuncture students to sit for the NCCAOM board examinations is a preliminary and mandatory step towards obtaining licensure as an acupuncturist in Utah.

Relevant to the issue concerning acupuncture students conducting some or all of their clinical hours in Utah, there is an exemption from Utah licensure for students currently attending school:

- (1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

....

- (b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program.

Utah Code Ann. § 58-1-307.<sup>2</sup>

Although this provision clearly allows for students to practice their chosen profession while being supervised and as part of their training program, several key phrases are not defined. This is why we are writing to you, in order to obtain the necessary clarification. Specifically, DOPL and its director, potentially with input from the Acupuncture Licensing Board, would make the determination as to what would be defined as a "recognized school approved by the division," who would be "qualified faculty, staff, or designee," and "the activities [that] are a defined part of the training program." See Utah Code Ann. § 58-1-202(1) ("The duties, functions, and responsibilities of each board include ... (e) assisting the director in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession it represents."); see also § 58-1-203(1) ("The following duties, functions, and responsibilities of the division shall be performed by the division with the collaboration and assistance of the appropriate board: (a) defining which schools, colleges, universities, departments of universities, military educational and training programs, or other institutions of learning are reputable and in good standing with the division").

Regarding the first relevant requirement, section 58-1-307(1)(b) mandates that a student be "in training in a recognized school approved by the division." Under the above Utah statutes and regulations concerning state licensure, a "recognized school approved by the division" would appear to be one that has been approved by ACAOM, and allows its graduates to sit for the NCCAOM board examinations.<sup>3</sup> To our knowledge, there is no defined list of recognized schools in Utah; instead, the key criterion is whether a school's graduates will be allowed to sit for the NCCAOM board examinations.<sup>4</sup> Thus, our

interpretation of “a recognized school approved by the division” would be a school that is allowed to have its graduates sit for the NCCAOM boards. Moreover, adopting this standard would create a bright-line rule for whether a student would be able to conduct his or her clinical hours in Utah; the alternative would require a case-by-case evaluation of every acupuncture school whose student(s) seek to conduct their clinical hours here. This would create a great deal of uncertainty for Utah residents who would like to attend acupuncture school (all of which would necessarily be out of state) and would like to conduct some or all of their clinical hours in Utah; in such a situation, students would have to submit a list of potential schools to DOPL, and then DOPL would have to evaluate each one to determine whether it would be approved in Utah.<sup>5</sup>

Second, section 58-1-307(1)(b) requires that the student’s activities be “supervised by qualified faculty, staff, or designee.” Based on Utah’s reliance on the NCCAOM board examinations as a prequalification for licensing, “qualified faculty, staff, or designee[s]” would logically mean those who meet the established requirements for faculty/staff/designees set by the acupuncture school that the student attends, so long as the student is attending an ACAOM approved school whose students are allowed to sit for the NCCAOM boards. In other words, if a student is attending an approved school that will allow him or her to sit for the NCCAOM boards, then the faculty, staff, and designees hired by that school would necessarily be “qualified” under Utah law to be clinical supervisors in Utah for that student.<sup>6</sup>

Finally, section 58-1-307(1)(b) provides that the student’s activities must be “a defined part of the training program.” Similar to the analysis outlined above, it would seem logical that the acupuncture school (*in coordination with the ACAOM*) would be responsible for determining the school’s curriculum, which in turn would determine “the activities [that] are a defined part of the training program.” Thus, as long as the student at issue is attending a school whose students are allowed to sit for the NCCAOM boards, this requirement would be met under Utah law.

In sum, Utah licensure is already based on passing the NCCAOM board examinations. Therefore, students who are seeking to do their clinical internship hours here in Utah should be permitted to do so if they are currently attending an ACAOM approved acupuncture school whose students are allowed to sit for the NCCAOM boards. Likewise, those who would be “qualified faculty, staff, or designee[s]” under Utah law would be those who have met the requirements set by the applicable acupuncture school, if the students from that school are allowed to sit for the NCCAOM boards. Finally, the “activities [that] are a defined part of the training program” under Utah law would be those mandated by the applicable acupuncture school, again, so long as students from that school are allowed to sit for the NCCAOM

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<sup>4</sup> This makes sense because there are currently no acupuncture schools in Utah; instead, all of the acupuncturists who are currently practicing in Utah have attended schools in other states. The relevant factor in Utah is whether the applicant has passed the NCCAOM board examinations.

<sup>5</sup> There is currently a shortage of licensed acupuncturists in Utah, in large part due to the lack of acupuncture schools in the state. This shortage would likely be ameliorated if acupuncture students are able to conduct some or all of their clinical hours here in Utah; such students would be more likely to return to Utah to practice once they graduate.

<sup>6</sup> Again, this bright-line rule would be easy to apply and would create certainty for students seeking to select schools and who wish to conduct their clinical hours in Utah.

boards. This bright-line rule would be clear to interpret and apply, as well as give students certainty as to whether they would be able to conduct some or all of their clinical hours here in Utah.

Please let us know how best to proceed. Under our analysis, no legislative change would be necessary. It is unclear whether there would need to be a rule change or whether DOPL could issue its determination in a private letter ruling or other similar method. Because there are several students who would be starting their clinical internships in the near future, we would very much appreciate a determination in the near future.

Thank you in advance for your attention to this issue.

Sincerely,

Laura Berglund

Kristen Phipps LAc.

Ryan Smith