HZ Assessments
177 Arbuckle Avenue
Folsom, California 95630-5412

September 2, 2003

Michael E. Alpert, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Re: Additional Written Testimony pertaining to Acupuncture Hearings

Dear Mr. Alpert:

I appreciate the opportunity to provide testimony about the issues that have hindered the regulation of the practice of acupuncture in California. These same issues continue to hinder the ability of acupuncturists to serve as primary health care providers.

The purpose of this memorandum is to provide a perspective different from the questions that were asked of me in the initial contact letter from the Little Hoover Commission. The details of the examinations will be investigated by independent evaluators so my comments relevant to the examination are moot except for the possibility of providing a historical perspective. During the hearing on August 28, 2003, the information that was presented and the discussion that followed was no different than that which has occurred, to my knowledge, for the past 15 years. I want to provide an objective perspective based on my 15 years of experience of working with all the regulatory agencies in the Department of Consumer Affairs and particularly the Acupuncture Board.

Dishonesty: A Board member was convicted of selling examinations to test takers. The Legislature removed direct control of the examination from the Board and required the Board to contract with testing vendors; however, much of the decision-making responsibility remains with the Board. Historically, the perception by some of the board members and test takers was that beating the "government's system" is acceptable and desirable. Several of the board members demonstrated a lack an understanding of the concept of "examination security" and seemingly felt that it did not apply to family members or friends. Test takers were systematically interviewed after they sat for the examination.

Conflict of interest by the Board members: An unfair clinical examination remained in place for years until the Legislature finally eliminated it. The Board refused to make the change apparently because of opposition by the schools and associations.

Lack of understanding of the purpose of testing by the Board: An examination vendor terminated its contract with the State (Acupuncture Board) because the Board insisted on continuing with unacceptable testing procedures. The Board challenged all and rejected

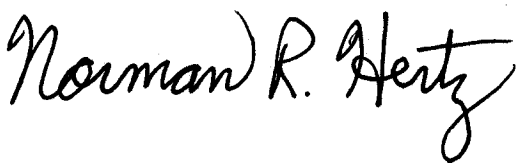
most of the examination recommendations provided by tests and measurement professionals to improve the examinations. The Board requested documentation about the most basic statistical procedures apparently for the purpose of delaying action.

Inability of the Acupuncture Board to regulate the profession: The Board lacks the capacity (will) to make decisions required of a regulatory body. The Board engages in delaying tactics; fails to control the public attending the meetings, allowing outbursts and intimidation of presenters. Of the approximately 30 boards in the Department of Consumer Affairs, the Acupuncture Board is the most ineffective.

Recommendation: Sunset the current Board with its membership and sunrise the Board with two licensed acupuncturists, a physician and surgeon, and six public members.

I look forward to providing testimony on September 25, 2003.

Sincerely,



Norman R. Hertz
Managing Partner

HZ Assessments

August 8, 2003

James Mayer, Executive Director
Little Hoover Commission
925 I Street, Suite 805
Sacramento, CA 95814

Dear Mr. Mayer:

At the request of the Little Hoover Commission I have prepared a response to the key issues from my perspective of the regulation of the practice of acupuncture in California. In 1987, as an employee of the Central Testing Unit (CTU), now known as the Office of Examination Resources (OER), I began working with the examination program of the Acupuncture Committee, now the Acupuncture Board and continued until December 2001. In 1988, OER became involved as a result of examination security being compromised. As a result, the Legislature required the Board to contract with an independent vendor to develop and administer the written and clinical examinations.

The OER was assigned the responsibility to oversee the development and administration of the examination program. OER's responsibility was to assist the vendor in developing and administering an examination that would meet scientific test and measurement standards. OER was especially concerned that the examinations remain secure so OER staff attended all the examination development workshops and the actual examinations. Furthermore, OER's role was to advise the Board on testing methodologies and procedures that should be implemented to improve the psychometric properties of the examinations.

1) As the former chief of the California Department of Consumer Affairs' Office of examination resources, please describe any concerns you have about California's acupuncture examination.

I am concerned that the acupuncture examination as it is presently offered does not provide adequate protection to the public. My concern is partly because of the examination structure and content but also because of the milieu in which the examination is used. Acupuncturists were established as primary health care providers in 1978 with AB 1291 (Torres). Furthermore, there are persons in California who use acupuncturists as their primary health care provider. There are three major elements in an examination program to ensure that persons who become licensed are qualified

to practice. These are education, experience, and examination and all are equally important and are interwoven.

As primary health care providers, acupuncturists must be able to integrate western medicine into the practice of oriental medicine. Although the persons training to become acupuncturists receive some exposure to western medicine, the amount is not sufficient to provide a basis to

provide referrals for western medical care. Because the training and experience for western medicine is not emphasized, the most recent occupational analysis (2001) did not sufficiently identify the importance of western medicine. Therefore, the California Acupuncture Licensing Examination has very little content associated with western medicine. The lack of procedures to bridge oriental medicine with western medicine creates a real threat to validity of the examination program. Validity is defined here as the degree to which accumulated evidence and theory support specific interpretation of test scores by proposed uses of a test (Standards for Educational and Psychological Testing, American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, 1999; hereafter called AERA Standards). When test takers achieve a passing score on the acupuncture examination, it is expected that they can function as primary health care providers. That conclusion is difficult to defend because of the lack of training and experience of the candidates with western medicine.

Also, as a further demonstration of the need to integrate the training program and experience into the mainstream of health care providers, acupuncturists are mandated reporters of child, dependent adult and elder abuse. Although there is an attempt to measure legal content on the written examination, training and educational requirements are lacking.

The requirement to offer the examination in three languages, English, Chinese, and Korean has a negative impact upon integrating Acupuncture into the health care system. Acupuncture is the only health-care related profession in California and the country that offers the examinations in multiple languages.

2) Please describe the efforts that you made while at the Department of Consumer Affairs to improve California's acupuncture examination, and whether your concerns have been addressed to your satisfaction.

The most important improvement in the psychometric properties of the examination occurred when the clinical examination was eliminated. The components of the clinical examination consisted of point location, herbal identification, and diagnosis. The licensed acupuncturists employed by the examination vendor often disagreed

about the location of the acupuncture point and formulating an oriental medical diagnosis. The error was compounded during the scoring. Therefore, the clinical examination produced extremely unreliable results. The herbal identification section was problematic because herbs were substituted or the age or cut of the herb caused unequal measurement. The actual administration of the clinical examination was fraught with delays, inability to find similar models, scoring errors, and test taker complaints.

OER had provided many recommendations to the Board to eliminate the clinical without success. Finally, the legislature enacted a law in 1999 to eliminate the clinical examination and assigned the development of the written examination to OER (See Exhibit 1, California Acupuncture Board, Board Meeting Minutes – April 6, 1999, pages 1-6; Exhibit 2, California Acupuncture Board, Board Meeting Minutes – May 18, 1999 item 8 c4, pages 7-9; Exhibit 3, Special Board Meeting Minutes, June 24, 1999, items 2, 3, and 4; pages 1-3).

The greatest threat to validity of the current California Acupuncture Licensing Examination (CALE) is that the examination is offered in multiple languages (See memoranda from OER dated May 1, 2000; February 13, 2001; and June 7, 2001. Also Exhibit 4, California Acupuncture Board, Board Meeting Minutes, – February 27, 2001, item 7b2, page 5; Exhibit 5, California Acupuncture Board, Board Meeting Minutes, August 20-21, 2001, item 6b, page 3). OER was not successful in my efforts to persuade the Board that the effects from offering the examination in three languages posed a threat to public's health, safety, and welfare; a threat to preventing acupuncture from reaching a "profession" status; and most importantly, the presentation of an examination that is not fair because of its inherent unreliability leading to an examination with questionable evidence of validity.

3) Please share with the Commission your perspective on whether the State should consider using the National Certification Commission for Acupuncture & Oriental Medicine's exam in lieu of, or as part of California's licensing examination.

I do not believe that the Acupuncture Board should use any of the examinations prepared by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) in lieu of or as part of the California examination. Information about the NCCAOM certification examination programs can be found on www.nccaom.org.

My first concern is that the NCCAOM examinations are designated as a certification examination whereas the examination offered by the Acupuncture Board is a licensing examination. The AERA Standards offer the following definitions:

- *"Certification - A voluntary process, often national in scope, by which individuals who have been certified have demonstrated some level of knowledge and skill in an occupation.*

- *Licensing - The granting, usually by a government agency, of an authorization or legal permission to practice in an occupation or profession."*

The differences are more than in the meanings of the words. The differences are operationalized in the methods and rationale used to develop and administer examination programs. The stated mission of NCCAOM is to promote nationally recognized standards of competency and safety in acupuncture and Oriental medicine and its primary mission is to protect the public by examining and certifying competence in the practice of acupuncture, Chinese herbology, and Asian body work therapy. The mission of the Acupuncture Board is much more direct which is to protect the public's health, safety, and welfare. To emphasize, there is a fundamental problem when a professional association intends to promote a profession and at the same time controls the examination program.

My second concern relates to the differences in structure of the California and the NCCAOM examinations. The NCCAOM examination for certification in acupuncture does not assess knowledge of herbs and has a separate examination for point location and a separate certification program for Chinese Herbology. The knowledge of herbs and the properties of point locations are tested in the California Acupuncture examination. However, instead of asking test takers to identify a point, the test questions ask instead about the effects of performing acupuncture on a location. The NCCAOM point location examination requires test takers to identify 25 points from a list of 395. California's examination is job-related while the NCCAOM point location examination may measure test takers' ability to recall facts, i.e., points. Furthermore, Asian body work therapy is not defined as part of the acupuncture practice in California. Finally, a certification issued by NCCAOM, described as "Diplomate in Acupuncture," has no standing in California.

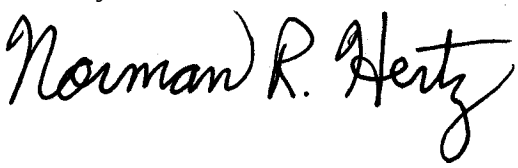
Summary and Conclusions

The Acupuncture examination program has made significant improvements over the last 15 years. However from the historical perspective of OER, the Acupuncture Board was reluctant to consider recommendations to improve the psychometric properties or to enhance its examination program. That was always a concern of OER because of the importance of Acupuncturists in the health care services in California since the examination program was and is not being carried out as well as it could be or should have been in the perspective of tests and measurement professionals.

If the two issues described above, (1) the integration of western medicine and (2) offering the examination in English were resolved, then I believe that the practice of acupuncture would be much improved and acupuncturists would truly become a mainstream "health care provider." Also, if those two issues were resolved I believe that the California examination could be a fair, reliable, and valid examination.

Finally, I do not believe that the NCCAOM certification examinations are not suitable for use, in whole or in part, as the standards for licensing acupuncturists in California.

Sincerely,



Norman R. Hertz
Managing Partner

Enclosures: Exhibits (5)

1. Acupuncture Board Minutes, April 6, 1999
2. Acupuncture Board Minutes, May 18, 1999
3. Acupuncture Board Minutes, June 24, 1999
4. Acupuncture Board Minutes, February 27, 2001
5. Acupuncture Board Minutes, August 20-21, 2001

OER Memoranda (3)

1. May 1, 2000 (Adapting Examinations in Multiple Languages)
2. February 13, 2001 (Language of Acupuncture Examination)
3. June 7, 2001 (Examination languages)

Biography