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Remote Acupuncture Training Venues and New Approaches

Avoiding Potential Legal and Malpractice Exposures

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Acupuncture colleges, as a part of their teaching missions, provide acupuncture services and engage in acupuncture demonstrations at a variety of locations and under a variety of circumstances.

In the traditional model, each acupuncture college operated its own acupuncture clinic on campus, where students and trainees provided acupuncture services under the supervision of licensed faculty. During the last five years, this method of providing supervised acupuncture training has been augmented by exciting new opportunities for outreach, including internships at hospitals, clinics and private practices. In addition, many acupuncture colleges have now established off-site clinics, providing students a chance to experience the practice of acupuncture in a community-based setting.

The emergence of these new training settings follows a developing pattern - the broadening interest in, and acceptance of, acupuncture by mainstream America. But as it is often said: Be careful of what you wish for - you just might get it! In this case, the movement of acupuncture into the mainstream carries with it new exposure - the microscope of regulatory oversight, the inventive intrusion of opportunistic personal injury attorneys, and territorial resistance from the American health care establishment. Acupuncture needs to enter this new arena well-prepared, cognizant and organized to avoid the myriad complex regulatory and legal exposures.

Here, we examine the integration of new training venues into acupuncture college curricula, and the steps needed to ensure these operations are implemented so as to minimize unnecessary exposure to the college or its staff. In addition, we review the basic steps to ensure proper protection is in place for traditional acupuncture college clinics.

Traditional Acupuncture College On-Site Clinics

The traditional acupuncture college clinic provides a setting for clinical training that is particularly well-suited for control of exposures. It is no accident that virtually without exception, every state acupuncture act was designed with a primary focus on this traditional venue as the setting in which an acupuncturist would develop and refine his or her clinical skills. At the college campus, greater attention can be given to the operation and training systems used in the clinical environment, and specific oversight of the patient intake process exists.

Patients entering the college setting are made explicitly aware of the fact that the clinical care will be rendered, in part, by acupuncture trainees, and that such care will be provided in the context of an educational program. No confusion can exist in the minds of the patient as to whether the treatment being rendered is at a private clinic or is part of a training institution. In short, all key issues impacting on the nature and quality of care can be tightly controlled in this setting. It is therefore no surprise that regulatory bodies prefer this environment as the mainstay for acupuncture clinical training.

Even in this traditional setting, there are some basic steps that should be followed to ensure the college is protected properly from exposure. Here are some key issues to address.

1. Be Sure Everyone Is Listed on Your Coverage. If your acupuncture coverage has been issued properly, it should include a listing of three different groups to be covered under the policy. First, the college should be named, along with any affiliated corporate entity, such as if the college has a management corporation as a part of its structure. Second, all students should be listed on your acupuncture policy, and disclosed in your acupuncture college application. Be sure to update this list as new students are enrolled. Third, all acupuncture faculty should be listed. Again, as new practitioners are recruited to be part of the college's faculty, be sure they are added to the list of covered individuals.

While these detailed lists take a little time to complete, they prevent any ambiguity with regard to coverage should an incident occur. The detailed list becomes an affirmative statement by the carrier that these individuals and entities will be protected in the event a covered claim is made against them. For this reason, you should insist that your carrier provide such a list to you. As long as this formality is handled, the college is well-protected in the event of a problem.

2. Faculty Licensure. Be sure that all members of the college faculty have proper licenses to practice in the state in which the faculty member is providing clinical training. Generally, all forms of medical licensing are supervised at the state level, and are subject to the regulation of the state in which the patient is located

at the time of care. Acupuncture is no exception. Don't make the mistake of inviting a visiting professor to provide training at your campus unless you have first determined whether that individual is licensed in your jurisdiction. Some states have special provisions for such visiting faculty, and can be easily approved if the proper steps are followed. The acupuncture college simply applies to the state licensing board for a provisional teaching license in order for the visiting acupuncturist to legally provide acupuncture training.

Failure to follow such steps can be devastating. Practicing medicine without a license can be a criminal offense leading to severe sanction - even the revocation of the teaching institution's license. Further, the unlicensed practice of acupuncture would also create an unwanted insurance coverage gap. Avoid this problem by checking for licensure at the time you bring new faculty on board. Include a renewal process to review this annually, and when you allow visiting professors to teach, clear their credentials with your state board first. In addition, if the visiting acupuncturist has his or her own private malpractice insurance policy, request that the state in which the college is located be added to the policy as an additional "territory" for coverage. This is usually provided free of charge.

3. Private Care vs. Clinical Training. As a college, your faculty may request privileges to utilize your facilities for their part-time private practices. Faculty members, whose primary activity is to work with students in a clinical training setting, may not be able to separately operate and manage an independent clinic. However, they may wish to provide care to a limited group of private patients, and want to avail themselves of the convenience of the clinical facilities at the college. Before you permit this, make sure that each such faculty member maintains private practice malpractice coverage. Your college policy covers the college for claims related to care rendered in connection with the clinical curriculum. This policy is not intended to cover acupuncturist who are treating their private patients independent of the college curriculum. As such, if you allow this activity to take place on your campus, be sure that the treating acupuncturist has his or her own independent insurance coverage. If the acupuncturist has independent coverage, no further steps need to be taken. If not, you may either require that the acupuncturist obtain such coverage before using the college facility, or you can typically assist him or her in arranging discounted coverage for this limited on-campus care. This type of coverage would be limited only to the care rendered within the college's "four walls," and would be at a substantially reduced price, reflecting the part-time nature of such activity.

Acupuncture College Additional Locations/Internships

It is becoming progressively more common for acupuncture colleges to place students for training either in clinics or in acupuncture practices that are not owned or operated by the acupuncture college. This approach raises a number of exposure issues that should be addressed by the college.

1. Be sure the clinic and faculty are covered. The college's "four walls" policy must be specifically endorsed to extend to clinics that are not on the college campus. This will ensure that the college and the students named in the college policy are covered at this extended location. The coverage for the faculty works a bit differently. As previously discussed, the college coverage is not designed to provide coverage for private patient care, only care provided as a part of the college curriculum. Just as with the college campus, if any activity at the remote location is private care, anyone involved in such private care must have separate private practice malpractice coverage, which names the college as an additional insured.

This is critically important at the remote location, since the college may not have control over the activities at that location. This can lead to abuses if an acupuncturist, who does not have independent coverage, attempts to "piggy-back" coverage onto the college policy. Not only is this activity not covered under the college policy (which would lead to gaps in coverage), but it can create a situation in which a plaintiff's counsel wrongfully names the college, marring the institution's track record with an otherwise avoidable nuisance exposure. This is entirely preventable if all acupuncturists at the remote location are required to have separate, private practice coverage.

The only exception to this situation is if the remote location is operated entirely by the college, solely for the purpose of instructional activities. In this case, the college simply needs to ensure that the site is added to the college's policy, and that all of the supervising acupuncturists are listed as a part of the college's faculty.

2. Be sure the facility and supervisors are licensed. As previously discussed, most state legislation that authorizes the operation and licensure of acupuncture colleges includes specific oversight requirements for that college. Typically, licensure is granted on a location-specific basis. As such, the addition of a location as a training site may require the specific approval of your regulatory oversight board. Be sure to contact your local state board before proceeding with a remote clinical training site to ensure that if such a requirement exists, it is met.

Colleges should also review legislative requirements pertaining to the qualifications of supervisors at remote sites. While members of your primary faculty may be exempt from some of these requirements, supervisors are often not even members of the college faculty, as in the case of an externship program. Either way, you

should contact your state board to determine if there are specific certification requirements for supervisors at remote sites. Sometimes a written agreement between the college and the supervising acupuncturist is required. Of course, in all cases, the supervising acupuncturist needs to be licensed to practice in the state in which the remote site is located.

3. Special operating requirements and controls. Because of regulatory concerns regarding the limited degree of college control at remote sites, and because of concerns about the mixed-use environment of a private practice and a clinical training function, many states have various operating requirements for the facility. These requirements can include rules regarding the presence of a practitioner at all times when a trainee is seeing a patient or the maintenance of a log of each patient seen by an acupuncture trainee. Some states have very detailed requirements designed to ensure that the patient is clearly notified of the training activity. These may include a requirement that each trainee wear a name tag with specific wording, or a requirement that consent be obtained for participation in a training program. These and other unique operating rules pertaining to remote sites should be reviewed and followed when integrating a remote site into your college curriculum.

Acupuncture Seminar/Continuing Education Programs

One final area that warrants attention is the utilization of acupuncture training seminars as a vehicle for teaching technique. These seminars take many forms, from a college-sponsored seminar on a college campus, to an independently sponsored seminar at a remote site, sometimes at a hotel ballroom. Following is a discussion of some of the exposure issues related to these seminars.

1. On the acupuncture college premises: Coverage issues for onsite acupuncture college seminar/continuing education programs usually are handled in the same manner as an on-site clinic. If demonstrations or needling are to be done during the seminar/program, (1) the teachers must be legally able to perform the services in the state in which they are occurring; and (2) the instructor must be either covered under the acupuncture college's malpractice insurance policy, or have his or her own malpractice insurance that extends coverage to the territory in which the instructor is teaching. In many states, there are exceptions to the usual licensing laws that will allow acupuncturists licensed in other states to come in and teach a seminar or series of seminars. Often times, advance approval from the state licensing board is necessary.

2. Programs not on an acupuncture college's premises: If an acupuncture college is sponsoring an off-site continuing education seminar, the acupuncture college can usually request an endorsement to its policy, extending coverage to the program. In this case, the program would be handled in exactly the same fashion as an on-site acupuncture college seminar/continuing education program.

In cases in which the off-site continuing education seminar is not sponsored by an acupuncture college, it is more difficult to obtain complete legal and insurance protection. These types of seminars are separate profit-making businesses that usually need to obtain a separate business owner's insurance policy. The person who is putting on the acupuncture seminar should obtain separate liability coverage through either a comprehensive general liability policy or a business owner's policy to cover lawsuits that may not be acupuncture-related. For example, when someone claims that they were injured at a demonstration where there was no acupuncturist/patient relationship, the claim would fall under a different form of coverage, since without a provider/patient relationship, there can be no professional services rendered. This type of claim instead falls under a general liability policy or a business owner's policy issued to the acupuncture seminar business.

Many state laws allowing out-of-state acupuncturists to give seminars and lectures **apply only to those sponsored by an acupuncture college**. In those states, private seminar providers would be legally barred from using any out-of-state acupuncturists to do demonstrations or any form of needling. Non-college seminar programs should take special note of these restrictions since, as mentioned earlier, the unlicensed practice of acupuncture is both illegal and uninsurable, creating considerable potential exposure for the seminar provider.

Conclusion

The basic lesson to keep in mind is that the best protection against ending up with unintended exposures is to check with your state board and follow the rules with regard to licensure and operation of remote sites and seminars, and communicate with your insurance carrier and ensure coverage is properly documented. Virtually all of the endorsements and riders discussed above can be issued for little or no cost; they must simply be requested. Follow these procedures step-by-step and make sure the results are documented, and you will have the best protection possible.

Author's note: A special thanks to Mark Seem for framing the issues that needed to be covered in this article.

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