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Assemblée législative  
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## **Official Report of Debates (Hansard)**

**Tuesday 14 November 2006**

## **Journal des débats (Hansard)**

**Mardi 14 novembre 2006**

**Standing committee on  
social policy**

Traditional Chinese  
Medicine Act, 2006

**Comité permanent de  
la politique sociale**

Loi de 2006 sur les praticiennes  
et praticiens en médecine  
traditionnelle chinoise

Chair: Shafiq Qadri  
Clerk: Trevor Day

Président : Shafiq Qadri  
Greffier : Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
SOCIAL POLICY**

**COMITÉ PERMANENT DE  
LA POLITIQUE SOCIALE**

Tuesday 14 November 2006

Mardi 14 novembre 2006

*The committee met at 1603 in committee room 1.*

**TRADITIONAL CHINESE  
MEDICINE ACT, 2006**

**LOI DE 2006 SUR LES PRATICIENNES  
ET PRATICIENS EN MÉDECINE  
TRADITIONNELLE CHINOISE**

Consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts / Projet de loi 50, Loi concernant la réglementation de la profession de praticienne ou de praticien en médecine traditionnelle chinoise et apportant des modifications complémentaires à certaines lois.

**The Chair (Mr. Shafiq Qaadri):** Ladies and gentlemen, colleagues, I call the meeting to order. As you know, we're here for clause-by-clause consideration of Bill 50, An Act respecting the regulation of the profession of traditional Chinese medicine, and making complementary amendments to certain Acts.

We have a number of motions before the floor, and I would offer it now, unless there are any opening comments, to section 1, motion 1, the PC Party. Ms. Witmer.

**Ms. Shelley Martel (Nickel Belt):** Chair, I want to raise a point of order. I'm not sure where would be the most appropriate place, so I apologize to Ms. Witmer.

This committee received a letter from the minister dated November 7, 2006—the same day, coincidentally, that the amendments were due. I'm assuming that we got it for a reason and that we got it because it's supposed to have some bearing on this particular committee and its work, so I'm wondering if we are going to deal with that before we start to deal with the amendments, because I have some questions about what I'm supposed to read into this letter, what it's supposed to mean. I don't know if Ms. Witmer feels the same way, but I certainly have some questions about what it means for this bill.

**The Chair:** I'll turn the floor over to the parliamentary assistant or anyone else able to reply.

**Mr. Richard Patten (Ottawa Centre):** The intent, of course, was to assure the committee that, while we will be short of time here to identify what all of the various health professions might see as a minimum standard, the ministry itself and the minister himself would be moving on contact with HPRAC to consult with the various professions—as you will see later as we go through the bill,

there are six of them that in particular have identified that there is some use of acupuncture in particular—and that there would be some collaboration. As you know, with HPRAC, the framework of the act is to encourage the various professions to work together and to acknowledge that indeed there is overlap, yet in the use of particularly acupuncture the function varies from profession to profession, as even the World Health Organization had acknowledged, and therefore it doesn't necessarily require the same standards. Nevertheless, the minister would move ahead on seeking the help of the council on contacting and moving in that direction.

**Ms. Martel:** A couple of questions. The minister referenced New Directions and said that some of the recommendations in here posed options for the health professions to collaborate. Right now, we don't have the minister's response to this document and we certainly haven't seen legislation on it. That's the first thing.

So what I want to be clear on, then, because all we have is this report and not a response to it: Is the letter a commitment to this committee and to the community at large that the minister is going to do a separate referral to HPRAC, a new referral to HPRAC, specifically on the matter of what are the minimum standards of practice to do acupuncture for the colleges that have been identified as those most likely to perform acupuncture? I would like to be very clear on what is the process here with respect to what the minister has raised, and should we read into this that the minister is committed to colleges having some minimum standard of practice in acupuncture before they are able to practise acupuncture?

**Mr. Patten:** If you look at the third paragraph, it talks about "recommendations [from the report] posed options for the health professions to collaborate in the development of standards of practice for the same or similar controlled acts, while respecting the competencies of the individual professions. I intend to seek further advice from HPRAC concerning these matters." So I think, as it was reported, that has been supported. We will follow up and ask HPRAC to do this.

**Ms. Martel:** So this is a new referral?

**Mr. Patten:** I guess so. Yes, it would be.

**Ms. Martel:** Do we have an idea of when the referral will be made to HPRAC, and can you give us some indication of what it will say?

**Mr. Patten:** I don't have that information at the moment. I take the letter on face value that this will be done in short order.

**Ms. Martel:** I just want to raise this again because, if you look at the bottom paragraph of the letter, this is certainly true where it says, “This has been an issue raised by some presenters during the hearings on Bill 50 and ... a topic of discussion among ministry officials and the health regulatory colleges.” If it has been a topic of discussion at this point, can you tell the committee what the nature of those discussions has been and if there has been any preliminary agreement that can be shared with this committee about what minimum standards might be?

**Mr. Patten:** I’m sorry; I can’t. I haven’t had those discussions myself, except the indication from the minister that he is prepared to take this kind of action.

**Ms. Martel:** Can I ask you if the two colleagues who are with you from the ministry have been a part of these discussions, and what we could know about them?

**The Chair:** I would respectfully ask you to come and make your presentation.

**Ms. Christine Henderson:** Thank you, Mr. Chair. My name is Christine Henderson and I’m counsel with the Ministry of Health and Long-Term Care.

I’m sorry; I can only reiterate what Mr. Patten has said. The letter speaks for itself and does seek additional advice from HPRAC on issues that overlap in terms of standards of practice for the same or similar controlled acts of the various health professions.

1610

**Ms. Martel:** So you haven’t been involved in any discussions that would have been related to that? Somebody’s having some discussions, that’s clear from the letter, but you weren’t a part of that so you can’t give us any more information.

**Ms. Henderson:** I sat during the days of standing committee, and there were a lot of submissions to this committee on these very issues. I certainly participated as part of that process.

**Ms. Martel:** Well, it was the point that it’s been a topic of discussion among ministry officials and the health regulatory colleges that I was particularly interested in. I heard the discussion that was raised here as well, but as I read this, it looks like there’s also been some discussion—not just at this committee, which we all heard—on a topic that’s already been debated a bit among ministry officials and the regulatory colleges. I’m wondering if you were privy to those and if there’s any information you can share with us about where that will be heading and whether or not the concerns that we all heard raised at this committee are going to be dealt with.

**Ms. Henderson:** I’ve answered the question to the best of my ability, Ms. Martel. I think you’ll have to wait for the motions to answer some of your questions.

**Ms. Martel:** Well, I’ve looked through the motions and I’ve seen the new one. I’m raising it because my questions weren’t answered, and maybe they’re not going to be answered here today.

Just let me put this on the record. We all heard that there were very specific concerns raised about standards of practice among regulated health professionals with respect to acupuncture. For example, the chiropractic col-

lege is moving to the World Health Organization standard of 200 hours. I’ve read through their standard, and I think that it’s quite fulsome. We also heard from the Ontario College of Nurses. Mr. Patten had some specific questions that imply that there is no particular standard that the College of Nurses has right now, specifically with respect to what the college feels would be necessary for one of its members to practise acupuncture. That’s certainly what I took away from the question and answer from the college.

So this remains an issue in terms of what the minimum standard is that we as MPPs expect regulated health professions, even the ones that we are limited to, to have in terms of training, licensing, examination, hands-on experience etc. before they can practise acupuncture. I’m hoping that this is what this letter is referring to. I just want to be clear that that is what we’re dealing with, because if it isn’t, then that very contentious issue is not going to go away.

**The Chair:** Mr. Patten.

**Mr. Patten:** It is precisely that. I think the sensitivity there, as you can appreciate, is because it is the colleges that develop their own particular regulations. They make the regulations, they forward those to the ministry, and then, if they’re agreed to, they go to executive council and the Lieutenant Governor for application. So it’s not the ministry and it’s not us who can say, “Here is what your regulations are.”

In acknowledging the difference between the various professions and the fact that the act has said that they have the authority to develop their own regulations, what this letter is essentially saying is that we want to move down that path and deal with—it would be very easy for us to say, “Okay, 200 hours for everybody.” But (1) we would be undercutting the authority that we have granted the colleges, and (2) even the World Health Organization itself has acknowledged that there are different usages for this modality of additional therapy in their main scope of practice. Some may be very minuscule or very minor; others may be more advanced and a little bit more expansive. Therefore, that may require extensive or differential minimum standards of training or qualification. But the minister is indicating the seriousness of this and the desire and willingness to move ahead to resolve that issue.

**Ms. Martel:** One final question, if I might: You said he was going to do that as soon as possible. Is there a deadline for this? Usually when you do a referral to HPRAC, you set a specific timeline for that to come back, so I’m wondering if you know whether or not there’s a deadline on this.

**Mr. Patten:** No, I’m not aware of any deadline on it.

**The Chair:** Mrs. Witmer.

**Mrs. Elizabeth Witmer (Kitchener–Waterloo):** If we take a look at this letter, which I found to be a little bit lacking in concrete direction, is there definitely going to be a referral to HPRAC—

**Mr. Patten:** Yes.

**Mrs. Witmer:** —concerning this issue? He does end up by saying, “I look forward to HPRAC’s analysis of

the issue,” but he’s never specifically said that he’s going to refer it to them. I think it’s important that people know what is going to happen. Saying that you’re going to seek further advice doesn’t necessarily mean you’re going to refer it.

**Mr. Patten:** I take this as a commitment to actually do it. I can’t see how someone could say that this is not an indication of intended action. It is.

**Mrs. Witmer:** Well, I guess I’d feel a little more comfortable if it was a little bit more definitive, indicating that “I plan to refer the issue to HPRAC,” and hearing from the minister what it is he hopes to achieve as a result of that referral.

**The Chair:** The question is before the floor, if either the parliamentary assistant or ministry staff care to weigh in on that. Otherwise, we’ll proceed.

**Mrs. Witmer:** I guess the reality is, we do have the New Directions report, but the minister has never responded to it. We’ve been waiting now quite a while. That was in the spring.

**The Chair:** Ms. Martel.

**Ms. Martel:** We’re trying to be helpful. Can I make a request of the parliamentary assistant? We can move on to the next sections. I would appreciate, though, if any of the political staff who are here from the minister’s office could please get us a concrete answer that what we are talking about is a new referral to HPRAC. It may well be true that there are some options in here outlined for collaboration, but we all know that the minister has not responded to this, and if there is legislation coming from this report, we haven’t seen it yet. So I would like some comfort that what we are talking about is a definite new referral to HPRAC on the matter of minimum standards to be set from those outlined in the schedule that comes later on for those who want to practise acupuncture.

**The Chair:** Thank you, Ms. Martel and Mrs. Witmer. I would invite both ministry staff as well as the parliamentary assistant to hopefully oblige these concerns.

I would now move to Mrs. Witmer and offer the floor to her for presentation of PC motion 1.

**Mrs. Witmer:** I move that the definition of “college” in section 1 of the bill be struck out and the following substituted:

“‘College’ means the College of Traditional Chinese Medicine and Acupuncture Practitioners of Ontario; (‘Ordre’).”

**The Chair:** Thank you, Ms. Witmer. If there’s no further discussion or commentary—

**Mrs. Witmer:** I’d like to speak to that.

**The Chair:** Please.

**Mrs. Witmer:** There were numerous presenters who asked that the name of the college be expanded to include acupuncturists. For example, we heard from Mary Wu of the Toronto School of Traditional Chinese Medicine, who indicated to us that acupuncture is one of the classes of TCM practitioners and is a recognized health profession across the world, especially in North America. We know that in the United States, over 40 states have acupuncture regulated, and the names of their regulatory

bodies all include the word “acupuncture.” So if we were to include the word “acupuncture” in the name of the college, it would certainly respond to the concerns that we heard from many who made representation. It would also be consistent with other areas in Canada and in North America. We also heard, of course, from the Global Chinese Medical and Acupuncture College. We heard from Dr. John Wang. And if we take a look in British Columbia, again, they have similar words referring to acupuncturist. So that would be our recommendation.

1620

**The Chair:** Any further questions or comments?

**Mr. Patten:** I just want to say that we have a motion here and so does the NDP, so the choice is one of words, context and title. “Acupuncture” itself is, in our view, not definitive enough, as it would be by saying “acupuncturist.” We agree that it should be part of the title. By the way, the term “acupuncture practitioner” is not a protected title in the bill, and therefore the status of that would be somewhat up in the air. But I think we’re all on the same page, essentially. As a matter of fact, “acupuncturist,” I believe, strengthens, because it keeps acupuncturists with the TCM college.

**The Chair:** Ms. Martel, any commentary?

**Ms. Martel:** We had the same motion as the government, so I think we’re trying to do the same thing. I’m not sure of all the nuances, so I’d probably just stick with the one I already put in.

**The Chair:** All right. Thank you. Yes, Ms. Witmer.

**Mrs. Witmer:** Do you know what? I’m happy to support the motion put forward by Ms. Martel and by the government. It’s the need to recognize acupuncture, so I would withdraw my motion as long as we move forward.

**The Chair:** Thank you. We have a withdrawal of PC motion 1.

We’ll now, therefore, offer the floor to Ms. Martel for NDP motion 2.

**Ms. Martel:** I move that the definition of “college” in section 1 of the bill be struck out and the following substituted:

“‘College’ means the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario; (‘Ordre’).”

**The Chair:** Thank you. If there is no further question or comment, we’ll proceed to the vote. Those in favour? Those opposed? Seeing none, NDP motion 2 is carried. We congratulate you.

We’ll now proceed to government motion 3.

**Mr. Patten:** In light of that, we withdraw our motion.

**The Chair:** Withdrawn.

Shall section 1, as amended, carry? Those in favour? Those opposed? Section 1, as amended, carried.

Now moving to section 2, PC motion 4.

**Mrs. Witmer:** Again, I would withdraw that.

**The Chair:** Withdrawal of PC motion 4.

We’ll proceed now to NDP motion 5.

**Ms. Martel:** I move that the definition of “college” in subsection 2(2) of the bill be struck out and the following substituted:

“College’ means the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario; (‘Ordre’).”

**The Chair:** If there are no further questions or comments, we’ll proceed to the vote. Those in favour of NDP motion 5? Those opposed? Carried.

**Mr. Patten:** We’ll withdraw 6.

**The Chair:** Withdrawal of government motion 6.

We’ll now proceed to the vote on the section. Shall section 2, as amended, carry? Those in favour? Those opposed? Section 2, as amended, carried.

Section 3: NDP motion 7.

**Ms. Martel:** I move that section 3 of the bill be struck out and the following substituted:

“Scope of practice

“3. The practice of traditional Chinese medicine is the assessment of body system disorders of an individual through traditional Chinese medicine diagnosis and differentiation techniques and prevention and treatment of any diseases or disorders or dysfunction using traditional Chinese medicine therapies to promote, maintain or restore health.”

This particular amendment was given to us in a presentation that was done by Mary Wu, who is the president of the Toronto School of Traditional Chinese Medicine, and I move it at this time.

**The Chair:** Are there any further questions or comments on NDP motion 7 before the committee?

**Mr. Patten:** We have some trouble with the language of this, because there is an addition to this. We’re not sure what it means by “diagnosis and differentiation techniques and prevention and treatment of any diseases or disorders or dysfunction.” It seems a little out of at least my understanding and that of some others of traditional Chinese medicine and their examinations and techniques of analysis and assessment being patterns of syndromes and not diseases per se. It’s looking at the energy flow or it’s looking at overactive or underactive activity in the body or cold and heat and things of that nature. So when “differentiation” is used, what’s meant by that?

**Ms. Martel:** In her notes it says, “Diagnosis and differentiation are the two most important terms and actions for the safe and effective treatment in TCM. There is no such thing in TCM as ‘assessment’ anywhere in our textbooks or our curriculum. The ‘diagnosis’ here is specified for TCM and ‘differentiation’ is unique in TCM.” Secondly, “TCM is famous in disease prevention and health promotion. The scope of practice should include ‘prevention’ as well.” Thirdly, “Most patients come to us with clear western ... diagnosis from their” doctors. “TCM textbooks list the treatment of diseases under the names of western diseases and universities curriculum use the name of the disease according to western medicine. This does not mean that TCM practitioners diagnose or treat western disease using western

medicine. But diseases diagnosed according to western medicine can also be treated with TCM.”

**The Chair:** Mr. Patten, any further comments? If there are no further questions or comments—Mr. Patten?

**Mr. Patten:** We’re talking about 3, right? All right. That’s fine.

**The Chair:** Thank you. We’ll proceed to the vote. All those in favour of NDP motion 7? Those opposed? I declare the motion lost.

Shall section 3 carry? Those in favour? Those opposed? Section 3 carries.

We’ll now proceed to new section 3.1, NDP motion 8.

**Ms. Martel:** I move that the bill be amended by adding the following section:

“Authorized acts

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

“1. Communicating a diagnosis and differentiation identifying a disease or disorder as the cause of a person’s symptoms according to traditional Chinese medicine.

“2. Performing a procedure on tissue below the dermis or below the surface of a mucous membrane for the purpose of acupuncture and its related procedure.

“3. Setting or casting a simple fracture of a bone or a dislocation of a joint if the member is a qualified traditional Chinese medicine specialist under the supervision of a legally qualified medical practitioner.

“4. Moving the joints of the spine beyond a person’s usual physiological range of motion using a fast, low amplitude thrust.

“5. Administering a substance by injection or inhalation for the purpose of traditional Chinese medicine treatments.

“6. Prescribing, dispensing, selling or compounding Chinese medicines and natural health products.

“7. Ordering a form of energy.”

If I can speak to this?

**The Chair:** Please.

**Ms. Martel:** Thank you, Mr. Chair. We know in the bill right now that the government will later make regulations with respect to the use of the “doctor” title. We know that a referral was made to HPRAC in that regard. I believe HPRAC responded at the end of September, but we don’t know the outcome of that. We don’t have the information with respect to what HPRAC has recommended with respect to the “doctor” title.

Having said that, we know that the bill proposes that some traditional Chinese medicine practitioners will be afforded the title “doctor” based on their education, experience etc. As a result of that, it seems to me that if you are giving a health care professional the title of “doctor,” then you also need to be giving them authorization to a number of controlled acts; otherwise, why give them the title of “doctor” in the first place?

So the access to controlled acts that are outlined are those which I believe should be given to those TCM practitioners who will be able to use the “doctor” title, because this would be appropriate given their educational background, their experience, the tradition in terms of how long they have been practising etc. These amendments were put together based on the recommendations of both Mary Wu and Marylou Lombardi, in Marylou Lombardi’s case on behalf of a number of organizations. So I think these will be appropriate authorized acts to be bestowing on an individual who would get the “doctor” title and in getting that title would clearly have an elevated level of education, experience etc.

1630

**The Chair:** Any further comments on NDP motion 8?

**Mr. Patten:** I certainly admire the effort that has gone into this, but I have to say that a number of these things, in my opinion, have nothing to do with traditional Chinese medicine. Some of them may have something to do with chiropractors or other health-related professions. For example, “ordering a form of energy,” using MRIs or CAT scans or those kinds of things, is not my understanding of the approach that TCM offers and the way they would come at doing their assessment or TCM diagnosis, whichever term you want to use. So I think this is putting absolutely too much in pinning down areas of activity that are just too much for that—I think it’s important to keep it simple, to provide some direction. We have a recommendation of our own that we think does that.

**Ms. Martel:** We have a difference of opinion. That’s why I put more in than the government did, because I didn’t think the government had gone far enough in terms of the controlled acts or the authorized acts that they were providing to doctors of TCM. Don’t forget, we’re not saying that these specific authorized acts would be given to just anyone. Acupuncturists or TCM practitioners, those who would have the ability to carry out these acts, would clearly be those who have the most background, the most educational experience, the most work experience etc. The college itself, with some advice from HPRAC, will be determining exactly those categories of individuals. So it will not be everyone within the TCM or acupuncturist community that would have authority to do this, only those who are the most extremely qualified.

Again, I think if you’re going to give a health professional a title of “doctor,” there are some things that have to flow from that. I just have to say again, if you look at some of the other health care professionals who have a “doctor” title, what they can do in terms of authorized acts is far more extensive than what the government is proposing in this bill. So the amendment was also to reflect what other registered health professionals who have access to the “doctor” title are also permitted to do. I think the government’s scope, frankly, is too narrow and too limited.

**Mr. Patten:** As you know, the intent of the bill is to set up a college and to provide some recognition, and through that particular process, provide for the safety of

consumers, or patients, or whatever term you’d like to use. Our view is that we would leave it up to the college itself to provide those categories of activity or those areas of specialty or what have you.

**Ms. Martel:** Chair, may I ask a question to counsel who is here? Right now, if I understand this correctly—you will correct me, of course, if I’m wrong—the authorized acts that different professions have are written right into the legislation. Is that correct, that it’s not done by regulation?

**Ms. Henderson:** Yes, they’re written into the health-profession-specific acts.

**Ms. Martel:** So I raise my concern again. Even allowing the college to take a look at this does not mean that it’s going to be put into the act. We would have to wait until the act is opened at some other time, whenever that may be, in order to get it in there. We can’t do this by regulation.

My argument is, if we’re going to follow the same mechanism that has been used to give authorized or controlled acts to other regulated health professionals, then we should be doing that and making it explicit in the act right now, as we do with other regulated health professionals. It would be fine to have that discussion with the college at some later date, but you’re not going to be able to put it in the act at that later date unless you open it up again, and we all know how often that occurs.

**The Chair:** Any further comments, replies?

**Ms. Martel:** May I have a recorded vote?

**The Chair:** Yes. We’ll proceed, then, to the consideration of NDP motion 8. It’s a recorded vote.

#### Ayes

Martel, Witmer.

#### Nays

Kular, Leal, Patten, Ramal, Van Bommel.

**The Chair:** I declare the motion lost.

We proceed now to PC motion 9.

**Mrs. Witmer:** I move that the bill be amended by adding the following section:

“Authorized act

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to communicate a diagnosis and differentiation identifying a disease or disorder as the cause of a person’s symptoms according to traditional Chinese medicine.”

If we take a look at the original HPRAC report in 2001, they did consider the controlled acts which the members of the college should have the authority to perform, and they did recommend that a controlled act of communicating a diagnosis be authorized to the new college. This particular bill, of course, doesn’t recognize this in any way, shape or form.

As well, some of the arguments that have been made by Ms. Martel I would agree with. She went into “authorized acts”; we’re referring here to “authorized act.” But if you take a look at the other professions who are entitled to use the word “doctor” under the RHPA, they are also authorized to perform the controlled act of communicating a diagnosis. If you’re not going to allow TCM doctors access to this controlled act, it would be quite inconsistent.

If we take a look at the British Columbia legislation again, they do allow the traditional Chinese medicine practitioner, the acupuncturist and the herbalist to make a traditional Chinese medicine diagnosis identifying a disease, disorder or condition as the cause of signs or symptoms.

Our controlled authorized act is certainly based on the recommendations from Mary Wu, the Toronto School of Traditional Chinese Medicine, who points out that “diagnosis” and “differentiation” are the two most important terms and actions for safe and effective treatment in TCM. As well, we heard from Marylou Lombardi, the president of the Ontario Association of Acupuncture and Traditional Chinese Medicine. Again, the argument was made that all other regulated health professions who have been granted the use of the title “doctor” have been given access to the controlled act of communicating a diagnosis. We heard from the Ontario Acupuncture Examination Committee, Dr. Jia Li, who supports that the controlled act of communicating a diagnosis be authorized to doctors of TCM. And we heard from James Yuan, the president of the Canadian Association of Acupuncture and Traditional Chinese Medicine, who supports access to the controlled act of communicating a diagnosis, thereby giving TCM doctors the rights and privileges to which a doctor is entitled.

Certainly there were many, many people who appeared before us who were supportive of making sure that within this legislation there be an amendment made that would allow for an authorized act to take place.

**The Chair:** Are there any further comments? Seeing none, we’ll proceed to the consideration of PC motion 9. Those in favour? Those opposed? PC motion 9 is lost.

We proceed now to government motion 10.

**Mr. Patten:** I’d like to withdraw motion 10.

**The Chair:** Withdrawn.

Government motion 10.1.

**Mr. Patten:** We have submitted a new motion, 10.1, and it’s been distributed. I’d like to read it.

I move that the bill be amended by adding the following section:

“Authorized acts

“3.1 In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

“1. Performing a procedure on tissue below the dermis and below the surface of a mucous membrane for the purpose of performing acupuncture.

“2. Communicating a traditional Chinese medicine diagnosis identifying a body system disorder as the cause of a person’s symptoms using traditional Chinese medicine techniques.”

1640

**The Chair:** Are there any further comments or questions, concerns?

**Ms. Martel:** I’ll vote in favour of it because it’s better than what’s in the bill right now, but I still don’t think it goes far enough.

**Mrs. Witmer:** I would certainly agree. In many respects, this is a combination of our motions number 9 and number 11. However, we do refer to diagnosis and differentiation, which this does not refer to. I would support this because, again, it is an improvement.

**The Chair:** We’ll proceed, then, to the vote. Those in favour of government motion 10.1? All opposed? Motion 10.1 carries.

PC motion 11.

**Mrs. Witmer:** I would withdraw that in light of the passage of 10.

**The Chair:** PC motion 12.

**Mrs. Witmer:** I move that the bill be amended by adding the following section:

“Authorized act

“3.3(1) In the course of engaging in the practice of traditional Chinese medicine, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to prescribe, dispense or compound Chinese herbal medicines and natural health products.”

Again, if we take a look at the HPRAC recommendations of 2001 where they consider the controlled acts which the college should have the authority to perform, they did recommend that they be authorized this controlled act of prescribing, compounding or dispensing natural health products. So I think, based on the research that they had done and the information provided, this is their recommendation.

Also, if you take a look at the British Columbia act, again, the traditional Chinese medicine practitioner or the herbalist may prescribe those Chinese herbal formulae listed in a schedule to the bylaws of the college.

We also heard from the International Scalp Acupuncture Research Association of Canada, who support that a member be authorized to prescribe, sell and compound herbs and natural herb products.

We heard from Dr. Jia Li of the Ontario Acupuncture Examination Committee, who supports that they be authorized to, again, prescribe, dispense, sell and/or compound drugs and natural products that are consistent with TCM practice.

Of course, we heard from Mary Wu. We got some excellent advice from the Toronto School of Traditional Chinese Medicine, who, again, did speak to this particular issue.

Again, I think we need to take that into consideration, and I would move this motion.

**The Chair:** Any further comments?



**Ms. Martel:** I agree with what Ms. Witmer has said. We had also moved it in our motion in terms of authorized act. I had a question, though. In the MPP report that was done, was there a recommendation made around herbal medicines?

**Mr. Patten:** No, because at the time, discussions with the federal government, under which natural products are identified—frankly, this isn't necessary anymore. They have said that the natural products that are there—and we've said, the bill says—TCM has within the scope of their practice. Therefore, they're free to use the natural products. So the bill was intentionally aligned with the federal legislation so that this complies with that and we don't have to worry about that problem.

**Ms. Martel:** Can I ask a further question? If I look at the scope of practice that's in the bill right now, how does it make it clear that a doctor of TCM would be allowed to do this?

**Mr. Patten:** Because if you interpret—this isn't expounded upon in five sentences, but if you think of each one, “The practice of traditional Chinese medicine is the assessment of body symptom disorders through traditional Chinese medicine techniques and treatment using traditional Chinese medicine therapies”—so there's an acknowledgement of traditional Chinese therapies—“to promote, maintain or restore health.”

That's to be understood in that fashion. So when you talk about herbal treatments, when you talk about massage treatment or any of the others, we leave it to the college to make those differentiations and to identify those specialties and standards that are required to be met in order to be qualified to provide those therapies.

**Ms. Martel:** But the scope of practice as it currently stands doesn't limit that ability to prescribe, dispense, sell or compound Chinese medicines and natural health products only to doctors of traditional Chinese medicine. I'm assuming we're going to want a limitation, because not everybody who's a TCM practitioner, I suspect, would be qualified to actually prescribe and dispense. Some of the products we're talking about could have some really serious consequences, so I'm assuming this would be something you would want a doctor to do. But that doesn't really match up to the scope of practice, which, as you've described it, would essentially allow anyone who's a TCM practitioner to be able to do that. I'm not sure that's where we want to be.

**Mr. Patten:** There were some discussions when we had our MPP review and some of our hearings that they had identified one or two particular herbs. I'm not sure if the feds have identified those specifically; certainly other schools have. Those who do training, I would imagine, would identify that in certain circumstances, certain combinations are perhaps not a wise thing to utilize. But the way it stands right now with the federal legislation, frankly, this is all over-the-counter stuff that is recognized and accepted as being available to the consumers of Canada. So it's not required to limit that.

The intention of the bill is to provide a sense of the scope, not to provide so much limitation that you freeze

in time your activity to only these areas. As you know, things evolve over periods of time; we know that from a variety of professions. New techniques are developed, improvements are made, new understandings take place etc. So the intent is to provide a sense of the scope, but not to be so limiting that you tie their hands or freeze in time what's eligible for the practitioners.

**Ms. Martel:** Can I just add this? I don't see it as a restriction or a limitation; I see it as a matter of public safety. I guess I'm not convinced, from the discussions that I've had with a number of members of the traditional Chinese medicine community who put this forward as being necessary to be a controlled act so that not everybody had access to it, that part of the reason you wanted to do this was to make sure that it was a doctor who had that ability, that it was for a matter of public safety, that it was neither appropriate nor safe in some circumstances to have this being done by just anybody. So I saw it in the context of making sure that someone who had this authority and this right was doing so in the best interests of public safety.

**Mr. Patten:** I would agree with that. I think the bill addresses that in section 10, in (a) and (b)—particularly (b), which is more related to your particular issue—where the college does get guidance:

“(a) prescribing standards of practice respecting the circumstances in which traditional Chinese medicine practitioners shall make referrals to members of other regulated health professions;

“(b) prescribing therapies involving the practice of traditional Chinese medicine, governing the use of prescribed therapies and prohibiting the use of therapies other than the prescribed therapies in the course of the practice of traditional Chinese medicine.”

But we're leaving the answering of those guidelines to the qualifications of the college, which is certainly in a better position than me to set them out.

1650

**Mrs. Witmer:** Are you suggesting, then, that you don't believe this is necessary?

**Mr. Patten:** That's correct.

**Mrs. Witmer:** I guess I would agree. I think this is an issue of safety. Although we were told that most of the Chinese herbal medicines are safe and have a rather mild action, we also know and were certainly informed by those who came before us that some of them are very potent, some of them are very toxic. They are effective and safe when used properly, but they also could cause strong reactions or aggravate conditions or cause adverse effects, even cause serious damage to the body or kill if used improperly. And that's from Mary Wu of the Toronto School of Traditional Chinese Medicine. She made the recommendation that these herbal medicines should be controlled but available to patients through prescription by qualified practitioners only. Based on her advice and the advice of others, and based on previous HPRAC recommendations, I would choose to leave this as is.

**Mr. Patten:** May I respond to that, Mr. Chair?

**The Chair:** Please.

**Mr. Patten:** Two things: One, I don't think it's necessary. In fact, it could have the unintended consequence of saying that if these things can only be done by prescription, all of those over-the-counter products that people go to without referral from any kind of a person would now not be able to be utilized. It goes contrary to the decision that's been made by the federal government already. Acknowledging your concern, that's why in the act it says that the colleges themselves have to look at the prohibition of the use of certain therapies, of prescribing therapies, other than what is there, and in defining that, I think they'll take that into consideration. This was certainly the indication we had when we consulted with others in other jurisdictions.

**Ms. Martel:** I don't have the federal act in front of me, so I can't respond to that as to whether or not everybody can just sell this over the counter now and the federal government says that's okay. I would hope that the federal government would see some issues around public safety as well with some of these herbal medicines. Granted, for most people using it properly or giving it to patients properly, there's not a problem. But we did hear that some of this stuff is pretty toxic. So I have to take your word that that's what the federal government has said, although I would have thought they would have had a similar concern about some limitations, very much from the perspective of public safety, especially to the more potent and toxic medications that we're talking about.

**The Chair:** Are there any further questions or comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 12? Those opposed? I declare PC motion 12 to have been lost.

We now move to consideration of PC motion 13.

**Mrs. Witmer:** I move that the bill be amended by adding the following section:

"Standard of practice for acupuncture

"3.4 It is a condition of every member's certificate of registration, and the certificate of registration of every member of a regulated health profession, that the member, in performing acupuncture, at a minimum comply with the 'Guidelines on Basic Training and Safety in Acupuncture' of the World Health Organization, as amended from time to time."

We heard about this minimum from pretty well everybody who appeared. However, since we submitted our amendment we got this letter from the minister, and we now don't quite know what's happening. He only says that he intends to seek further advice; he doesn't indicate that he's referring it to HPRAC to take a look at these minimum standards of practice. But we do believe it's important that there be an acknowledgement of the need for a minimum of training in acupuncture. I think Ms. Martel pointed out that different health professions currently have different standards, and this is obviously not something you can do without some sort of a minimum standard.

We heard 50 individual submissions from registered massage therapists, physiotherapists and chiropractors,

who all asked that Bill 50 enforce minimum standards of training for all professions who practise acupuncture and that those standards be no less than the 200 hours of training, citing the international recommendation of the World Health Organization's 1999 document. I think that shows you how significant an issue this was for people who appeared before the committee.

We also heard that the Canadian Memorial Chiropractic College has offered a clinical acupuncture program that exceeds the standards set by the WHO in 1999. We heard from the Ontario Chiropractic Association that they receive postgraduate acupuncture training from a variety of sources, and there are about 650 chiropractors who are certified graduates of acupuncture training. It does meet the WHO guidelines. We heard from naturopathy. They require all of their registrants to have a minimum of 220 hours. We heard also from the Ontario Association of Acupuncture and Traditional Chinese Medicine, who said that there should be a minimum standard for the practice of acupuncture.

Certainly this was a most significant issue, and I do believe that there needs to be a minimum standard put in place.

**Mr. Patten:** I have to agree with the concern and what did come forward in terms of what was identified. I heard it too and I agree completely.

The structure of the act, though: For you to miss this vehicle itself—and I think the minister may recall. Were you the health minister when—no.

**Ms. Martel:** I was in the government but I wasn't the minister.

**Mr. Patten:** You may recall that we can't legislate across the board. This impinges upon every single regulated profession and it can't be done. It's verboten for us to do that with that particular act, which was one of the reasons, frankly, why the letter is there. In fact, there's evidence, as you have pointed out, that says—a number of the colleges have already responded. Even when the nurses were here, they said, "Listen, if this act goes through and there's pressure for some minimum standards, we'll look at that." In fact, most of them are looking at this because they're aware of this particular bill.

I agree with the intent. Frankly, I wouldn't mind being in a position to be able to say, "Do you know what? No matter what you're doing, 200 hours for everybody." But we can't do it under this particular act. The only thing we can do is encourage and ask them to revisit, to take a look at their minimum standards. We want to promote minimum standards. What should they be in your particular circumstances, given, within your scope of practice, how you might utilize aspects or acupuncture or whatever? I agree with the intent, but in this one we can't technically do it, legally.

**Mrs. Witmer:** I understand what you're saying. The ministry must have recognized that this was going to be an issue that would be raised. I wish that there had been some consultation and some referral to HPRAC prior to the introduction of this bill, because, until such time now

as there is a referral to HPRAC, which we don't even know is going to happen, people are going to be in limbo. There isn't going to be a minimum standard. We can pass this bill, but there's going to be a lot of uncertainty until such time as HPRAC is in a position to receive a referral, analyze this particular issue and make a decision as to how it can be satisfactorily resolved. And really, at the end of the day it needs to be resolved because this is for the protection of the public. Without it, there is no minimum standard, currently.

1700

**Ms. Martel:** I'd just add that we all heard the concerns, and I think we all share the concerns about what is the minimum standard of practice that you have to have before you provide acupuncture. I'd say to the parliamentary assistant that I would perhaps feel better if I had a clearer sense of what the minister is going to say to HPRAC. Is the minister going to give a strong indication to HPRAC, either through the course of the public hearings or through his own discussions with whomever? Very clearly the response back was that, for a matter of public safety, for the regulated health professions that commonly practise acupuncture now and that are going to be outlined in the schedule that comes later in the government's amendment, the minister feels strongly that each of those should have some minimum standard that's going to be developed. I apologize to research if I missed it, but I don't think we got back from research information about what the standards of practice for acupuncture were for the various colleges. We certainly heard what the college of nurses had to say. For example, when we contacted the royal college to find out the situation for dentists, as part of my remarks on second reading, we were clearly told that there isn't a standard: "This is part of our controlled act and we don't have a standard."

I would be much more comfortable if I could see that a referral to HPRAC was strongly endorsing standards, even for those colleges that just believe they can do that as part of their standard of practice. There has to be some specific training in acupuncture, regardless of what regulated health profession you are, before you go out and do that. I feel like we're operating at a bit of a loss, because we have some indication that the minister is going to do something, but we don't know what and we don't know when. We certainly don't know how strong the minister's sentiment is going to be about a need for minimum standards. We certainly heard it, but I don't know what he's going to say.

**Mr. Patten:** I think it has to be dealt with as well. We tried to deal with that in another section here because we couldn't do it in this one. I think when we get to section 18, we have some recommendations there that precisely deal with, if someone is going to use acupuncture, for example, the fact that they have to meet the minimum standards of their college. The only thing we cannot do here is tell all of those colleges, "Hey, listen. You all have to have 200 hours." We can't do it. We want to move them as far as we possibly can to be as responsible

as possible, which I think they will be, by identifying that, "If this goes through, you're going to have to have some standards. You're going to have to present those and you're going to have to justify them. What are those?"

There may be some variance, but I would point out that even the World Health Organization acknowledged that there may be some variance between different health practitioners by virtue of the usage, which may be quite limited in some instances and in others a bit more elaborate.

**Ms. Martel:** May I ask one further question on this? Is there a mechanism whereby the minister has to approve those minimum standards?

**Mr. Patten:** Any regulations that are developed have to be put forward and reviewed by the minister and approved by the Lieutenant Governor in Council.

**Ms. Martel:** May I ask a further question? Right now the standards of practice, for example, by the chiropractic college have to be approved by their own governing body, and we know physiotherapists are doing that as well. It was not my understanding, however, that once approved by their individual colleges, there was then a second step whereby the minister had to approve whatever the board put forward.

I'm trying to get a clear understanding of the process in place to understand very correctly whether or not somehow there is a difference in this legislation whereby those colleges would actually have to submit regulations to the minister outlining what their standard of practice is going to be for members who want to practise acupuncture. Is that going to be in this bill? I don't think it's in the other regulated health professions legislation right now. I don't think they have to do that.

**Mr. Patten:** Yes, they do; it's my understanding they do. That's right. If they're regulations, they do. It would seem to me that if the college is going to put forward something in regulations, they would go to their members first, have a process of approval there to be able to propose, "This is what our regulations will be," and then it would go to the minister and from there to cabinet.

**Ms. Martel:** But I think the key is "if." Let me get this straight. Let me use chiropractors, because that's the clearest example for me. They came; they have been looking at a standard of practice for their members who want to practise acupuncture. They will probably agree, as a council, to move to the WHO guidelines. Is it a requirement, then, for the college to submit those guidelines to the minister for approval before the college authorizes its members to undertake acupuncture? Is that a requirement?

**Ms. Henderson:** The colleges have the authority to set standards of practice and qualifications for many of the innumerable procedures that their members may perform in accordance with the RHPA and their health-profession-specific acts. If it's a regulation that the college is putting forward in terms of qualifications or standards of practice, Mr. Patten has outlined correctly the process. If it's a policy or a guideline, it does not

need to be submitted to the ministry for review. However, normally those policies or guidelines are public documents on the college's website and may be accessed there by the members. They are evidence of a standard of practice that the college would expect their members to reach. But there are, as you can imagine, innumerable processes and procedures that health care professionals who are regulated perform every single day. You'll see in the government's motion upcoming on subsection 18(2) a requirement for colleges to set qualifications for members who will be performing acupuncture within the scope of practice and standard of practice of their profession.

**Ms. Martel:** Okay, but I go back to this point. You just finished saying that if it's a regulation, then of course it has to be approved by the LG. I understand that. But you also said, if it's involving policy and guidelines, that's something that doesn't have to be dealt with by the government. I understand that too. My question would be, how do we ensure that a minimum standard of practice for acupuncture becomes a regulation that that college has to submit to the government for approval? As I understand what you're saying, that's the only way the government can be clear that there is a minimum standard. It seems to me that's the only authority you have to ensure that happens.

**Ms. Henderson:** The RHPA gives the ability to college councils to make regulations respecting registration requirements, standards of practice, qualifications and so on for their members. Each college has been given the mandate to set those standards, to set those qualifications. It is within the purview of the college to set those standards and regulations, to set standards of practice in regulations or otherwise. They have been given the authority to do that under the Regulated Health Professions Act. If you're asking what the government can or should do to enforce a requirement, there are extraordinary powers of the minister set out under provisions in the RHPA. Whether or not this is the appropriate exercise of that power is a difficult question.

**Mr. Patten:** Anyway, it can't be done this way.

1710

**Mrs. Witmer:** Well, you know, I understand that it can't be done this way. However, you haven't told us how it can be or will be done or how the public can be assured that those people who are performing acupuncture have had some sort of minimal level of training. I guess that's what is worrisome.

**Mr. Patten:** We dealt with it, we feel, in section 18, which is motion 26. We're jumping ahead to it, but I think it answers the question that you had. It says, "A person mentioned in subsection (2) or (3) is exempt from subsection 27(1) of the act for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be." So that confines, it seems to me—I may need to get a legal read on this. Whether it's regulation or not—guidelines, bylaws; call it what you want—we're saying they have to

have standards, requiring each college to have standards, before someone can utilize a form or modality of acupuncture. They will be held to account for that, and they are required, I think, by the act to also have disciplinary and compliance committees—I don't know what the terms are—to oversee that. The practitioners will be accountable for that, so if anything happens, they've gone against the regulations, as it were, or whatever it is, they've breached what was recommended by their own college, and therefore they would be susceptible to discipline.

**The Chair:** Are there any further questions, comments, queries, concerns, debates? Fine. We'll proceed now, therefore, to consideration of PC motion 13. Those in favour? Those opposed? I declare PC motion 13 to have been lost.

We'll proceed now to PC motion 14.

**Mrs. Witmer:** I would withdraw this motion because our first motion was defeated.

**The Chair:** PC motion 14 is withdrawn.

NDP motion 15.

**Ms. Martel:** I move that section 4 of the bill be struck out and the following substituted:

"College established

"4. The college is established under the name College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario in English and l'Ordre des praticiennes et praticiens en médecine traditionnelle chinoise et des acupuntrices et acupuncteurs de l'Ontario in French."

**Le Président:** Merci. Commentaires et débat?

**Mr. Patten:** I am advised by legislative counsel that the term—first of all, it's inaccurate in the use of the term. It is not necessary to have both masculine and feminine in the French title; it can suffice to have "praticiens en médecine traditionnelle chinoise...." So it's a technical thing.

**Le Président:** Merci. Plus de discussion sur masculin ou féminin?

**M<sup>me</sup> Martel:** Je veux avoir tous les deux.

**The Chair:** If there are no further questions or comments, we'll proceed to the consideration of the vote. NDP motion 15: Those in favour? Those opposed? I declare NDP motion 15 to have been lost.

Government motion 16—Ms. Martel.

**Ms. Martel:** I'm sorry that I didn't catch this. Can I ask then why, in the government bill as it's currently written, it uses both masculine and feminine for practitioners in section 4?

**The Chair:** You may indeed ask.

**Ms. Martel:** So I'm asking.

**The Chair:** Ms. Martel's question is before the floor.

**Ms. Martel:** Page 2, section 4 of the bill right now, also uses "des praticiennes et praticiens." So you're changing that because you've been told that you can just use the masculine?

**Mr. Patten:** That's correct.

**Mr. Ralph Armstrong:** May I be so bold?

**Ms. Martel:** Yes, sure.

**Mr. Armstrong:** Ralph Armstrong, legislative counsel office.

Our French team now says they wish they hadn't done it that way originally.

**The Chair:** Sorry; could you repeat that?

**Mr. Armstrong:** Our French team now says that they regret having used both terms in the original. It's not their usual practice in these things, and they want to take this opportunity to use their standard.

**Ms. Martel:** Thank you.

**Mr. Armstrong:** And if smacks on the head can be transcribed, I would be grateful. Apologies to the committee.

**The Chair:** We'll proceed now to government motion 16.

**Mr. Patten:** We believe that this is the accurate French terminology and consistent with the other college usage.

**The Chair:** You need to read it into the record, Mr. Patten.

**Mr. Patten:** I move that section 4 of the bill be struck out and the following substituted:

"College established

"4. The college is established under the name College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario in English and Ordre des praticiens en médecine traditionnelle chinoise et des acupuncteurs de l'Ontario in French."

**The Chair:** If there are any further questions, comments, self-flagellation, debate? None? We'll proceed then to the vote. Those in favour of government motion 16? Those opposed? I declare government motion 16 to have carried.

Shall section 4, as amended, carry? Those in favour? Those opposed? I determine that that is carried.

We'll proceed now to NDP motion 17.

**Ms. Martel:** I move that subsection 5(1) of the bill be amended by adding the following clause:

"(c) at least one and no more than two persons selected by the Lieutenant Governor in Council who are faculty members of educational institutions of traditional Chinese medicine."

The particular section right now lists who will be members of the new council once traditional Chinese medicine and acupuncture is regulated. I agree with what appears in the bill right now, but I am suggesting an addition so that at least one or two of those council members be persons who are already involved in the educational field with respect to traditional Chinese medicine so that the council will cover off not only people who are practitioners and public members, but one or two persons who also operate educational institutions where traditional Chinese medicine is taught. I just think that would be a valuable addition to the council in terms of its decision-making processes.

**The Chair:** Any further commentary on NDP motion 17?

**Mr. Patten:** It is within the purview of the college to set out the nature of its representation, and surely this

would be one of the areas. It seems to me that if you go down this road, then you're going to have to say, "Well, we should also have somebody who is a practitioner; we should have men and women; we should..." By the time you get through it, you'll have prescribed everything. Our view is that that should be left up to the college.

**The Chair:** Thank you, Mr. Patten. We'll proceed now to consider the vote on NDP motion 17. Those in favour? Those opposed? I determine that NDP motion 17 is lost.

Shall section 5 carry? Those in favour? Those opposed? Section 5 is carried.

There are no motions before the committee for section 6. We'll proceed directly to the vote. Shall section 6 carry? In favour? Opposed? Carried.

We now move to the consideration of PC motion 18.

**Mrs. Witmer:** I move that subsection 7(1) of the bill be struck out and the following substituted:

"Restricted titles

"(1) No person other than a member shall use the titles 'traditional Chinese medicine practitioner', 'acupuncturist' or 'traditional Chinese medicine herbalist', a variation or abbreviation or an equivalent in another language."

Basically, this is an expansion of the restricted titles to include the traditional Chinese medicine herbalist. If we take a look, again, at British Columbia, they do include TC herbalists. Also, HPRAC, in 2001, did recommend that those three titles that I've just mentioned be as such. And of course, we also heard from the Toronto School of Traditional Chinese Medicine and individual presenters that restricted titles for members of the new college should include "TCM herbalist." Without the herbalist title, this could cause a problem to those who are currently practising herbal medicine only, without doing acupuncture. Again, it talks to the issue of safety. We talked about the Chinese herbal medicines, the fact that some of them are toxic and potent. So obviously these herbs should be used as prescription only by qualified TCM practitioners, TCM herbalists and doctors of TCM.

1720

**The Chair:** Any further comments? Seeing none, we'll proceed to the vote. Yes, Mr. Patten?

**Mr. Patten:** I was just going to add to that. I think the spirit of that is in 7(2), that the college can have and will have specialities which they can protect and enforce. I think the next subsection deals with that concern that's identified.

I'm also notified that while, for example, the Ontario College of Physicians and Surgeons protects the title of "doctor," there are subspecialist areas that they identify—oncologists or whatever it may be—that have the same challenge. Some of those are not protected and some are. But it's basically the overall doctor of medicine or surgeon.

**The Chair:** Thank you, Mr. Patten. We'll proceed now to the vote. Those in favour of PC motion 18? Those opposed? I declare PC motion 18 to have been lost.

NDP motion 19.

**Ms. Martel:** I move that section 7 of the bill be struck out and the following substituted:

“Restricted titles

“(1) No person other than a member shall use the titles ‘traditional Chinese medicine practitioner’, ‘tuina massage therapist’, ‘traditional Chinese medicine herbalist’ or ‘acupuncturist’, a variation or abbreviation or an equivalent in another language.

“Representations of qualification, etc.

“(2) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a traditional Chinese medicine practitioner, tuina massage therapist, traditional Chinese medicine herbalist or acupuncturist or in a specialty of traditional Chinese medicine.

“Definition

“(3) In this section,

“‘abbreviation’ includes an abbreviation of a variation.”

This was moved for the same reason that Ms. Witmer has already outlined. We also added in ours a restricted title of tuina massage therapist, based, again, on the recommendation of a number of the presenters before the committee, particularly Mary Wu. We know that the HPRAC recommendations in 2001 went further than what the government is doing now. I think we should at least be on the ground of what HPRAC recommended in 2001 and actually moving further with respect to tuina massage therapist as a title that should be protected and to ensure that no one holds themselves out as someone who can perform this important health care activity without truly being qualified to do so.

So it is both a matter of elevation of members of the profession, respecting their qualifications, and also a very serious issue of public safety in terms of ensuring that only people who have the appropriate qualifications are allowed to practise and are allowed to hold themselves out in this regard in the public.

**The Chair:** Any further questions or comments? Seeing none, we’ll proceed to the vote in consideration of NDP motion 19. Those in favour? Those opposed? I declare NDP motion 19 to have been lost.

Shall section 7 carry? None opposed. Section 7 carries.

With the committee’s will, we’ll do block consideration of sections 8 to 13, inclusive, seeing that there are no motions brought forward.

**Ms. Martel:** Excuse me. I have a question with respect to section 10. I apologize for this, but I do have also a potential amendment, depending on what answer I can get. On section 10, it was brought to my attention by several groups that—

**The Chair:** Ms. Martel, with your indulgence, if we might, for procedural purposes, go through 8 and 9 first, which we can consider as a block, if there’s no objection. Shall sections 8 and 9 carry? Those in favour? Those opposed? I declare them to have carried.

Ms. Martel, the floor is yours.

**Ms. Martel:** Let me ask this question, then. A concern was brought to my attention by a number of people in the

traditional Chinese medicine community that this item with respect to mandatory referrals doesn’t appear in other regulated health professions and that it would seem that TCM practitioners are being treated differently under regulation in this regard.

I did take a look at a number of the regulated health professions to see what was already in their acts, and I do see that, for example, under the Dental Hygiene Act in part 5 around professional misconduct, it does say, for example, that it is an act of misconduct to fail to refer a client to a qualified medical or dental practitioner where the member recognizes or ought to have recognized a condition which required medical or dental examination.

So I looked at a number of acts and saw areas where, under the misconduct section, it would be an act of professional misconduct if you didn’t make a referral. What I don’t know is if there is a similar regulatory provision which allowed that to happen in the other acts, or if this is something that’s quite different. If you can explain that to me, I’d appreciate it.

**Mr. Stephen Cheng:** Stephen Cheng, senior policy analyst with the Ministry of Health and Long-Term Care.

If your question is regarding whether the council must make a regulation prescribing standards of practice respecting referrals, the answer is no. The college may make regulations if they determine that it’s appropriate to develop a standards-of-practice regulation involving referrals to members of other health professions.

If we take a look at British Columbia, we do have in their legislation acupuncturists who must refer on. However, in the legislation we currently have, that’s currently in Bill 50, we leave it up to the college to determine whether or not that’s appropriate.

**Ms. Martel:** I didn’t make myself very clear, and I apologize for that. Does a similar section to section 10 appear in the other acts with respect to the regulated health professions?

**Mr. Tim Blakley:** I’m Tim Blakley. I’m the manager of the regulatory programs unit.

The Nursing Act contains certain provisions with respect to mandatory referral and consultation by members of the extended class of nurse practitioners. When it comes to communicating a diagnosis, members of that particular class of registration of registered nurses must abide by certain standards with respect to communicating a diagnosis. In other words, there are certain standards about consultation and referral, and that’s set out in the Nursing Act itself.

**Ms. Martel:** It’s set out in the Nursing Act, not under the discipline section but under the controlled acts section?

**Mr. Blakley:** Within the controlled acts section.

**Ms. Martel:** So in your opinion, it is not out of line or not inconsistent with at least this act to have this provision?

**Mr. Blakley:** It’s a similar concept. In this case, it’s actually a discretionary power for the council as to whether or not they make these regulations. In respect of

the extended class for registered nurses, it's mandatory that they establish a standard and make a regulation.

**Ms. Martel:** So regarding the concerns of some that this is different than what is happening with other regulated health professions, the example the ministry would have to use is the registered nurse extended class as an example where this also appears in the legislation.

**Mr. Blakley:** It's analogous, yes.

**Ms. Martel:** All right. Thank you.

1730

**The Chair:** Are there any further questions or comments on NDP motion 19—actually, on section 10. We'll proceed to the individual consideration of section 10. Shall section 10 carry? Those in favour? Those opposed? Carried.

And again, with the committee's will, we'll consider as a block sections 11 to 13. Shall sections 11 to 13, inclusive, carry? Those in favour? Those opposed? I declare them—Ms. Martel?

**Ms. Martel:** I have another question.

**The Chair:** Sure. What section, Ms. Martel?

**Ms. Martel:** On section 12.

**The Chair:** Okay. We'll proceed, then, to the consideration of section 11. Shall section 11 carry? All opposed? Section 11 carries.

Ms. Martel, the floor is yours.

**Ms. Martel:** Thank you, Chair. I have another question. This has to do with a concern that has been raised by me about how clear it is that on the day that some of these provisions go into force—and I understand that section 12 goes into force and then the other sections go into force at a date later named by the LG. I understand that. The immediate question was, with section 12 going into force when the bill is passed, what difficult position, if any, those who are currently providing traditional Chinese medicine and acupuncture would be put in. The sense was that once this section went into effect, current registration or licence holders may be in difficulty in terms of continuing to practise.

The reference that I was given was that transitional provisions with respect to specific professions were included in some of the 1991 legislation; for example, chiropractors. There was a specific transitional section that said that if you were practising under the Drugless Practitioners Act before, you still could continue to practise as you transitioned to the Chiropractic Act. Now, the distinction may be that these practitioners were already regulated under some act, so that is why it's not necessary in this act to have a similar provision. If I could get some clarification, that would be great, because it's certainly a concern that has been raised with me. There was also a specific amendment that would cover that off if it needs to cover that off.

**Mr. Patten:** My understanding is that it will have no effect on anyone at the moment. It will only have an effect when the transitional council—which, by the way, will carry and have the powers of a full council. But it's when the council has done its work, is in place and has its

regulations ready to go. It would mean that until that happens, it's business as usual.

**Ms. Martel:** The difference between this act and those transitional sections which clearly stated that in the others—can you just put that on the record for me, please?

**Ms. Henderson:** You were accurate in your analysis that those deeming provisions were in respect of practitioners who were already regulated under the old scheme, whether it was the Health Disciplines Act or what have you, so that they were then being switched over to the Regulated Health Professions Act.

However, in the case of the new colleges—dietitians, for example—those new colleges would have been in the same position as this new college will be in on royal assent. Mr. Patten has accurately stated the situation for TCM practitioners, that they may continue until such time as the transitional council has in place their new registration requirements and grandparenting provisions, what have you, whatever the transitional council decides and determines is appropriate.

**Ms. Martel:** Thank you.

**The Chair:** We'll proceed, then, to the consideration of section 12. Those in favour? Those opposed? Section 12 carries.

Any debate on the consideration of section 13, for which we have no motions brought forward? Proceeding directly with the vote, those in favour of section 13? Those opposed? Section 13 is carried.

Section 14: government motion 20.

**Mr. Patten:** I move that section 14 of the bill be struck out and the following substituted:

“Drug Interchangeability and Dispensing Fee Act

“14. The definition of ‘drug’ in subsection 1(1) of the Drug Interchangeability and Dispensing Fee Act is repealed and the following substituted:

“‘drug’ means a drug as defined in the Drug and Pharmacies Regulation Act, and includes any substance designated as an interchangeable product before section 15 of the Traditional Chinese Medicine Act, 2006 came into force; (‘médicament’).”

Essentially, this is a technical change. It essentially deals with the numbering in the Drug Interchangeability and Dispensing Fee Act.

**The Chair:** Any further questions, comments? If not, we'll proceed to the vote. Those in favour of government motion 20? Those opposed? I declare government motion 20 to have carried.

Shall section 14, as amended, carry? Those in favour? Those opposed? Carried.

There are no motions brought forward, so we'll proceed directly to the vote on section 15. Those in favour of section 15? Those opposed? Section 15 carries.

We'll now proceed to section 16: government motion 21.

**Mr. Patten:** I move that section 16 of the bill be struck out and the following substituted:

“Ontario Drug Benefit Act

“16. The definition of ‘drug’ in subsection 1(1) of the Ontario Drug Benefit Act is repealed and the following substituted:

“‘drug’ means a drug as defined in the Drug and Pharmacies Regulation Act, and includes,

“(a) any substance designated as a listed drug product before section 15 of the Traditional Chinese Medicine Act, 2006 came into force, and

“(b) any substance that was supplied under this act by virtue of section 16 before section 15 of the Traditional Chinese Medicine Act, 2006 came into force; (‘médicament’).”

For the same reason: a technical change dealing with renumbering in the Ontario Drug Benefit Act.

**The Chair:** Any further questions on government motion 21. Seeing none, we’ll proceed to the vote. Those in favour of government motion 21? Those opposed? I declare government motion 21 to have carried.

Shall section 16, as amended, carry? Those in favour? Those opposed? Section 16, as amended, carries.

We’ll now proceed to section 17: PC motion 22.

**Mrs. Witmer:** In light of what’s gone before, I would withdraw this motion.

**The Chair:** PC motion 22 is withdrawn.

NDP motion 23.

**Ms. Martel:** I move that subsection 33(2.1) of the Regulated Health Professions Act, 1991, as set out in subsection 17(1) of the bill, be amended by striking out “College of Traditional Chinese Medicine Practitioners of Ontario” and substituting “College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario.”

**The Chair:** If there’s no further commentary, we’ll proceed to the vote. Those in favour of NDP motion 23? Those opposed? I declare it lost.

Government motion 24.

**Mr. Patten:** I move that section 17 of the bill be struck out and the following substituted:

“Regulated Health Professions Act, 1991

“17.(1) Section 33 of the Regulated Health Professions Act, 1991 is amended by adding the following subsection:

“Same

“(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title ‘doctor.’

“(2) Schedule 1 to the act is amended by adding the following:

Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine
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This inserts a new name of the college into the bill. Essentially, in order to deal with the French, we have to deal with it in English, so that the translation could be compatible.

**The Chair:** Are there any further comments or questions on government motion 24?

**Ms. Martel:** So the translation is going to appear when the bill is reprinted? Because it doesn’t appear under section 17 right now. I’m not clear what the necessity for the change is. Ralph?

1740

**Mr. Armstrong:** With the committee’s indulgence, yes, it will appear in the French translation. Also, this is necessary in the English, for the same reason as Ms. Martel’s motion, to put in the new English name of the college. So it’s just drafted a bit differently to combine the two issues: the new name of the college in English and the preferable translation of it in French. So it would have to be done in any case, just in a different format.

**Ms. Martel:** What’s the difference between 23 and 24 except for sub (2) on government motion 24?

**Mr. Armstrong:** As you’ll note, the government motion includes the reference to sub (2), which coincides with the—

**Mr. Patten:** The numbering is wrong at the beginning. It’s got, “Traditional Chinese Medicine Act, 2005.”

**Mr. Armstrong:** That could be changed editorially, but it helps clean things up to put in the title as it will appear, with “2006.” Also, this will enable the preferred French translation of the short title to appear throughout, as part of the head-smacking earlier referenced. So there is a combination of technical factors coming together.

**The Chair:** Thank you, Mr. Armstrong.

We’ll proceed now to the vote. Those in favour of government motion 24? Those opposed? I declare government motion 24 to have carried.

Shall section 17, as amended, carry? Those in favour? Those opposed? I declare that section, as amended, to have carried.

Section 18: NDP motion 25.

**Ms. Martel:** I move that subsection 18(2) of the bill be struck out and the following substituted:

“(2) Section 8 of the regulation is amended by adding the following subsections:

“(2) A person who is a member of the following colleges is exempt from subsection 27(1) of the act for the purpose of performing adjunct acupuncture in accordance with the standard of practice of the profession, within the scope of practice of the profession, and in accordance with the regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council and enforced by the college:

- “1. The College of Chiropractors of Ontario.
- “2. The College of Chiropractors of Ontario.
- “3. The College of Massage Therapists of Ontario.
- “4. The College of Nurses of Ontario.
- “5. The College of Occupational Therapists of Ontario.
- “6. The College of Physicians and Surgeons of Ontario.
- “7. The College of Physiotherapists of Ontario.
- “8. The Royal College of Dental Surgeons of Ontario.



“9. Any other college named in an order of the minister and published on the website of the Ministry of Health and Long-Term Care.

“(3) A person who is registered to practise under the Drugless Practitioners Act by the Board of Directors of Drugless Therapy is exempt from subsection 27(1) of the Regulated Health Professions Act, 1991 for the purpose of performing adjunct acupuncture in accordance with the practice of the profession and in accordance with the regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council and enforced by the board.

“(4) A person is exempt from subsection 27(1) of the act for the purpose of performing adjunct acupuncture if the acupuncture is performed as part of an addiction treatment program and the person performs the acupuncture within a health facility in accordance with regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council.

“(5) Any person mentioned in subsection (2), (3), or (4) who was legally practising adjunct acupuncture immediately before this subsection came into force is not required to comply with the standards mentioned in those subsections until two years after this subsection comes into force.

“(6) In this section,

“‘adjunct acupuncture’ means a procedure on tissue below the dermis for the purpose of acupuncture pain relief in conjunction with other modalities such as western medicine, physiotherapy and chiropractic adjustment according to human anatomy and physiology;

“‘health facility’ means a facility governed by or funded under an act set out in the schedule.”

This is our attempt to deal with the concerns that were raised about section 18, which we are all very much aware of. What we used was a schedule that referenced those colleges right now that the ministry had advised us by letter were the ones that, within their scope of practice, the ministry believed could practise acupuncture. That was in response to a question that I had raised during the course of the public hearings. So we have listed the eight that appeared in the government’s memo back to members of the committee. That’s the first thing, how we arrived at the eight. Clearly, this would limit acupuncture to members of these colleges.

Part 9 would allow another college to make their case to the government at some point in time in the future as to why they believe this might fall in their scope of practice or their standard of practice etc. They could make their case to the government, and the government at a future date could decide if members of another college could perform acupuncture.

We also put in a specific definition for “adjunct acupuncture.” We did this because, during the course of the public hearings, I think enough people raised a concern that there’s a difference between acupuncture practised by traditional Chinese medicine practitioners and acupuncture that is performed by other regulated health

professionals. We wanted to make a clear distinction between the two, that acupuncture practised by other regulated health professions, those we’ve outlined, the eight, is acupuncture for the purpose essentially of pain relief and it is done in conjunction with the scope of practice and the work that some of those other health care practitioners already do, be it chiropractors, physiotherapists etc.

We also kept in each of the sections the government language with respect to “with the standard of practice of the profession and within the scope of practice of the profession.” We kept that in place, but added a section that talked about “regulations on the minimum standards to safely perform adjunct acupuncture as established by the Lieutenant Governor in Council.” This was our way of trying to deal with the concern that was raised that there isn’t a minimum standard in place right now with respect to other health care professionals who provide acupuncture. We saw that clearly during the course of the public hearings in questions that were raised with the college of chiropractors, for example, with the college of nurses etc.

There is a wide variation between the standards of practice to perform acupuncture that is required by various colleges. We put the onus back on the government to clearly outline what the government believes are the minimum standards that each of these colleges needs to meet in order to safely put themselves out as individuals who are qualified to perform acupuncture. That is what the reference to minimum standards means, and that is carried through with respect to naturopaths, which is point number 3, and with respect to those individuals who provide acupuncture right now as part of an addiction treatment program within a health facility. I will stop there, Mr. Chair.

**Mr. Patten:** This is a very interesting section, isn’t it? The first thing I must say is that the College of Physicians and Surgeons—I think I mentioned this before—had to be removed from that particular list in that they have the authority under the Medicine Act, and in the statute they have the authority to set their own standards, regulations etc.

Second: “9. Any other college named in an order of the minister and published on the website of the Ministry of Health and Long-Term Care.” There was always the option for the minister or others to come forward with the proposal to do this, so it wouldn’t be required at this particular point. Then I’m advised that—because I personally like the term—“adjunct acupuncture” does not have a definition in practice and that it therefore may provide some limitations.

However, I think what you’re trying to get at is the use of acupuncture within the scope of practice. Therefore, in the government motion we tried to address that, and we think we were able to get at it because we’re headed in the same direction.

1750

**The Chair:** Ms. Martel and then Ms. Witmer.

**Ms. Martel:** The authority under the Medicine Act to set their own standard—does that mean that by legis-

lation they can set their own standard for their members who practise acupuncture? Is that what you mean when you say this is already referenced under the Medicine Act?

**Mr. Patten:** They already have the authority to deal with anything below the dermis in terms of surgery, or what have you, and invasive procedures for medical purposes. Besides that, we don't have the authority to infringe upon them at this particular stage, by regulation. So we just can't do it.

**Ms. Martel:** But don't members of other colleges also have the controlled act of a procedure below the dermis; nurses, for example?

**Mr. Patten:** No, not in an unqualified way, but within the scope of practice of their particular profession.

**Ms. Martel:** I don't understand that distinction. But that's probably not the most important part of this for me, so let me leave that for the moment and say two things.

The ministry says that we cannot have a definition of "adjunct acupuncture" because there is not a definition in practice. That's fine; why can't we define it? I mean, that is the point of legislation. I'm worried about that as an answer to why we can't make a clear distinction between what I think we should be making a clear distinction between, which is, as you have already said, Mr. Patten, clearly acupuncture that's practised in a different way, depending on if you are a TCM practitioner and if you are already a member of a regulated health profession who also provides acupuncture as part of a pain-management regime. So I still don't understand why we can't do that. We've made a reference to it in terms of a definition section at the bottom.

The other thing that I still remain concerned with, and I know we have been going around this issue a couple of times in earlier amendments, is what the government will do in terms of ensuring that the regulated health professions that the government has outlined in its amendment will still perform acupuncture within some minimum standard. You reference in your amendment "in accordance with the standard of practice and within the scope of practice," but that was already in the bill, and I don't think that caused anyone a lot of happiness in terms of it being very clear that there still had to be some kind of minimum standard that as a health care professional you had to meet to perform acupuncture.

So your language is still the same as what's currently in the bill, which is language that people had a concern with because it didn't clearly say that regardless of whether or not you were a doctor, a nurse, a chiropractor or a physiotherapist, there was going to be some minimum standard that you had to meet in order to also practise acupuncture.

**Mr. Patten:** I'm going to ask Steve to deal with your issue of the term "adjunct acupuncture."

**Mr. Cheng:** In taking a look at the government motions, let's refer to government motion 10.1. In that government motion, it does state that acupuncture is a procedure on tissue below the dermis and below the surface of a mucous membrane. In upcoming government

motion number 26, it says that for the purposes of these other colleges, acupuncture is "a procedure performed on the tissue below the dermis" only. So there is a distinction between the acupuncture that a TCM practitioner might practise and what the other colleges may also practise. In addition—

**Ms. Martel:** Hang on before you go any further, because I'm looking at number 10.1. The only difference that I see with respect to the authorized act is "performing a procedure ... below the surface of a mucous membrane for the purpose of performing acupuncture." So is that the only difference between acupuncture performed by traditional Chinese medicine practitioners and acupuncture performed by everyone else, that single notion?

**Mr. Cheng:** Encapsulated in that notion is that there are a limited number of acupuncture points that members of the other colleges may use, whereas motion 10.1 indicates that it is the full scope or the full range of acupuncture points, which may include on tissue below the surface of a mucous membrane. So there is a clear differentiation. We do understand that the practitioners listed under motion 26 do use acupuncture points, but they use a limited set of acupuncture points.

**Ms. Martel:** We get to that understanding by virtue of the fact that you use the word "acupuncture" under 10.1 under "Authorized acts"? Because you use the word "acupuncture," I'm to understand that all of those things flow from that?

**Mr. Cheng:** It's important to note that 10.1 says that "In the course of engaging in the practice of traditional Chinese medicine" TCM practitioners are authorized these controlled acts. When you're taking a look at number 26, the government motion is saying that a member of a college listed in column 1 may only perform acupuncture below the dermis. So there is a distinction there.

I would also like to note that the definition of "adjunct acupuncture," as currently defined in motion 25, does not encompass the use of acupuncture by those practitioners. HPRAC, in their 2001 report, has indicated that nausea and vomiting is an efficacious use of acupuncture that is being used, for example, after chemotherapy and that may be used by some of these practitioners.

In addition, acupuncture—

**Ms. Martel:** May I stop you there? There's lots from the HPRAC report that doesn't make its way into the bill. If we're going to go there, we're going to have lots of trouble, because there's lots that HPRAC said, and it seems like you're being rather selective about what you pick and choose in that regard.

**Mr. Cheng:** In addition, under subsection (4), as part of an addiction treatment program, that's also not used for pain.

**The Chair:** Thank you, Ms. Martel, if you have concluded.

**Ms. Martel:** Although I don't agree with it—I think it doesn't respond to the concern that both Mrs. Witmer and I have raised a couple of times now about what it is

and where it is that we and members of the public are going to be assured that there is some minimum standard. I'm looking very clearly at the government's motion which will come next, and I continue to see essentially "in accordance with the standard of practice and within the scope of practice of the health profession listed in column 2." I think we heard very clearly during the course of the public debate that that wasn't enough to guarantee that there was at least a minimum standard, some minimum level of training for people who were members of a regulated health care profession and were going to perform acupuncture. The use of the same language again is not going to get us that much further.

What is it about your amendment that's going to assure me, Mrs. Witmer and, frankly, members in the TCM community that the government understands that there has to be a minimum standard and the government has figured out a way to ensure that happens?

**Mr. Cheng:** Taking a look at government motion 26, subsection (4), it does say that a person who is mentioned under subsection (2) or (3) may only perform acupuncture "if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be."

It is assumed that the respective college and the respective board must set these standards and qualifications and that those performing acupuncture who are members of that college or the board must meet those standards and qualifications.

**Ms. Martel:** I'm still not sure what the difference is between that and essentially what was already outlined in the current bill where it also talked about acupuncture within the standard of practice and within the scope of practice of the profession.

**Mr. Cheng:** It's an additional requirement. I'm not sure we should be debating number 26 at this point.

**The Vice-Chair (Mr. Khalil Ramal):** Mrs. Witmer?

**Mrs. Witmer:** I would certainly again echo the concerns that have been raised by Ms. Martel. There appears to be no assurance provided to the public or no response to those who made presentations about the fact that there is a need for a minimum standard, there is a need to ensure that the public has confidence in those individuals who are going to be performing acupuncture. I'm afraid, when I look at the government motion, it certainly doesn't give me any assurance that that is indeed the case.

1800

**The Vice-Chair:** Is there any further comment? Section 25, NDP motion. Everybody in favour?

**Ms. Martel:** May I have a recorded vote, please?

**The Vice-Chair:** Okay. Section 18, motion 25, an NDP motion.

**Ayes**

Martel, Witmer.

**Nays**

Kular, Leal, Patten, Van Bommel.

**The Vice-Chair:** The motion is lost. Now we have government motion 26.

**Mr. Patten:** I move that subsection 18(2) of the bill be struck out and the following substituted:

"(2) Section 8 of the regulation is amended by adding the following subsections:

"(2) Subject to subsection (4), a person who is a member of a college listed in column 1 of the table is exempt from subsection 27(1) of the act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the standard of practice and within the scope of practice of the health profession listed in column 2.

	Column 1	Column 2
1.	College of Chiropractors of Ontario	Chiropractic
2.	College of Chiropractors of Ontario	Chiropractic
3.	College of Massage Therapists of Ontario	Massage Therapy
4.	College of Nurses of Ontario	Nursing
5.	College of Occupational Therapists of Ontario	Occupational Therapy
6.	College of Physiotherapists of Ontario	Physiotherapy
7.	Royal College of Dental Surgeons of Ontario	Dentistry

"(3) Subject to subsection (4), a person who is registered to practise under the Drugless Practitioners Act by the Board of Directors of Drugless Therapy is exempt from subsection 27(1) of the Regulated Health Professions Act, 1991, for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, in accordance with the practice of the profession.

"(4) A person mentioned in subsection (2) or (3) is exempt from subsection 27(1) of the act for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college or the Board of Directors of Drugless Therapy, as the case may be.

"(5) A person is exempt from subsection 27(1) of the act for the purpose of performing acupuncture, a procedure performed on tissue below the dermis, if the acupuncture is performed as part of an addiction treatment program and the person performs the acupuncture within a health facility.

"(6) In subsection (5) 'health facility' means a facility governed by or funded under an act set out in the schedule."

The explanation, first of all, on the list of college members who provide acupuncture in Ontario, who are listed here, these particular seven: All of these members must provide acupuncture in accordance with their profession's scope of practice and standards of practice,

and they must also meet standards and qualifications set by the college. In other words, if they do not have that, they cannot use the procedure. They're not allowed to. The college must have standards, whatever form that takes.

**The Vice-Chair:** Any further comment or debate?

**Ms. Martel:** I'm trying to be helpful. Where does it say that? Where does it say that the college has to have a minimum standard, because if you look—

**Mr. Patten:** It says it right there in subsection (4); it says, "for the purpose of performing acupuncture only if he or she has met the standards and qualifications set by the college..." In other words, if they don't have standards, that person cannot practise that.

**The Vice-Chair:** Any further debate?

**Ms. Martel:** Yes. Thank you for clarifying that for me. The next question I have is, what will be the control that the government has for the government to assure itself that those standards and qualifications are appropriate for someone who wants to perform acupuncture? Is there any mechanism to ensure that that happens? I mean, what if a college comes back to you and says, "We think that this is already within our scope of practice and our standard of practice, and we're not going to set out an additional set of qualifications for someone to perform acupuncture." What do we do then?

**Ms. Henderson:** This regulation is a government regulation, made by the minister under the RHPA. The vast majority of colleges—I don't have each of their professional misconduct regulations before me, but my recollection is that many of these professional misconduct regulations provide that the breach of a regulation is professional misconduct. This drafting of these provisions says a person who is a member of a college in the schedule and says in subsection 3, "a person who is registered to practise under the Drugless Practitioners Act." The ministry, these colleges and these drugless practitioners under the DPA, we have been informed relate directly to those practitioners who are currently providing acupuncture services to their clients and have been as they described during the submissions to this committee.

However, there is a condition on their providing acupuncture, and that is that these persons may only perform acupuncture if they have met these standards and qualifications set by the college or the board under the Drugless Practitioners Act. So there is a duty on the member or the drugless practitioner to meet the standards and there's a duty on the college and the board to set those standards—again, acupuncture only within the standard of practice and the scope of practice of each of those professions.

**The Vice-Chair:** Any further questions or comments?

**Ms. Martel:** I understand the reference to the breach of a regulation being a matter of professional misconduct. By that point, you have had an incident which has already occurred, so the college is in a reactive mode because they are now dealing with someone because a

complaint has arisen, maybe a complaint about the level of care or harm done or whatever. So while I recognize that it's a breach, I would rather be at the front end of the exercise in terms of what our expectation is so we don't end up with a breach.

**Ms. Henderson:** The breach is the event that a person performs acupuncture and is not compliant with this regulation. The regulation is also proactive in setting out the requirements in order for a person to perform acupuncture. Again, it's within the ethical and professional standards of each member of a college or a person governed by the Drugless Practitioners Act to comply with each of the requirements, and this is the new requirement.

**Ms. Martel:** So the new requirement is the standards and qualifications set by the college; that's the new requirement.

**Ms. Henderson:** When it's enforced, and it must be, again, within the standard of practice and the scope of practice of that profession.

**Ms. Martel:** But the scope of practice and the standard of practice was already in the bill. We had concerns about that. So adding those two, scope of practice and standard of practice, we already heard concerns about that language. So the new language includes now "standards and qualifications set by the college." I appreciate that. What do we do if we have concerns about what those standards and qualifications are? The other thing is, "set by the college." Does that mean the college has to enforce it? We also heard from some of the educational institution folks that they certainly have a number of hours, but it was up to the college to ensure or guarantee that people actually finish those hours. So is it implicit also in here that the college has an obligation to enforce?

Secondly, I just have to go back. Standards and qualifications still for me are pretty vague in terms of what is going to be required: What's going to be required by the College of Chiropractors, what's going to be required by the College of Physiotherapists etc.

**Ms. Henderson:** Again, the college has been given, by the Legislature, the authority to make regulations respecting standards, qualifications and standards of practice for each member of that college. The ministry may review those standards or those standards may be shared; or in the case of a regulation, there is a process set out by the RHPA, but the authority to make those standards and to set those policies or make regulations has been mandated to the colleges.

**1810**

**Ms. Martel:** If we look at the letter that the minister has sent, which I assume has a direct bearing on this section, what should we take from the minister's letter in terms of what he's going to be asking HPRAC in that regard? Are we to assume that the standards and qualifications set by the college would be the matter of the referral to HPRAC?

**Mr. Patten:** I said before, if you don't mind—and that's in the third paragraph, which is: "...options for the health professions to collaborate in the development of standards of practice for the same or similar controlled

acts, while respecting the competencies of the individual professions. I intend to seek further advice from HPRAC concerning these matters, and how best to facilitate that collaboration." Implicit in that statement, to me, is that they will be brought together. I don't know if HPRAC does it, but somebody's going to bring them together and say, "Listen, we've got overlapping," which is fine, because that's part of the intent of the act in any case.

What would be the basis for variance? If we can't all agree on one particular standard—and people are kind of leaning somewhat towards their greatest references—and work that through, and if we use this particular legislative model, this piece of legislation, we're in the position of not being able to dictate to the colleges if we want to honour what the colleges come up with. They make it. They propose, there's a reaction, there's a review from the minister and it goes forward for the Lieutenant Governor in Council. So there is some give and take in this.

You may know this, and I'm sure the former minister would know this, but just because a college comes up with a set of recommendations in no way means that the ministry or the minister is going to say, "That's fine with me." I think we may see some of that emerge over the next little while as to what may happen.

Again, I can only surmise and give my interpretation of the letter. That's the intent from the minister. He wants to move ahead, to bring these professions together to look at minimum standards and what's the best way to facilitate that, and is seeking advice from HPRAC.

**Ms. Martel:** Then we go back to Mrs. Witmer's original question: Can we get clarification that there will be a new referral? I think we'd like to have that answered in this committee.

I just repeat the concern I've had: For me, the issue has always been, what is the mechanism by which we can ensure this happens—a minimum standard? We've heard talk about practices and procedures which don't have to be dealt with by the ministry, or a regulation which does have to be dealt with by the ministry. It's not clear to me that whatever the college comes up with with respect to a minimum standard will come via the way of a regulation the minister has to authorize. I don't know how else to explain it except in that way.

**Mr. Patten:** I don't know the answer to that because I'm not a lawyer. My reading of this is that they have to develop standards. They can do it through regulation, they can do it through bylaws or they can do it through guidelines, whatever it is, and those are binding. Members of that particular college, if they do not adhere to it, are susceptible through breach of whatever the terminology is, regardless of what modality they use. I know in regulation they must come through the ministry. If they do it by virtue of guidelines, even though they don't, is there a legal engagement there if they choose, let's say, to develop guidelines?

**Mr. Cheng:** If colleges develop guidelines, they frequently—and this is the current practice—send out those guidelines to their members, as well as to other colleges for comments. They do conduct that type of con-

sultation. I believe that's what we heard when the college of chiropractors was in here, as well as the college of physiotherapists. They both mentioned that they would be sending out their standards-of-practice guidelines within a month or so.

**Ms. Martel:** I know that, and I know they do that with their own members, but that's not my question. My question is, where does the ministry become implicated in this process? I recognize the procedure they use to develop their—and it goes to council and there's a vote and the whole nine yards, but that doesn't mean that the government has any opportunity or mechanism there to say, "Yes, we agree that for this profession, 200 hours is appropriate" or "For this profession, we don't think 200 hours is appropriate because we think, with your level of training, you need 300."

**Mr. Patten:** I guess the clarification is, is there a qualitative difference in terms of enforcement between standards that are in regulation versus standards that are in guidelines or something else? And if it's not regulation, does the ministry still have some leverage in terms of saying, "We think that's pretty weak," or whatever?

**Ms. Martel:** Or not enough.

**Mr. Patten:** Yes.

**Ms. Henderson:** Just one last one: With the greatest respect, the existing law, which has been in place for many years now, has permitted anyone to provide acupuncture to the public through the regulation. Those members of regulated health professions and who practise acupuncture, along with those members currently registered with the board under the Drugless Practitioners Act, have been subject to the fairly significant complaints and discipline procedures under the RHPA and the DPA. The public in that regard has been protected, as the public is protected for any number of the innumerable procedures performed every day by health practitioners. These are new requirements that all regulated health professionals who come within this new regulation will have to meet. But I must say again that the exemption has been in place for many years and indicates that apparently—"apparently," because I've not been privy to all of their issues but they did make reference to some of them in their presentations to the committee—this procedure has been dealt with in an ethical and safe way and those standards are going to be heightened by virtue of the government's motion.

**The Vice-Chair:** Ms. Martel, are you satisfied with the answer? Any more questions, comments? If not, I'm going to move to Mrs. Witmer.

**Mrs. Witmer:** Probably this is the best we're going to get. I guess what this does, which we didn't have before, is at least give the assurance that there will be standards established. If we take a look at the research that was done with us in terms of standards of practice regarding acupuncture, it was clear that many of the colleges currently did not have any standards of practice. So I guess this does mean—and you can let me know, one way or the other—that they must develop standards and qualifications. Although it doesn't give any indication as to what the minimum standards may or may not be, at

least now anybody who is performing acupuncture, we now see that's limited certainly to colleges. We also now know that there will be standards they will have to meet.

Obviously, I'd like to see a stronger commitment to a minimum, but at least here we do have a commitment to the establishment of standards if you're going to be performing acupuncture. So it's a compromise.

**The Vice-Chair:** Any further questions or comments? Now we're ready to vote on motion 26. All in favour? Opposed? Carried.

Shall section 18, as amended, carry? All in favour? Anybody opposed? Carried.

Now we move to government motion 27.

**Mr. Patten:** I move that subsection 19(2) of the bill be struck out and the following substituted:

"Same

"(2) Sections 3 to 11, 13, 17 and 18 come into force on a day to be named by proclamation of the Lieutenant Governor."

**The Vice-Chair:** Any debate? All in favour? Any opposed? Carried.

Shall section 19, as amended, carry? All in favour? Any opposed? Carried.

We move to section 20, government motion 28.

**Mr. Patten:** I move that the French version of section 20 of the bill be amended by striking out « praticiennes et », which clarifies the French title.

**The Vice-Chair:** Any further debate or questions? I'll put the motion for a vote. All in favour? Anybody opposed? Motion carried.

Shall section 20, as amended, carry? Anybody opposed? Section 20 is carried.

Shall the title of the bill carry? All in favour? Anybody opposed? Carried.

Shall Bill 50, as amended, carry? All in favour? Anybody opposed? Carried.

Shall I report the bill, as amended, to the House? All in favour? Anybody opposed? Carried.

Now we are adjourned.

*The committee adjourned at 1822.*



# CONTENTS

Tuesday 14 November 2006

**Traditional Chinese Medicine Act, 2006, Bill 50, *Mr. Smitherman* / **Loi de 2006**  
**sur les praticiennes et praticiens en médecine traditionnelle chinoise,**  
projet de loi 50, *M. Smitherman* ..... SP-1327**

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