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STATE REGULATION OF COMPLEMENTARY AND ALTERNATIVE VETERINARY THERAPIES: DEFINING THE PRACTICE OF VETERINARY MEDICINE IN THE 21ST CENTURY

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I. INTRODUCTION

Although consensus regarding a precise and inclusive definition for complementary and alternative veterinary therapies ("CAVT") may be difficult to achieve,¹ interest in and utilization of such treatments is growing. Animal owners understandably want access to the full range of available treatment options for their animals. Unfortunately licensed veterinarians and lay practitioners often possess competing philosophical and economic interests in providing CAVT to their clients. The contention between licensed veterinarians and lay practitioners creates a dilemma for state regulators.

Specifically, state regulators face the issue of whether to include CAVT in the statutory definition of the "practice of veterinary medicine,"² and thereby limit the practice of these therapeutic techniques to licensed veterinarians.³ This Article surveys the current landscape for state regulation of CAVT then suggests a harm-based model for regulation that

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1 AVMA Model Veterinary Practice Act § 2(7) (2007), available at http://www.avma.org/issues/policy/mvpa.asp. The American Veterinary Medical Association (AVMA) offers the following definition in its Model Veterinary Practice Act: "'Complementary, alternative, and integrative therapies' means a heterogeneous group of preventive, diagnostic, and therapeutic philosophies and practices, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from veterinary medicine routinely taught in accredited veterinary medical colleges, or both. These therapies include, but are not limited to, veterinary acupuncture, acutherapy, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical therapy; and veterinary phytotherapy." Very few states have adopted this definition verbatim; most have not; see infra Part 1(B).

2 AVMA Model Veterinary Practice Act § 2(19) (2007). The AVMA presumes by definition that administration of any and all complementary and alternative therapies involves the practice of veterinary medicine.

3 While state regulation of non-veterinarians who provide farrier and equine dentistry services to horse owners raises similar regulatory issues, the scope of this Article is limited to the provision of complementary and alternative veterinary therapies.
addresses the legitimate interests of animal owners, veterinarians, lay practitioners, and state regulators.  

II. STATES OF CONFUSION

With few exceptions, states regulate the practice of veterinary medicine through the promulgation of veterinary practice acts and accompanying administrative regulations. Such regulation is an exercise of the states’ police powers, the general validity of which is well established. The few legal challenges to the state regulation of CAVT and other animal care practices generally involve claims of constitutional vagueness and over breadth, claims that regulation interferes with the liberty and property interests of non-veterinarians who wish to practice CAVT, and claims that regulation creates an impermissible monopoly in favor of licensed veterinarians. In similar situations, the United States Supreme Court has upheld the authority of states to regulate professions, so long as the regulation is not an unreasonable exercise of state police power.

4 See generally Donald M. Zupanec, Annotation, Validity, Construction, and Effect of Statutes or Regulations Governing Practice of Veterinary Medicine, 8 A.L.R.4th 223 (1981) (discussing the validity of state veterinary practice acts, which is beyond the scope of this article).

5 See, e.g., 21 U.S.C. § 812 (2000) (showing that the federal government regulates one aspect of the practice of veterinary medicine through the establishment of schedules for controlled substances, some of which have legitimate use in treating animal diseases and ailments).

6 See, e.g., ALA. CODE § 34-29-62 (2007) (“In order to promote the public health, safety and welfare by safeguarding the people of the State of Alabama against unqualified or incompetent practice of veterinary medicine, it is hereby declared that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of the personal and professional qualifications specified in this article. It is the legislative intent that veterinarians who are not normally competent or who otherwise present a danger to the public shall be disciplined or prohibited from practicing in the State of Alabama.”)

7 See, Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975) (noting that, “[w]e recognize that the States have a compelling interest in the practice of professions within their boundaries, and as part of their power to protect the public health, safety, and other valid interests that have broad power to establish standards for licensing practitioners and regulating the practice of professions.”).

8 See State v. Jeffrey, 525 N.W.2d 193, 200-02 (Neb. 1994) (holding that “the right to conduct a lawful business occupation is a constitutionally protected right,” but that Jeffrey’s equine dentistry business was not “lawful” because the practice was limited to licensed veterinarians and finding that the Nebraska veterinary practice act was not overbroad or vague and therefore constitutional.); See also Portable Embryonics, Inc. v J.P. Genetics, Inc., 810 P.2d 1197, 1198-99 (Mont. 1991) (refusing to enforce a contract for “ova or embryo transfer” services by a non-veterinarian on the ground that the techniques constituted the practice of veterinary medicine and thus were illegal.). But see Marshall v. Kansas City, 355 S.W.2d 877, 884 (Mo. 1962) (stating that while “liberty to contract is one of the rights protected by the due process clause . . . the right is not absolute and universal”; and acknowledging that restrictions on the right to contract “must not be arbitrary or unreasonable and can be justified only by conditions calling for their imposition.” (quoting Gideon-Anderson Lumber Co. v. Hayes, 156 S.W.2d 898, 899 (Mo. 1941))). Marshall suggests that state regulation of CAVT must be based on something more substantial than a general concern for the protection of the public. See infra Part III.

9 See Jeffrey, 525 S.W.2d 193; Portable Embryonics, Inc., 810 P.2d 1197; see also United States v. Oregon State Med. Soc’y, 343 U.S. 326, 336 (1952) (noting that “forms of competition usual in the business world may be demoralizing to the ethical standards of a profession.”); Semler v. Oregon
Each state has a veterinary practice act defining by statute the practice of veterinary medicine. While the general parameters of the practice acts are similar, each practice act is unique in the details. Generally, the acts define the practice of veterinary medicine and then restrict the practice of veterinary medicine within the state to licensed veterinarians.

This does not mean, however, that the practice of veterinary medicine is limited strictly to licensed veterinarians. States’ veterinary practice acts also include various exceptions to the general requirement that a license is necessary for the legal practice of veterinary medicine. The

State Bd. of Dental Examiners, 294 U.S. 608, 611 (1935) (Upholding state regulation of professional advertising, stating, “[t]he question is whether the challenged restrictions amount to an arbitrary interference with liberty and property and thus violate the requirement of due process of law. That the state may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute.”) The Semler Court also explained that the state was not obligated to “deal alike with all [professions], or to strike at all evils at the same time or in the same way. It could deal with the different professions according to the needs of the public in relation to each.” Id., at 610. But see Marshall, 355 S.W.2d 877.


11 See, e.g., Fla. Stat. § 474.213(1)(i) (2006) (“No person shall... Practice veterinary medicine in this state, unless the person holds a valid, active license to practice veterinary medicine pursuant to this chapter... .”).

nine enumerated exceptions to Kentucky’s veterinary practice act are typical of the practice acts in most states.\textsuperscript{14}

\textsuperscript{13} See infra Part II(F).

\textsuperscript{14} \textbf{KEN. REV. STAT. ANN.} \textsection 321.200 provides:

(1) No provision of this chapter [the veterinary practice act] shall be construed to prohibit any of the following:

(a) Any persons from gratuitously treating animals in cases of emergency if they do not represent themselves to be veterinarians or use any title or degree pertaining to veterinary practice;

(b) The owner of any animal or animals and the owner's full-time, or part-time, regular employees from caring for and treating, including administering drugs to, any animals belonging to the owner. Transfer of ownership or a temporary contract shall not be used for the purpose of circumventing this provision;

(c) Any person from castrating food animals and dehorning cattle, as long as any drugs or medications are obtained and used in accordance with applicable federal statutes and regulations governing controlled and legend drugs;

(d) Any student enrolled in any approved veterinary school or college from working under the direct supervision of a veterinarian who is duly licensed under the laws of this Commonwealth and whose compensation is paid solely by the licensed veterinarian;

(e) Nonlicensed graduate veterinarians in the United States Armed Services or employees of the Animal and Plant Health Inspection Service of the United States Department of Agriculture or the Kentucky Department of Agriculture, Division of Animal Health while engaged in the performance of their official duties, or other lawfully qualified veterinarians residing in other states, from meeting licensed veterinarians of this Commonwealth in consultation;

(f) A trainer, sales agent, or herdsman from caring for animals, provided there is a veterinary-client-patient relationship, as defined in KRS 321.185;

(g) A university faculty member from teaching veterinary science or related courses, or a faculty member or staff member from engaging in veterinary research, including drug and drug testing research, provided that research is conducted in accordance with applicable federal statutes and regulations governing controlled and legend drugs;

(h) Any person who holds a postgraduate degree in reproductive physiology or a related field, and who has performed embryo transfers in Kentucky during the five (5) years immediately preceding July 14, 1992, from performing embryo transfers; or

(i) Volunteer health practitioners providing services under KRS 39A.350 to 39A.366.
A. Model Practice Acts: Attempts at Uniformity

The American Veterinary Medical Association ("AVMA")\(^{15}\) drafted the organization\'s first Model Veterinary Practice Act ("MVPA") in 1964.\(^{16}\) The MVPA has gone through several revisions since its inception, the most recent of which took place in 2007 and includes a comprehensive definition of complementary and alternative veterinary therapies.\(^{17}\) One of the AVMA\'s objectives is for the MVPA to serve as a "model set of guiding principles for those who are now and will be in the future preparing or revising a practice act under the codes and laws of an individual state," presumably like the Uniform Commercial Code (UCC) and other model laws drafted by the National Conference of Commissioners on Uniform State Laws.\(^{18}\)

The MVPA provisions defining CAVT as the practice of veterinary medicine have been adopted by only a handful of jurisdictions. In most states, the question of whether the practice of CAVT constitutes the practice of veterinary medicine requiring a license remains open to interpretation.

B. AVMA/MVPA States

Only four states have adopted the AVMA definition of CAVT, or a similar inclusive definition, by statute or administrative rule: Illinois,\(^{20}\) Mississippi,\(^{21}\) Oklahoma,\(^{22}\) and South Carolina.\(^{23}\) In Illinois, Mississippi, and Oklahoma, the statutory definition of the practice of veterinary medicine specifically includes CAVT.\(^{24}\)

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\(^{15}\) The AVMA is a not-for-profit organization that represents more than 76,000 veterinarians. The AVMA also accredits schools of veterinary medicine in the United States and styles itself as an "active participant in state and federal legislation regarding animal care, animal abuse and other important issues affecting animals and public health."


\(^{17}\) See supra note 2.


\(^{20}\) 225 ILL. COMP. STAT. ANN. §115/3 (2007).


South Carolina defines CAVT with some specificity, but curiously, the state does not specifically include the practice of CAVT in the definition of the practice of veterinary medicine.\(^{25}\) Ohio, on the other hand, includes the use of “complementary, alternative, and integrative therapies on animals” in the statutory definition of veterinary medicine,\(^{26}\) but the term is not defined with any specificity.

C. **Quasi-AVMA/MVPA States**

Thirteen states identify specific complementary and alternative veterinary therapies in their statutory definitions of the practice of veterinary medicine: Alabama,\(^{27}\) Arizona,\(^{28}\) Arkansas,\(^{29}\) Georgia,\(^{30}\) Kansas,\(^{31}\) Kentucky,\(^{32}\) Maine,\(^{33}\) Missouri,\(^{34}\) Montana,\(^{35}\) Rhode Island,\(^{36}\) South Dakota,\(^{37}\) Texas,\(^{38}\) and Washington.\(^{39}\)

Having identified specific CAVT procedures, the statutes generally then add broad and inclusive language such as “including but not limited to,”\(^{40}\) “all other branches or specialties of veterinary medicine,”\(^{41}\) or reference to “any drug, medicine, treatment, method or practice” or similar wording.\(^{42}\) Only Montana identifies a specific CAVT modality (acupuncture) in a separate section of the definition of the practice of

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\(^{26}\) OHIO REV. CODE ANN. § 4741.01(B)(4) (2006).

\(^{27}\) ALA. CODE § 34-29-61(14) (2007) (acupuncture, animal psychology).


\(^{33}\) ME. REV. STAT. ANN. tit. 32, § 4853(7) (1999) (acupuncture, homeopathic or chiropractic procedures, physical or massage therapy).


veterinary medicine without any language suggesting that the technique is representative of other CAVT practices the state also intends to regulate.  

A general rule of statutory interpretation, expressio unius est exclusio alterius, holds that identification of one or more things creates an inference that the legislature intended to exclude other non-specified things from operation of the statute. Applying this maxim to the practice act in Montana, for example, suggests that the state legislature intended to regulate the practice of acupuncture by identifying it in the statute, but by omission did not intend to regulate the practice of other CAVT. However, this argument apparently is untested in court and remains speculative at best.

Attempts by a state legislature to be inclusive through the use of non-specific statutory language may, or may not, extend the reach of a statute that also includes specific language. Although courts have not addressed this question in the realm of veterinary practice acts, the issue has arisen in other contexts. In Harrison v. PPG Industries, Inc., the United States Supreme Court considered whether the phrase “any other final action of the Administrator” extended the reach of Section 307(b)(1) of the Clean Air Act beyond the section’s enumerated provisions. The Court concluded that the principle of ejusdem generis did not apply.

The Court explained:

As we have often noted: “The rule of ejusdem generis, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty.” With regard to [the Clean Air provision], we discern no uncertainty in the meaning of the phrase, “any other final action.” When Congress amended the provision in 1977, it expanded its ambit to include not simply “other final action,” but rather “any other final action.” This expansive language offers no indication whatever that Congress intended the limiting construction of [the Clean Air provision] . . . . Rather, we agree . . . that the phrase, “any other final action,” in the absence of legislative

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45 See, e.g., Smith v. Wedding, 303 S.W.2d 322, 323 (Ky. 1957) (stating that “[i]t is a primary rule of statutory construction that the enumeration of particular things excludes the idea of something else not mentioned.”) (Citing Bloemers v. Turner, 137 S.W.2d 387 (Ky. 1939))).
46 Harrison v. PPG Indus., 446 U.S. 578, 579 (1980).
47 See BLACK'S LAW DICTIONARY 517 (8th ed. 2004) (“ejusdem generis’ a canon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed.”).
history to the contrary, must be construed to mean exactly what it says, namely, *any other* final action.\(^{48}\)

The question, then, is whether statutory language such as "including but not limited to" satisfies the *Harrison* requirement for certainty. Decisions outside the context of interpretation of veterinary practice acts suggest that the answer is "yes."\(^ {49}\)

**D. CAVT-Silent States**

In the remaining states, CAVT is not mentioned in veterinary practice acts by individual modalities or by collective reference. Instead, regulation of CAVT as the practice of veterinary medicine is accomplished—if at all—by implication through broad statutory language that arguably encompasses CAVT.\(^ {50}\) Typical is the definition of veterinary medicine in Minnesota:

The practice of veterinary medicine, as used in this chapter, shall mean the diagnosis, treatment, correction, relief, or prevention of animal disease, deformity, defect, injury, or other physical or mental conditions .... The practice of veterinary medicine shall include but not be limited to the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique.\(^ {51}\)

Although CAVT is not mentioned specifically in Minnesota's statutory definition of the practice of veterinary medicine, the intent of the legislature to regulate the practice of *any* therapy or procedure relating to

\(^{48}\) *Harrison* at 588-89 (citations omitted); see also *Norfolk and W. Ry. Co. v. Brotherhood of Ry. Carmen*, 499 U.S. 117, 128-29 (1991) (noting that the statutory phrase "all other law" is "clear, broad, and unqualified" and "indicates no limitation.").

\(^{49}\) See, e.g., *Cooper Distrib. Co., Inc. v. Amana Refrigeration, Inc.*, 63 F.3d 262, 280 (3d Cir. 1995) (stating "[i]n arguing that this provision is ambiguous, Cooper relies on the fact that sales by Amana to local retailers, such as P.C. Richard, are not specifically mentioned in the list contained in the provision. But since this list is prefaced by the phrase "including but not limited to," this argument is unconvincing. The list merely gives examples of entities with whom Amana reserved "the right to make sales directly." By using the phrase "including, but not limited to," the parties unambiguously stated that the list was not exhaustive. *See Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162, 171 (Iowa 1982) (noting that the "including, but not limited to" language created a considerably discretionary standard); *In re Forfeiture of $5,264*, 439 N.W.2d 246, 251 n. 7 (1989) (inferring a broad construction from use of the "including, but not limited to" language); *Jackson v. O'Leary*, 689 F.Supp. 846, 849 (N.D.Ill.1989) (noting that the phrase "including, but not limited to" is "the classic language of totally unrestricted (and hence totally discretionary) standards").

\(^{50}\) See *supra* note 11.

the health of an animal seems clear. But is the assumed legislative intent voiced with sufficient clarity to put a purveyor of CAVT on notice that his or her practice is against the law?

In People v. Amber, a criminal prosecution for the illegal practice of medicine, the defendant claimed that a similar statute governing the practice of medicine in New York was overbroad and vague. He argued that his practice of acupuncture was not the practice of medicine because acupuncture was not addressed specifically in the statute. The Supreme Court of New York, Criminal Term, Queen's County, disagreed, stating,

The language of the statute is very general. It bears evidence in itself that the words were chosen for the express purpose of prohibiting, except upon registration and authorization of the practitioner . . . every means and method that could thereafter be used, or claimed to be used, to relieve or cure disease and infirmity . . .

The defendant's argument that only Western medicine came under the purview of the statute also failed:

To say that the statute is so limited by the failure of the legislature to envision the practice of acupuncture in this state is an implausible interpretation . . . Whether actions constitute the practice of medicine is dependent upon the facts and not upon the name of the procedure, its origins or legislative lack of clairvoyance.

Applying the reasoning of the Amber Court to the similarity in language and purpose between state statutes governing the practices of medicine and veterinary medicine, it is unlikely that legislative failure to include CAVT in a state veterinary practice act, standing alone, will give free rein to non-veterinarian practitioners of complementary and alternative veterinary therapies.

E. Hybrid States

States that identify specific complementary and alternative therapies as the practice of veterinary medicine also generally utilize

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53 Id. at 607.
54 Id. at 608 (quoting People v. Cole, 113 N.E. 790, 793 (N.Y. 1916)).
55 Id. at 611-12.
56 See supra Part II(C).
broad statutory language that arguably encompasses most other, non-specified CAVT. Kentucky, for example, specifically defines the practice of veterinary medicine to include “veterinary surgery, obstetrics, embryo transfer, dentistry, acupuncture, manipulation,\textsuperscript{57} and all other branches of veterinary medicine . . .”\textsuperscript{58}

More generally, the statutory definition of the practice of veterinary medicine in Kentucky also means:

To diagnose, treat, correct, change, relieve, or prevent: animal disease, deformity, defect, injury, or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic, or other therapeutic or diagnostic substance or technique . . . . \textsuperscript{59}

Given a sufficiently broad reading, this definition includes all CAVT in the practice of veterinary medicine. One possible inference is that the inclusion of specific CAVT practices in the statutory definition of veterinary medicine means that providing non-specified CAVT does not constitute the practice of veterinary medicine. Whether this is a reasonable inference is a question of statutory interpretation, a task that few state courts have thus far undertaken.

F. \textit{Exceptions}

The depth of the regulatory quagmire increases when statutory exceptions to state veterinary practice acts are introduced.\textsuperscript{60} Common exceptions to the requirement for a veterinary license to practice veterinary medicine include: the owner of an animal and the owner’s regular full-time (and in a few states, regular part-time) employees;\textsuperscript{61} veterinary students working under the supervision of a licensed veterinarian; officials of the federal or state Departments of Agriculture while performing their official duties.

\textsuperscript{57} Statutes in Kentucky and several other states include “manipulation” in the definition of veterinary medicine. Although the term generally is not defined, a reasonable assumption is that it refers to animal chiropractic and related therapies.

\textsuperscript{58} KY. REV. STAT. ANN. § 321.181(5)(b) (2006).

\textsuperscript{59} Id. at (5)(a).

\textsuperscript{60} The AVMA’s Model Veterinary Practice Act includes eighteen exceptions allowing non-veterinarians to practice veterinary medicine (including CAVT) under certain circumstances. These exceptions have not been adopted \textit{in toto} by the states. AVMA Model Veterinary Practice Act § 6 (2007), http://www.avma.org/issues/policy/mvpa.asp (last visited Feb. 9, 2008).

\textsuperscript{61} Florida also exempts persons “hired on a part-time or temporary basis, or as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals . . . .” FLA. STAT. § 474.203(5)(b) (2006). This provision may allow the practice of CAVT by non-licensed persons on some animal species, in some circumstances.
duties; and university faculty members who teach veterinary science or who engage in veterinary research. Presumably, individuals in any of these groups can practice CAVT legally without a state veterinary license. In addition, many states have exceptions that allow, either directly or by implication, some non-veterinarians to practice CAVT.

i. Specific CAVT Exemptions

The veterinary practice acts of six states include specific exceptions for designated modes of CAVT: Arkansas, Connecticut, Maryland,

62 See generally supra note 10 (providing citations to each state's veterinary practice act exceptions).
63 ARK. CODE ANN. § 17-101-307(b)(9) (2002) (the veterinary practice act does not prohibit "[a]ny chiropractor licensed in this state and certified by the American Veterinary Chiropractic Association from performing chiropractic upon animals so long as the chiropractic is performed under the immediate supervision of an Arkansas licensed veterinarian.").
64 CONN. GEN. STAT. § 20-197 (2008) ("The performance of myofascial trigger point therapy by persons experienced in that practice shall not be deemed to be the practice of veterinary medicine.").
The statute defines "myofascial trigger point therapy" as "the use of specific palpation, compression, stretching and corrective exercise for promoting optimum athleticism" and "persons experienced in that practice" to mean "persons who, prior to October 1, 2003, have attended a minimum of two hundred hours of classroom, lecture and hands-on practice in myofascial trigger point therapy, including animal musculoskeletal anatomy and biomechanics, theory and application of animal myofascial trigger point techniques, factors that habituate a presenting condition and corrective exercise."
65 MD. CODE ANN. [AGRIC.] § 2-301(11) (2007) (the practice act exempts "A person practicing acupuncture in accordance with the principles of oriental medical theories if the person:
(i) Is licensed under Title 1A of the Health Occupations Article;
(ii) Is certified as an animal acupuncturist by the Board of Acupuncture;
(iii) Practices only acupuncture, acupressure, and moxibustion;
(iv) Cooperates and consults with a veterinary practitioner by:
1. Beginning acupuncture treatment on an animal only if the animal has been seen by a veterinary practitioner within the previous 14 days;
2. Adhering to the terms and conditions of treatment decided by the veterinary practitioner, including the degree of communication and collaboration between the veterinary practitioner and the person practicing acupuncture;
3. Reporting to the veterinary practitioner at the end of the treatment or at monthly intervals, at the discretion of the veterinary practitioner; and
4. Not working on an animal for which the person has not been appropriately trained, in accordance with regulations adopted by the Board of Acupuncture; and
(v) Has successfully completed a specialty training program in animal acupuncture that:
1. Is approved by the Board of Acupuncture;
2. Is offered by a school holding nationally recognized accreditation;
3. Consists of at least 135 hours; and
4. Enables the person to:
   A. Design effective treatments of animals based on traditional acupuncture theories and principles, including appropriate knowledge of functional animal anatomy and physiology;
Oklahoma, South Carolina, and Utah. The evolution of the veterinary acupuncture exception for non-veterinarians in Maryland is particularly instructive. Additionally, Maryland’s acupuncture exception is illustrative of the turf wars that CAVT can generate between veterinarians and non-veterinarian practitioners of complementary therapies.

B. Handle and restrain animals to the extent appropriate in the practice of acupuncture;
C. Demonstrate sufficient knowledge of animal diseases and zoonoses that would require the immediate attention of a veterinary practitioner; and
D. Communicate effectively with a veterinary practitioner.

See also infra Part II(F)(1) for a discussion of the history of the acupuncture exception to the Maryland veterinary practice act.

66 Okla. Stat. tit. 59, § 698.12(10)-(12) (2000 & Supp. 2009) (the practice act exempts “[a]ny chiropractic physician licensed in [Oklahoma] who is certified by the Board of Chiropractic Examiners to engage in animal chiropractic diagnosis and treatment . . .” and “[a]ny chiropractic physician licensed in [Oklahoma] who is not certified to practice animal chiropractic diagnosis and treatment by the Board of Chiropractic Examiners” if an animal “is referred to such chiropractic physician by a licensed veterinarian,” and “[a]ny individual that is certified in animal massage therapy and acquires liability insurance” following “referral from a licensed veterinarian. . .”). Oklahoma is among the states that include a comprehensive definition of CAVT in the statutory definition of the practice of veterinary medicine, without addressing practitioners of those therapies in the general exceptions section. The definition of CAVT, however, includes an apparent additional exception: CAVT “shall be performed on animals only by a licensed veterinarian or under the direct supervision of a licensed veterinarian.” Okla. Admin. Code § 775:10-10-1 (2008) (emphasis added).


(a) upon written referral by a licensed veterinarian, the practice of animal chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, who has completed an animal chiropractic course approved by the American Veterinary Chiropractic Association or the division;

(b) upon written referral by a licensed veterinarian, the practice of animal physical therapy by a physical therapist licensed under Chapter 24a, Physical Therapist Practice Act, who has completed at least 100 hours of animal physical therapy training, including quadruped anatomy and hands-on training, approved by the division;

(c) upon written referral by a licensed veterinarian, the practice of animal massage therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act, who has completed at least 60 hours of animal massage therapy training, including quadruped anatomy and hands-on training, approved by the division; and

(d) upon written referral by a licensed veterinarian, the practice of acupuncture by an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act, who has completed a course of study on animal acupuncture approved by the division.”
Prior to 1994, the Maryland General Assembly intended for the practice of acupuncture be limited to human patients. At that point, a non-veterinarian licensed by the state acupuncture agency would run afoul of two separate regulatory schemes by practicing acupuncture on animals: the veterinary practice act and the acupuncture regulations.

The regulatory situation changed in 1994, however, when the Maryland General Assembly redefined and broadened the scope of the practice of acupuncture. The descriptive word "human" was deleted from the statutory phrase "human body," leaving the practice of acupuncture defined as the "stimulation of points of the body by the insertion of acupuncture needles ...." Giving the word "body" its general meaning, the Maryland Attorney General opined that the new definition of the practice of acupuncture allowed individuals who were not veterinarians but who were appropriately licensed by the State Acupuncture Board to practice on both human and animal bodies.

The Attorney General concluded that it was not inconsistent for two separate regulatory bodies to authorize different groups of licensees to perform the same activity—in this case the practice of acupuncture on animals. However, the Attorney General also concluded that the State Acupuncture Board could not authorize the practice of acupuncture on animals because regulations to that effect had not yet been adopted pursuant to the state Administrative Procedures Act.

The State Acupuncture Board apparently took the hint. Less than two months after the Attorney General’s Opinion was issued, the Board met

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69 80 Md. Op. Att’y Gen. 180, 183-84 (1995) (responding to the question of “whether a non-veterinarian licensee of the State Acupuncture Board may also perform acupuncture on animals,” the Maryland Attorney General explained that, “[i]n Chapter 530 of the Laws of Maryland 1974, the practice of acupuncture was not expressly defined, but acupuncturists were required to work under the supervision of a licensed physician .... Chapter 644 of the Laws of Maryland 1982 defined the scope of practice of acupuncture as limited to the human body. In pertinent part, ‘perform acupuncture’ meant ‘to stimulate a certain point or points on or near the surface of the human body by the insertion of needles ....’”).

70 There was general agreement in Maryland that veterinarians could perform acupuncture on animals. Id. at 180.

71 Id. at 184.

72 Id.

73 But see Dept. of Consumer and Indus. Services v. Hoffman, 583 N.W.2d 260 (Mich. Ct. App. 1998). Hoffman was a licensed chiropractor who argued that he should be permitted to practice on animals despite not being a licensed veterinarian because the statutory definition of “practice of chiropractic” was not specifically limited to humans, other than a restriction on the use of x-ray machines for diagnosis. Id. at 263. The Court concluded that although the word “human” was not used in the first two paragraphs of the statutory definition of chiropractic, use of the word in the third paragraph made it “unreasonable or illogical to allow chiropractors to diagnose and adjust spinal misadjustments in animals while allowing the use of x-rays only in the examination of humans.” Id. Furthermore, the court added, Hoffman’s “action of performing spinal adjustments on horses is contemplated by the statutes regulating veterinary medicine.” Id. at 265.


75 Id. at 185-86.
and approved a motion to include the phrase "human and animal" in the statutory definition of the practice of acupuncture.\(^{76}\) The final version of regulations authorizing the Acupuncture Board to license non-veterinarians to practice acupuncture on animals took effect on January 1, 2007.\(^{77}\)

ii. **Non-Specific, but Arguably Applicable, CAVT Exceptions**

A number of states permit non-veterinarians to provide services included in the definition of veterinary medicine in conjunction with supervision by or referral from a licensed veterinarian. These exceptions typically apply to licensed veterinary technicians or other employees of the supervising veterinarian or, occasionally, individuals not employed by a veterinarian but licensed by a different regulatory agency. Very few states have broader exceptions for veterinary services provided by a non-veterinarian with concomitant veterinary supervision or referral.\(^{78}\)

While these exceptions generally do not single out CAVT, a non-veterinarian CAVT practitioner presumably could fall under the exceptions. These states include: Colorado,\(^{79}\) Illinois,\(^{80}\) Indiana,\(^{81}\) Kansas,\(^{82}\)

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\(^{77}\) Md. Code Regs. 10.26.02.06.

\(^{78}\) The Model Veterinary Practice Act of the American Veterinary Medical Association suggests the following exception, "Any member in good standing of another licensed or regulated profession within any state, or any member of an organization or group approved by the Board within the rules and regulations, providing assistance requested by a veterinarian licensed in the state, acting with owner consent from the client, and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the treatment and care of the patient. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship." AVMA Model Veterinary Practice Act, § 6(5) (2007), http://www.avma.org/issues/policy/mvpa.asp (last visited Dec. 14, 2008). This proposed exception, which has been adopted by very few states, would allow non-veterinarians to practice at least some complementary veterinary therapies, provided that there is a state accrediting board for the particular practice.

\(^{79}\) COLO. REV. STAT. § 12-64-1040(2) (2008) (the practice act does not prohibit "[a]ny person from performing duties other than diagnosis, prescription, surgery, or initiating treatment under the direction and on-the-premises supervision of a licensed veterinarian who shall be responsible for such person’s performance.").

\(^{80}\) 225 ILL. COMP. STAT. 115/4(8) (2009) (exempting the "owner of an animal, or an agent of the owner acting with the owner’s approval, in caring for, training, or treating an animal belonging to the owner, so long as that individual or agent does not represent himself or herself as a veterinarian or use any title associated with the practice of veterinary medicine or surgery or diagnose, prescribe drugs, or perform surgery. The agent shall provide the owner with a written statement summarizing the nature of the services provided and obtain a signed acknowledgment from the owner that they accept the services provided.").

\(^{81}\) IND. CODE § 25-38.1-3-1(11) (2008) (the practice act does not restrict "[a] member in good standing of another licensed or regulated profession within Indiana who:

(A) provides assistance requested by a veterinarian licensed under this article;

(B) acts with the consent of the client;

(C) acts within a veterinarian-client-patient relationship; and
(D) acts under the direct or indirect supervision of the licensed veterinarian.

82 KAN. STAT. ANN. § 47-817(i) (2007) (the practice act does not restrict "[a] nonstudent employee, independent contractor or any other associate of the veterinarian or a student in a school of veterinary medicine who has not completed at least three years of study and who performs prescribed veterinary procedures under the direct supervision of a licensed veterinarian or under the indirect supervision of a licensed veterinarian pursuant to rules and regulations of the board.").

83 KY. REV. STAT. ANN. § 321.200(f) (2006) (the practice act exempts a "trainer, sales agent from caring for animals, provided there is a veterinary-client-patient relationship . . . .").

84 MASS. GEN. LAWS ch. 112, § 58(5) (2004) (the practice act does not apply to the "nursing care to animals in the establishment of facilities of a registered veterinarian under his general supervision, direction and control, by the employees of the veterinarian or the assisting of a veterinarian during the course of any procedure or treatment.").

85 MINN. STAT. § 156.12(2)(h) (2008) (the practice act does not prohibit "any employee of a licensed veterinarian from performing duties other than diagnosis, prescription or surgical correction under the direction and supervision of the veterinarian, who shall be responsible for the performance of the employee.").

86 MO. REV. STAT § 340.216(8) (2001 & Supp. 2008) (the practice act exempts "[a]ny veterinary technician, duly registered by, and in good standing with, the board from administering medication, appliances or other products for the treatment of animals while under the appropriate level of supervision as is consistent with the delegated animal health care task.").

87 MONT. CODE ANN. § 37-18-104(6) (2007) (the practice act does not prohibit "an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.").

88 N.J. STAT. ANN. § 45:16-8.1(6) (2009) (the practice of veterinary medicine does not include the actions of "[a]ny properly trained animal health technician or other properly trained assistant, who is under the responsible supervision and direction of a licensed veterinarian in his practice of veterinary medicine . . . .").

89 N.H. REV. STAT. ANN. § 332-B:2 (2003) (the veterinary practice act does not prohibit "[a]n animal owner or his or her agent [from] performing treatment as prescribed by a veterinarian with a valid-veterinarian-patient relationship.")

90 OKLA. STAT. tit. 59, § 698.12(9) (2000 & Supp. 2009) (the practice act does not prohibit "[a]ny person employed by a licensed veterinarian who is assisting with the professional duties of the licensed veterinarian and who is under the direct supervision of the licensed veterinarian from administering medication or rendering auxiliary or supporting assistance under the direction of such licensed veterinarian . . . .").

91 OR. REV. STAT. § 686.040(4) (2007) (a "practitioner of allied health methods [who] may practice that method on animals without violating [the practice act], so long as the practice is in conformity with laws and rules governing the practitioner’s practice and the practice is upon referral from a licensed veterinarian for treatment or therapy specified by the veterinarian.").

92 63 PA. STAT. ANN. § 485.32(6) (1996 & Supp. 2008) (the practice act does not apply to "[a]ny nurse, laboratory technician or other employee [sic] of a licensed doctor of veterinary medicine when administering medication or rendering auxiliary or supporting assistance under the responsible supervision of such licensed practitioner . . . .").

93 R.I. GEN. LAWS § 5-25-7(b)(5) (1999) (the practice act does not include "[t]he nursing care to animals in the establishment or facilities of a registered veterinarian under his or her general supervision, direction and control by the employees of the veterinarian or the activities of a person assisting a veterinarian during the course of any procedure or treatment.").

94 TENN. CODE ANN. § 63-12-133(a)(6) (2004 & Supp. 2008) (the practice act does not apply to "[v]eterinary aides, nurses, laboratory technicians or other employees of a licensed veterinarian who administer medication or render auxiliary or supporting assistance under the responsible supervision of such licensed veterinarian.").

95 TEX. [OCC.] CODE ANN. § 801.004 (2004 & Supp. 2008) (the practice act does not cover "the performance of a duty by a veterinarian’s employee if:
Other statutory exceptions that might apply to non-veterinarian practitioners of CAVT in some states include provision of veterinary services that involve "accepted livestock management practices" and the offering of veterinary services without compensation. At least 16 states exempt accepted livestock practices and some states allow non-veterinarians to provide veterinary services if the services are provided gratuitously and if the provider does not hold himself or herself out to be a veterinarian. Accepted livestock management practices are not always defined by statute, but when they are so enumerated, the definitions generally do not include CAVT. Providing CAVT for free is not a viable option for most practitioners.

The general lack of uniform guidelines for the regulation of complementary and alternative veterinary therapies from jurisdiction to jurisdiction, including conflicting statutory language that may or may not adequately define applications and exceptions, makes practice of these therapies problematic for non-veterinarians. The following section proposes a harm-based approach to state regulation that satisfies the interests of all stakeholders.

(A) the duty involves food production animals;
(B) the duty does not involve diagnosis, prescription, or surgery;
(C) the employee is under the direct and general supervision of the veterinarian; and
(D) the veterinarian is responsible for the employee's performance.

96 VT. STAT. ANN. tit. 26, § 2403(10) (1998) (The practice act does not prohibit "any employee of a licensed veterinarian performing duties other than diagnosis, prescription or surgery under the direct on-premise supervision of the veterinarian who is responsible for his or her performance.").

97 WYO. STAT. ANN. § 33-30-203(a)(ix) (2007) (the practice act does not prohibit "[a]ny veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian from administering medication of rendering auxiliary or supporting assistance under the responsible supervision of such practicing veterinarian.").


99 See, e.g., S.D. CODIFIED LAWS § 36-12-2(1) (1999 & Supp. 2003) (the statute exempting "[t]hose who administer to livestock, title of which rests in himself or in his regular employer, or free service in any case" from the definition of the practice of veterinary medicine).

100 See, e.g., LA. REV. STAT. ANN. § 37:1514(3) (2007) (defining "accepted livestock management practices" as:

(a) The collection of semen for quality evaluation of male equine or bovine species conducted for the purpose of processing or freezing of semen for use in artificial insemination.
(b) The nonsurgical impregnation of farm animals with frozen embryos
(c) The practice of artificial insemination of farm animals.
(d) The teaching in schools and short courses of artificial insemination techniques and pregnancy diagnosis by qualified employees of the National Association of Animal Breeder's Certified Semen Service Program.")
III. A HARM-BASED MODEL FOR STATE REGULATION OF CAVT

There is little disagreement, in principle at least, that a state has the authority to regulate businesses and professions to protect the public. This proposition raises a fundamental question regarding state regulation of CAVT by limiting the practice to licensed veterinarians with certain exceptions: from what, exactly, is the public being protected by state regulation?

The American Veterinary Medical Association urges state regulation of CAVT as a “public protection issue, because if these definitions [of CAVT] are excluded, the state has no authority to discipline an individual, whether a licensed veterinarian or not, who causes harm to an animal as a result of practicing such therapies.” This statement begs the question of whether state regulation must be based on actual, proven harm, however, or whether purely speculative harm, is sufficient. This question apparently has not been addressed in the context of state regulation of CAVT; it has been addressed infrequently in other contexts.

In State v. Norene, for example, the Alaska Supreme Court considered a state regulation that required fireworks vendors to purchase liability insurance. Several vendors complained that such insurance was not readily available and that they would suffer irreparable harm if the limiting regulation was enforced during the July 4 holiday. At a trial court hearing in which an injunction halting enforcement of the statute was issued, the state did not contest the vendors’ allegations, relying instead on the proposition that a law that does not discriminate on its face should not be enjoined.

The court first acknowledged that state regulations that discriminate (against uninsured sellers of fireworks in Norene, or perhaps against non-veterinarian practitioners of CAVT) “can be validated upon a showing of an adequate legislative purpose which necessitates the discrimination.” Notwithstanding that general statement, however, the court then explained that the state had “made no showing at all as to what state interest would be served by any of the provisions of this statute, other than the claim that all laws are to protect the public.” In other words, a valid state regulation must be based on something more than an unsubstantiated assertion that the

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101 Marshall v. Kansas City, 355 S.W.2d 877, 883 (Mo. 1962) (stating, “Police power is the exercise of the sovereign right of a government to promote order, safety, health, morals, and the general welfare of society, within constitutional limits.” (quoting State v. City of St. Louis, 2 S.W.2d 713,722 (Mo. 1928)).
104 Id. at 928.
105 Id. at 930.
106 Id. (emphasis added).
public is being protected from something. In *Conway v. Deane*,\(^{107}\) the Maryland Court of Appeals seemed to agree, noting that the "exercise of the [police] power must have some real and substantial relation to the public welfare."\(^{108}\)

Extending this line of reasoning to complementary veterinary therapies, a valid state regulation restricting the practice of CAVT to licensed veterinarians should be based on something more than speculative harm to an individual's animals (or upon which faction has the stronger lobby). Determination of whether the practice of CAVT by non-veterinarians creates a genuine risk of harm to the animal-owning public sufficient to require regulation is beyond the scope of this article. Generally, though, a finding of harm (or at least a reasonable probability of harm) should be a necessary prerequisite to state regulation of CAVT.\(^{109}\)

Even with a showing of actual harm, or the reasonable possibility thereof, protection of the public and the public's animals could be accomplished without restricting the practice of CAVT to licensed veterinarians. As noted above, the Maryland legislature determined that non-veterinarians with appropriate training and a license from the state acupuncture board could legally practice veterinary acupuncture. This approach recognizes that proper training and licensure by a state regulatory board can be sufficient protection for the public, and has been followed in a few states.\(^{110}\)

\(^{107}\) 932 A.2d 571 (M d. Ct. App. 2007).

\(^{108}\) *Id.* at 622 n. 65; *see also* State v. Pacific Health Center, Inc., 143 P.3d 618 (Wash. Ct. App. 2006). The case involved the practice of acupuncture and other alternative therapies on humans and the questions of whether the practices were included in the statutory definition of the practice of medicine and whether the practitioners violated the state Consumer Protection Act (CPA). In pertinent part, the court explained that while the "State need not present evidence that [the challenged] practices actually caused harm" to establish a CPA violation, the "State must demonstrate that appellants' actions have a reasonable possibility of causing harm." *Id.* at 630. This suggests that something more substantive than mere speculation that CAVT might cause harm to an animal is necessary to support state regulation.

\(^{109}\) *But see* Pollard v. Cockrell, 578 F.2d 1002, 1012-13 (5th Cir. 1978) (the court explaining that the right to "pursue a legitimate business" is not a fundamental right for "purposes of equal protection analysis," and that "state regulations of business or industry are to be reviewed under the less exacting 'rational basis' standard." Rational basis analysis requires only that allegedly discriminatory portions of a statute "bear a rational relationship to the broad purposes of the ordinance.").

\(^{110}\) *See, e.g.*, IND. CODE § 25-38.1-3-1 (2007 &Supp. 2008) (providing an exception for: "A member in good standing of another licensed or regulated profession within Indiana who: (A) provides assistance requested by a veterinarian licensed under this article; (B) acts with the consent of the client; (C) acts within a veterinarian-client-patient relationship; and (D) acts under the direct or indirect supervision of the licensed veterinarian."); and OR. REV. STAT. § 686.040(4) (2008) (providing that, "A practitioner of allied health methods may practice that method on animals with violating [the state veterinary practice act], so long as the practice is in conformation with laws and rules governing the practitioner's practice and the practice is upon referral from a licensed veterinarian for treatment or therapy specified by the veterinarian."
Informed consent of an animal owner prior to CAVT treatment, emphasized in a few state veterinary practice acts, and a liability insurance requirement are other options for protection of the public short of limiting the practice of CAVT to licensed veterinarians.

IV. CONCLUSION

Regulation of CAVT by the states should be based on something more than a general intent to "protect" the public or from fear of purely speculative harm that might be caused by the techniques—either a showing of actual harm or a reasonable probability of harm. If states choose to regulate CAVT, with or without a showing of actual or reasonably probable harm, the public can be protected by measures less severe than limiting the practice exclusively to licensed veterinarians. Adequately trained individuals properly licensed by other regulatory bodies, with proof of liability insurance, should be permitted to practice CAVT upon referral from, and direct or indirect supervision of, a licensed veterinarian.

111 See, e.g., 225 ILL. COMP. STAT. ANN. 115/4(8)-(9) (2007) ("An owner of an animal, or an agent of the owner acting with the owner's approval, in caring for, training, or treating an animal belonging to the owner, so long as that individual or agent does not represent himself or herself as a veterinarian or use any title associated with the practice of veterinary medicine or surgery or diagnose, prescribe drugs, or perform surgery. The agent shall provide the owner with a written statement summarizing the nature of the services provided and obtain a signed acknowledgment from the owner that they accept the services provided. The services shall comply with the Humane Care for Animals Act . . . ." and a "member in good standing of another licensed or regulated profession within any state or a member of an organization or group approved by the Department by rule providing assistance requested by a veterinarian licensed in this State acting with informed consent from the client and acting under the direct or indirect supervision and control of the licensed veterinarian. Providing assistance involves hands-on active participation in the treatment and care of the patient, as defined by rule. The licensed veterinarian shall maintain responsibility for the veterinarian-client-patient relationship.")