Regulation of Acupuncture

We are approaching the end of 2007 and there is still not a single governing body for acupuncture, TCM and Chinese herbal medicine in the UK. There are many different organizations all practising different versions of acupuncture, TCM and Chinese herbal medicine all with different lengths to their training courses. At present all these different organizations have equal standing under the law.

Students who have graduated from the College of Chinese Medicine, an ASA accredited course, are entitled to be admitted as members of The Acupuncture Society and are obliged to maintain its high professional standards and adhere to its code of ethics, rules and regulations and professional requirements.

Society involvement in the future regulation of the profession

The Acupuncture Society were asked to contribute towards the draft National Professional Standards for Acupuncture and the Department of Education has also sort the advice of The Acupuncture Society relating to how the public can best be informed about the benefits of the acupuncture profession. The Acupuncture Society are currently attending the Acupuncture Stakeholders Group meetings and are participating in the future regulation of acupuncture and Chinese herbal medicine in the UK.

Here is an article from the april 2007 issue of The Chinese Medicine Times which clearly explains the current situation.

The Statutory Regulation of Acupuncture in the UK
by John Wheeler

Introduction

Statutory self-regulation (SSR) had become something of a holy grail for traditional acupuncturists in the UK. It had always been seen as the last step in a process of gaining true professional recognition alongside orthodox western medicine, and had achieved almost iconic status. The last decade, however, has seen fundamental changes in the structure of statutory regulation in the UK, and the original intended outcome of SSR is no longer possible. The irony of this situation is that this may well be to the longer-term advantage of the acupuncture profession, although many of its current practitioner members will feel cheated of their original goal. This paper examines briefly the historical background of the pursuit of statutory regulation, and then considers the opportunities which the current situation offers.

The long haul to regulation

Acupuncture had always been grouped alongside osteopathy, chiropractic,
herbal medicine and homeopathy as the so-called â€œBig Fiveâ€ in the complementary and alternative medicine (CAM) world. Together these groups formed the Council for Complementary and Alternative Medicine, and the understanding between them was that each in turn would move forward to statutory regulation. Without direct government support, the only process available was by the parliamentary mechanism of a Private Member’s Bill, a costly and time consuming route. However, the osteopaths (1993) and the chiropractors (1994) managed to achieve their goals by this means, and after a gap of several years while the regulatory infrastructures were created, both opened registers in the late 1990s.

It was widely assumed that acupuncture would be the next profession to follow suit. This had been anticipated in the creation of the British Acupuncture Council (BAcC) in 1995 by the merger of five acupuncture schools. With the British Acupuncture Accreditation Board (BAAB), an independent accreditation body formed in 1991, providing a guarantee of common educational standards, discussions with the UK Department of Health were very positive.

As well as the traditional acupuncture associations, there also existed three associations of medical professionals using acupuncture alongside their primary statutorily regulated activity. The key word in use at the end of the 1990s in regulatory discussions was â€œinclusivity,â€ and the Department of Health was concerned that any statutory self-regulation scheme would embrace all of those using substantial amounts of acupuncture in their day to day practice. It encouraged the creation of a forum involving the BAcC, the British Medical Acupuncture Society (BMAS), the Acupuncture Association of Chartered Physiotherapists (AACP), and the British Academy of Western Acupuncture (BAWA), these groups representing the doctors, physiotherapists and nurses.

It would be fair to say that the early meetings of this forum were somewhat bad-tempered affairs. Accusation and counter-accusation about lack of acupuncture training and lack of medical training were very much to the fore. Whereas other groups, notably the herbal medicine associations who were following a similar path, shared equivalent levels of entry standard training, there were wide variations in the amount of training undertaken by people claiming to be â€œacupuncturists,â€ and very little by way of concession to each other’s positions. Even where the representatives themselves began to establish a healthy respect for each other, their constituents were largely implacable.

The defining change came with the House of Lords Science and Technology Select Committee Report on Complementary and Alternative Medicine published in 2001. This was the result of a long investigation by the Committee into the huge range of CAM provision in the UK, one outcome of which was to assign therapies to three distinct groups depending on the levels of independent practice which they supported and the evidence base for their efficacy and effectiveness. Acupuncture and herbal medicine were in Group 1, described in the Report as those professionally organised therapies for which there was a good evidence base. Ironically Traditional Chinese Medicine (TCM), considered
in its integrated form as a combination of acupuncture, herbal medicine, tui na and dietary advice based solely on Traditional Chinese therapeutic principles, was placed in Group 3, those therapies with the least scientific evidence bases and resting largely on philosophical rather than scientific beliefs. It was clear that it was the limited evidence base created largely by scientific research using western medical acupuncture, as well as the fact that acupuncture was diverse enough to span several paradigms, which had unwittingly becomes traditional acupuncture’s passport into the higher Group.

At the same time as the House of Lords Report was published, however, there had been a number of problems with herbal medicine and toxicity, arising mainly from covert imports of adulterated raw herbs, and also a fairly rancorous campaign by a leading academic with a university Chair in complementary medicine about the safety of acupuncture, drawing on world-wide statistics which bore little relation to the high standards espoused by UK practitioners. The resulting perception was that both acupuncture and herbal medicine represented a serious safety risk and should, according to the recommendations of the Report, be moved forward to statutory regulations as soon as was practicable for the protection of the public.

This recommendation followed shortly after the passing of the 1999 Health Act, in which a new fast-track legislative procedure was introduced, the so called Section 60 Order, by which statutory regulation could be introduced without the expense and time involved in the older parliamentary methods. Drawing on the House of Lords Report’s recommendations, the Department of Health, in partnership with the (then) Foundation for Integrated Medicine, established two working groups in 2002 to draw up plans for the statutory regulation of acupuncture and herbal medicine.

The Acupuncture Regulatory Working Group (ARWG) and the Herbal Medicine Working Group (HMRWG) worked in relative isolation from each other, a decision which with the benefit of hindsight was a strategic error. The ARWG, better resourced by virtue of the numbers and finances involved in their associations, dealt with the thorny problems of different entry routes into the acupuncture profession, the problems of establishing equivalences of educational standards and outcomes and the manner in which dual registration, as for example a doctor and an acupuncturist, could be managed and funded. The HMRWG, by contrast, were able to settle their differences relatively quickly by accepting a range of titles and curricula based on equivalent training standards, but rapidly concluded that statutory regulation was not financially viable for them as an independent body unless the acupuncture and herbal medicine professions were jointly regulated.

When this merger was initially proposed, it took the ARWG by surprise, especially since the two professions were being described as the first entrants in what might become over time a CAM Council. For the BAcC, in particular, these proposals caused some fairly serious rifts amongst its practitioner members, with many believing that a CAM Council was their natural home while others felt
that the self-regulation would ultimately be diluted to the point where control of the traditional acupuncture profession was handed over to a majority of non-acupuncturists. This antipathy to what was perceived as outside control had already gained momentum in acceding to the possibility of sharing control with the western medical acupuncturists. Having now potentially one seat at a twenty-four seat table was seen as the ultimate sell-out.

However, by this stage the regulation of acupuncture and herbal medicine was being overtaken by a much wider and far-reaching review of healthcare regulation in the UK. This had been initiated with the creation of the (then) Council for the Regulation of Healthcare Professionals (CHRP), a statutory body with overarching powers to harmonise standards across the statutory regulators and to challenge decisions which it believed to be unduly lenient to registrants. The Shipman tragedies, where a GP was discovered to have murdered up to 300 of his elderly patients, together with a number of high profile cases where statutory regulators had been perceived to fail in the actions which they took against errant practitioners, led to the commissioning of several reports under the chairmanship of Dame Janet Smith. Many major reforms of healthcare were put on hold until these reports had been prepared and published.

This, indeed, had been the case with the regulation of acupuncture and herbal medicine. As early as 2004 the Department of Health announced the formation of a Joint Working Group (JWG) to deliver a proposal for the regulation of acupuncture and herbal medicine. The brief of the JWG and its representation had been published after consultation with the main players, but then, as a consequence of the general hiatus while everyone awaited the outcome of the Shipman Reports, in the words of a famous review of a Samuel Beckett play, nothing happened twice. Indeed, the situation was then further compounded by the announcement of two further commissioned reports, a review of non-medical healthcare by Sir Andrew Foster and a review of the General Medical Council by Sir Liam Donaldson. Both of these were aimed at taking on board the recommendations of the Shipman Reports and reviewing the overall state of healthcare regulation in the light of these recommendations.

While this process had unfolded in the wider world of regulation, the division of acupuncture and herbal medicine regulation into two was being strongly challenged by the Chinese associations who argued that TCM, or CM as they now described it, was an authentic discipline in its own right, and that there should be a third wing. This move coincided with an increasing proliferation of High Street outlets for TCM in many cities and towns across the UK, and an upsurge in reports of sharp business practices and unchecked import routes leading to yet more problems with adulterated herbal medicines. This in turn led to a perception that a third working group for Chinese medicine might be an effective mechanism for bringing this whole sector under better control.

This task became all the more pressing with the realisation that many of the reforms in the use of herbal medicines which would be necessitated by the implementation of the European Union Directives on Traditional Medicine in
2011 depended on the statutory regulation of herbal medicine, since many of the herbs would only be available to registered practitioners. Continuing fears about the safety and toxicity of herbs, together with the realisation that waiting for the Donaldson and Foster Reviews would leave scant time for introducing a regulatory scheme, meant that the JWG began its work in late 2006 before the Reviews were completed. The creation of a Chinese Medicine Working Group (CMWG) to sit alongside the expanded ARWG, now called the Acupuncture Stakeholders Group (ASG), and the Herbal Medicine Working Group (HMWG) gave the JWG the three workhorses of regulation to generate material for assembling into regulatory proposals, which are due to be presented at the end of 2007.

The current situation

This route march through the history of the last decade’s movement towards regulation, while much briefer than would do full justice to the complex intertwining of factors, is intended primarily to demonstrate how the current position for traditional acupuncturists is vastly different from what they aspired to as little as ten years ago. The main outcomes of the Donaldson and Foster Reviews are concerned primarily with patient safety, with the accountability of health professionals, the standardisation and streamlining of conduct systems, and the increase in lay representation in committees to ensure that professions do not favour their own. The older model of professional regulation is long gone, and statutory self-regulation as a concept is now moribund.

Indeed, there are two consequences of the current reforms which dilute still further the self which had been for so long the primary aim of regulation for acupuncturists. Foster concluded that there should be no new regulatory bodies, and identified the Health Professions Council (HPC) [http://www.hpc-uk.org/aboutus/](http://www.hpc-uk.org/aboutus/), a body which had developed from the former Council for Professions Supplementary to Medicine, as an effective conduit for any emerging professions. The JWG is currently being given a very clear steer that this is where any emerging acupuncture and herbal medicine council will be housed. In order to deal with the expansion of this body to accommodate more professions, there already being fourteen in the HPC, the structure of the HPC would itself need to be reviewed, since its current constitution, with one representative from each profession on the governing council and a lay majority, would lead to an unwieldy and unworkable governing council. There has been much talk of the Ontario model, a structure pioneered in the Canadian state where governing boards in healthcare consist primarily of non-professionals with expertise in areas such as finance and management but with little professional representation.

For many practitioners, this seems to be the ultimate betrayal of their original aspirations. Where they had believed that a General Acupuncture Council governed by a majority of traditional acupuncturists would be the ultimate guarantee of the future of traditional acupuncture, they are confronted with a picture in which they are simply one amongst many professions governed by a
healthcare regulator which, through having just taken on the psychotherapists, now oversees over a quarter of a million practitioners. They have no guarantees of any effective representation on the governing councils, and by virtue of the tripartite grouping of acupuncture, herbal medicine and Chinese medicine, may not even have effective control of the small sub-section which they may become within the HPC as an overarching regulator.

However, far from being a picture of decline, I believe that the likely outcome maybe to the advantage of the acupuncture profession in ways which its members have not yet thought through with any clarity. The history of SSR bodies is not necessarily one about which people should feel particularly nostalgic. The conclusions of the Shipman Report, that healthcare professionals tend to look after their own, was an extrapolation based on an analysis of just one major SSR body, the General Medical Council. Other bodies disputed this, and the experience of registrants is often that elected representatives more often than not ago native very quickly on governing councils, and are not reliable defenders of the professionals position, either in standard setting or in determining ethical and conduct matters.

In broad terms, the lighter the regulatory touch, the more autonomy rests with the professions in matters of greatest significance to them. Where there is less representation of professionals, there is a greater need to work in partnership with them to achieve the overall objectives of regulation. This has certainly been the case where the Ontario model has been tested, and given that in an internal questionnaire of acupuncture associations control of educational standards was the single most important factor for every group, any structure which allows this to happen is to be encouraged.

Indeed, the Register itself is a good example of how times have changed, and how the perceptions of potential registrants need to be guided through these changes. In the older models of regulation appearing on the register was seen as a professional achievement in itself, one which distinguished the registrant from those whose standards were not as high and one which could be used as a means of attracting custom. In the modern regulatory systems the register is just a list, and probably one to which the public would only refer by way of instigating a complaint. The register for the combined acupuncture, herbal medicine and Chinese medicine professions may even benefit from being a joint list without distinction except by way of secondary differentiation. The less it looks like a mark of distinction for each individual discipline, the more it will appear to be only an administrative device, which provides basic information and guarantees of minimum and continuing competence. The profession and its professional associations will be where the public goes to find out the information on which it will base its treatment choices.

**New Opportunities**

The obvious question to pose, given the fundamental change in the structure of healthcare regulation, is what benefits statutory regulation now offers to
practitioners. Rather than creating a route to professional recognition and self-management, the current model looks more like a mechanism for external control in which the professionals themselves have little say.

Many practitioners see statutory regulation offering some of the direct marketing opportunities which voluntary self regulation has denied them. Principal amongst these are the possibilities for being recognised and reimbursed by the major health insurance schemes, such as BUPA and PPP, and for finding employment within the NHS. The former certainly does offer scope for development. Many of the larger providers have baulked at funding acupuncture treatment because they have lacked the resources to check the credentials of every practitioner to whom a subscriber may have been. The experience of the osteopaths and chiropractors has been very positive in this respect. The one factor with which the traditional acupuncture profession may have to contend is the demand for evidence-based treatments with a definite prognosis in terms of time taken and money spent. Models of acupuncture which favour open-ended commitments to balance are not a favourite with the actuaries who determine funding policy. There are, however, enough proven protocols in popular areas such as the treatment of migraine and back problems to allow considerable funding, and statutory regulation should, in theory, make it easier to find funding for further trials, which build up the evidence base.

The experience of osteopaths in respect of NHS funding is illustrative for the wrong reasons, however, insofar as the cash-strapped NHS may be able to identify suitably regulated professionals but has no additional funding to provide openings for them. Few osteopaths have reported any significant increase in their NHS work as a consequence of statutory regulation. That said the barriers to work in GP practices and at a more local level may be considerably lifted by the reassurance which regulation brings to potential service purchasers. There are already indications that at a local level providers are awaiting statutory regulation to underpin the case which they wish to make to their Primary Care Trusts for adding acupuncture to the treatment mix.

By far the greatest benefit, however, aside from the structural control of educational standards which the new system should provide, is the confidence which regulation and the use of protected title will give to the public. The proliferation of practitioners and high street retail outlets has left the public confused about standards and accountability. The advent of statutory regulation will bring that element of control to the sector which encourages the general public to feel that they are not dabbling with fringe medicine but benefiting from the work of properly trained and fully accountable healthcare professionals.

Summary

There is a great deal more which needs to be written about the actual structure of acupuncture regulation, the grand-parenting schemes whereby existing practitioners can be taken on to the new registers, and the innovations in setting educational standards which are likely to be necessitated by having as diverse a
range of practitioners as the acupuncture profession does. However, as a member of the Acupuncture Stakeholders Group it would be unfair for me to comment on these while they are still under discussion. I shall be happy to give you an update in the near future, however, as the process unfolds.

Biography

John Wheeler has been an acupuncture practitioner since the late 1980s, having trained at the College of Traditional Acupuncture in the UK. He has a long history of involvement in the political development of the acupuncture profession, having sat on the Council for Acupuncture and Council for Complementary and Alternative Medicine in the early 1990s, and having been a member of the Acupuncture Regulatory Working Group and the Acupuncture Stakeholders Group. He has been a longstanding member of the Executive Committee of the British Acupuncture Council, and is currently its Secretary, Chair of its Finance Committee, and a member of its Admissions and Ethics Policy committees. He has no spare time.

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