Naturalizing ACM and Its Practitioners

An Interview with Nathan Waxman, M.A., J.D.

Russ Mason, M.S.

Introduction

Nathan Waxman, M.A., J.D., is a New York City-based immigration lawyer who has represented hundreds of alternative medicine practitioners and teachers over the past 20 years. While most of his alternative and complementary medicine (ACM) practitioner clients have been Oriental doctors, he has handled the immigration matters for practitioners from many different countries, with a broad range of specialties.

Having represented such a diverse group of clients—which includes Western M.D.s with foreign medical degrees, scientists, university faculty members, and entrepreneurs as well as ACM practitioners—Nathan, as he prefers to be called, has a novel perspective on the ways in which U.S. immigration laws have shaped the assimilation of non-Western medical systems and practitioners into medical practice in this country. He observes that alternative medicine is unique among all possible categories of academic, professional, and business immigration in that, until recently, ACM in the United States lacked the regulatory and educational infrastructure that has evolved to support it in Asian countries and elsewhere, and that characterizes other allopathic clinical fields such as dentistry and veterinary medicine.

Traditional Chinese Medicine (TCM), for example, came to this country intact, “like Athena springing from the head of Zeus,” he observes, with its practitioners trained in a foreign educational system that did not equate to the medical education system here, and its unfamiliar therapeutic modalities and concepts of health and illness. Over the past 20 years, as a relatively small group of lawyers has represented most of the foreign-trained ACM practi-

tioners, the immigration process has inevitably, inexorably, and subtly left its stamp on the practice of ACM in the United States. Nathan stepped back from his busy practice to discuss the complex interrelationships between immigration law and the “naturalization” of alternative medicine modalities—and their practitioners—into the U.S.

The Interview

Russ Mason: What does immigration law have to do with ACM in this country?

Nathan Waxman: Over the past 20 years, everything! Until the 1980s, it was nearly impossible to bring in practitioners of any alternative modality, and it was challenging to bring in instructors and researchers. It’s no coincidence that America was singularly devoid of alternative practitioners through the 1970s. It’s a mark of how the tides have turned that, today, it’s relatively easy to bring in educators or researchers.

Indeed, even clinicians who achieve appropriate licensure can now take clinical positions without having to complete the lengthy periods of internship or residency typically imposed upon practitioners of established Western health professions. As recently as 12 years ago, the federal government regarded ACM practitioners, such as acupuncturists, who are now pretty much mainstreamed, as being quite marginal, even disreputable. The INS [Immigration and Naturalization Service], relying on already anachronistic data from the Department of Labor [DOL],* considered acupuncture to be a vocational trade, with a training period comparable to that of truck repair or hairdressing. So we’ve come a long way.

RM: Wasn’t this just a reflection of public opinion at the time?

NW: Certainly. But things have changed so much in the past 20 years that it’s easy to forget how much extreme resistance there was to *all* forms of “exotic” medicine, not just to acupuncture. Few people in this country had any awareness of TCM, Ayurvedic, or Tibetan medicine. These and other unfamiliar therapies were simply not acknowledged by the government and were considered to be curiosities by the few people who knew about them.

*Historically, the immigration process (not unlike the drug approval process) has been subject to regulation by numerous federal agencies, with divergent goals and priorities. The decision-making functions of the erstwhile INS, which was part of the Department of Justice, were transferred in March 2003 to the U.S. Citizenship and Immigration Service, a component of the newly formed Department of Homeland Security. The DOL and the Department of State also have roles in the immigration process.

Immigration practitioners have witnessed and have facilitated the process that has taken acupuncture education out of the back rooms of clinics in this country in the 1980s and into academic departments at accredited, 4-year colleges and teaching hospitals. Fifteen (15) years ago, the only way a person could learn acupuncture in the U.S. was to study it with an experienced practitioner in a small proprietary school adjoining an acupuncture clinic. In the intervening years, there has been a nationwide proliferation of schools of diversity of ACM modes, and most conspicuously of TCM. Increasingly, proprietary, clinician-owned schools are merging into free-standing, nonprofit educational institutions committed to conducting research as well as training clinicians.

Indeed, many of the TCM pioneers in this country fear that the practice of Chinese medicine, particularly acupuncture, will be absorbed into mainstream medicine, and lose its "alternative" label, truly a victim of its own success. After all, acupuncture treatments are now covered on health insurance plans and are often integrated into the practices of Western allopathic physicians, anesthesiologists, chiropractors, and veterinarians.

We have also seen, since the 1980s, the introduction and expansion of stringent licensing of acupuncturists and other ACM practitioners, by more and more states. Paradoxically, increased regulation has made it easier for foreign-trained clinicians to practice in the U.S. The implementation of educational and licensing standards has played a major role in persuading the DOL—which oversees a key portion of employment-based immigration policy—that acupuncturists and other ACM practitioners are professionals, not at best skilled tradespeople.

RM: Is there a relationship between immigration advocacy and the societal acceptance and integration of these modalities?

NW: Yes. As we in the immigration bar succeeded in persuading the government that acupuncture was a profession and as states began imposing fairly rigorous licensing requirements mandating that practitioners have appropriate academic training, the legitimacy and viability of these occupations and their modalities became recognized.

RM: So has the government been more resistant to TCM clinicians than to educators?

NW: Absolutely. But, as the clinical modalities have become more mainstreamed, the disparity in the government's treatment has declined. Bear in mind, however, that the respective states vary significantly in their licensing requirements for clinical practitioners. All clinicians must demonstrate to the federal authorities that they are licensable in the states in which they plan to work.

Until the mid-90s, it was much easier to bring over a *teacher* of acupuncture or TCM than a *practitioner*. One of the reasons was that the incredulity of federal agencies regarding the professional stature of acupuncture rendered clinicians ineligible for the H-1, the standard short-term employment category. We found our-

selves in the position of having to "prove a negative" since, back then, most states did not license acupuncturists, but H-1 regulations require that anyone who needs to be licensed must have a license. It was surprisingly difficult, in many instances, to prove that no state required licensure for teachers and researchers, and that many in the 1980s didn't regulate or license clinicians either. Now most do.

An additional challenge in representing foreign-trained ACM practitioners has been to expand the existing infrastructure to assimilate practitioners and teachers coming from professional traditions that simply didn't equate with our own. It has taken forceful advocacy by American lawyers to convince the administrative agencies involved that previously unknown degrees such as Bachelor's of TCM constituted genuine academic and professional education, albeit in disciplines previously unavailable for study in the U.S.

RM: Is licensure as challenging for foreign-trained TCM practitioners as it is for foreign-trained allopathic professionals such as doctors and dentists?

NW: Ironically, despite the government's early skepticism, TCM practitioners have an easy time, when compared with their foreign-trained allopathic counterparts, including U.S. citizens who study medicine abroad. The problem is that the U.S. licensure exam is given only in the U.S., and it's given in English. Although, in the vast majority of states, acupuncture licensure requires successful completion of an exam given only in the U.S., passing it on the first try is rarely an obstacle to the majority of TCM practitioners, whose training in China is far more comprehensive than that provided by any U.S. school.

Unfortunately, as state licensing exams are not yet given abroad, U.S. employers cannot initiate the services of trained clinicians until they have taken the exam in the U.S. Clinicians generally overcome this obstacle by initiating their employment in the U.S. in teaching or research positions that don't require licensure, and subsequently, upon receipt of licensure, seeking approval to accept a clinical position.

RM: Speaking of academic preparation, is there a direct correspondence between the Chinese and U.S. medical education systems?

NW: To answer this question properly, I have to refer to the past as well as the present. "Western" medicine and TCM have coexisted in China and other parts of Asia for a long time, and China has many Western-style medical schools patterned on the British tradition, in which a medical doctor earns a B.S.[†] in Medicine and may or may not choose to pursue a master's degree in some specialized field.

In the past, practitioners of TCM generally learned their skills from individual teachers, often family members, and not in formal schools. During the Chinese "Cultural Revolution" of the 1950s and '60s, Mao Zedong, Premier of the Chinese Communist Party, promoted the practice of acupuncture and other TCM modalities by "Barefoot Doctors" who received either 3 or 5 years of training in applied TCM therapeutic skills and who then made medical treatment more available to a larger segment of the pop-

[†]This B.S. is the equivalent to the M.D. in the United States.

ulation. As a result of Mao's efforts, there are now approximately 150 colleges of TCM throughout China, and they offer substantial 5-year programs that are academically comparable to the 5-year Bachelor of Medicine degree we have in Britain.

Doctors who attend a 5-year TCM college or university in China now graduate with knowledge of biomedicine, molecular biology, molecular medicine, and sophisticated scanning and diagnostic techniques comparable to that of graduates of British-style B.S. of Medicine programs. And, just as students at TCM colleges in China are taught sophisticated methods of molecular biology and radiology, so are students at Western-style Chinese medical schools steeped in the principles and practices of TCM. The big movement in China now is the true integration of TCM and Western medicine. In the post-Maoist period an additional development in TCM education brings the Chinese system even closer to the U.S.'s: In the 1980s, larger TCM universities started offering Ph.D.s to medical students interested in research or teaching.

RM: So have these changes in China made a difference here in the U.S.?

NW: The changes in TCM education in China haven't been happening in a vacuum, of course. The availability of well-trained, postgraduate-level Chinese TCM practitioners has upgraded the level of expertise at U.S. schools of TCM and Oriental Medicine, and has expanded the horizons of university-based research groups. With improvements in TCM education and licensure standards, and with the increasing presence of highly educated TCM educators, researchers, and practitioners, the Western medical educational establishment and clinical medicine have explored TCM and acupuncture more enthusiastically.

It was in the mid-1990s that our firm brought over some of the first generation of Ph.D. TCM faculty members from China. These individuals have gone on to become deans at U.S. schools of TCM and to participate in the continual and ongoing refinement of the licensure examinations in this country, and in the curriculum development for the first generation of TCM Ph.D. programs in the U.S. This will ultimately raise the bar with respect to academic standards within the U.S. Recalling how TCM was first considered in the U.S., this is a phenomenal achievement.

By the mid-1990s most of the American acupuncture colleges had exchange programs with colleges of TCM in China. As a result, the institutions in China became a valuable resource for faculty appointments at their American counterparts. That is, if an American college of TCM had, as its partner in China, a school in Beijing, then the American faculty would tend to be recruited from Beijing. Once they are here, the faculty members then recruit other faculty members from Beijing. As a result, many of the American TCM schools tend to have a regional connection to China, whether it's Beijing, Chengdu, or Heilongjiang.

RM: How else have foreign-trained TCM practitioners integrated into the U.S. medical establishment?

To Contact Nathan Waxman

Nathan Waxman, M.A., J.D.
404 Park Avenue South,
Suite 1600
New York, NY 10016
Phone: 212-213-2024
e-mail: naw@waxlaw.com

Nathan Waxman, M.A., J.D., in private practice in New York City, standing near his favorite tree, the eucalyptus, on a recent visit to Australia. Nathan comments that the eucalyptus, like TCM, is a prodigious migrant that has become naturalized and thrives on every continent on earth.

NW: One of the most interesting ways is what I call the "crossover" scenario. The U.S. Educational Commission on Foreign Medical Graduates, in recognition of the comparability of the 5-year TCM medical degree with the Western medical degree, permits holders of the Chinese 5-year degree to sit for the U.S. Medical Licensing Exam [USMLE]. Successful completion of the USMLE is a prerequisite to entering the internship and/or residency programs that all the states require for licensure as an M.D.

I have had several clients with 5-year TCM degrees come to the U.S. for low-paying university research positions that give them the time and university resources to study for the USMLE, in preparation for crossing over into a Western-style medical practice.

Another recent trend is the interest in TCM-based products ranging from herbal medicines to therapeutic devices. The big pharmaceutical companies are becoming very interested in herbal medicines from all over the world—China and India, for example—and are starting herbal drug discovery programs. Many of my acupuncture clients have gone on to do pharmacology research, not only with the big pharmaceutical companies, but also with smaller startup companies, and some of the businesses have joint ventures with larger pharmaceutical companies.

RM: How do acupuncturists interface with and integrate into allopathic medical facilities?

NW: Increasingly, our acupuncture clients collaborate with, or are employed, by Western practitioners ranging from chiropractors to physical therapists and orthopedic surgeons. Other clients have joined integrative, multidisciplinary practices. There is an excellent symbiosis between chiropractic and acupuncture.

Chiropractors, themselves alternative at one time in the past, and other practitioners of Western specialties as sports medicine or pain-management anesthesiology are able to significantly enhance their practices by offering a wider range of services to the patients. Sometimes the chiropractor (or veterinarian) will be

instructed in acupuncture techniques by the TCM practitioner. Of course, veterinarians are allowed to practice acupuncture; we are seeing vets using acupuncture more and more; but the chiropractor must be licensed to practice acupuncture.

It's an interesting fact that many Western practitioners are instructed in TCM and acupuncture in their very own offices and are able to integrate these methodologies without having separate licensing. This phenomenon seems inequitable to many foreign-trained practitioners.

By the way, I must add that by "acupuncture" I don't refer to needlework exclusively. The occupation we designate "acupuncture" encompasses the full ensemble of interrelated traditional East Asian methodologies including bodywork (*Tui Na*), acupressure, herbal therapies, and moreover, an entire conceptual apparatus radically distinct from that underlying allopathic practice.

RM: You mentioned that most TCM practitioners initiate their employment in the U.S. as TCM instructors. Do they typically remain instructors?

NW: Many are dedicated and enthusiastic teachers and remain within the TCM educational system, not infrequently establishing their own schools. Many, however, are attracted by the economic opportunities afforded by clinical practice in this country, creating a constant demand for new TCM instructors. This is one of the reasons we are constantly bringing new instructors into the system. But this "migration" from China to the U.S., from instructor to practitioner, means that now there are many local, neighborhood acupuncturists who were respected academicians in China, who now enrich the provision of clinical services throughout the U.S.

RM: Do your TCM educator clients adjust quickly to teaching in this country? Did those clients who shifted from teaching to clinical practice find the transition an easy one?

NW: Most have a theoretical knowledge of technical English. Colloquial English necessary for teaching students is often an initial challenge, but is almost always overcome. Surprisingly, the greatest shock most have expressed to me is the radical disparity in curricula between the U.S. and China. Admission standards to Bachelor's of TCM programs in China are rigorous, and hours of theoretical classroom instruction and clinical practica exceed even those imposed on Western medical students. Moreover, the curriculum in China includes intensive training in Western medical science as well as in the philosophical foundations of TCM, not excluding the reading of traditional texts in classical Chinese.

In marked contrast, most U.S. Master's in Oriental Medicine programs require only a 3-year commitment and significantly deemphasize intensive training in basic medical science as well as details about the historical antecedents to contemporary TCM. Many TCM disciplines are inappropriate for study in this country, particularly those involving radically invasive procedures such as surgery, ophthalmology, and gynecology. Of course, the biggest adjustment for Chinese-trained clinicians and academicians is the radically restricted range of permissible practice.

In the West, an acupuncturist may legally offer only a limited range of treatment options. In China, a doctor of TCM may do

anything a Western doctor may do, including surgery, just as in the West a Doctor of Osteopathy (D.O.) may do anything an M.D. may do. In China, TCM students may specialize, just like here, and may receive postgraduate (i.e., master's or doctoral level) degrees in TCM-Ophthalmology, TCM-Gynecology, or TCM-Surgery, to name but three. A TCM-ophthalmologist in China may do retinal surgery, but cannot perform surgery in the U.S. In this country, the legal practice of TCM is limited by law to acupuncture, herbs, *Tui Na*, and other noninvasive protocols.

As I mentioned earlier, Western physicians are incorporating TCM modalities into their practices, impelling a number of TCM school faculty and administrators to express concerns that techniques of TCM are being co-opted by Western medical practitioners who lack the years of specialized training that TCM practitioners have acquired. Is a Western medical doctor with 50 hours' training in the use of acupuncture really more qualified to practice it on patients than a doctor of Oriental Medicine? This situation further motivates foreign-trained TCM practitioners to seek licensure as Western medical doctors.

RM: Are the Chinese doctors bothered by the seemingly inequitable treatment they receive from the government?

NW: They are used to bureaucracy and regulation. The difference is in how they are regarded. In China, TCM doctors are considered socially and professionally equal to Western M.D.s and often represent the first-line treatment option. Recent East Asian immigrants to the U.S. frequently turn to TCM practitioners for primary health care, and may be surprised to learn that their doctors are not permitted legally to perform all the procedures he or she might have been able to perform in China. In the U.S., even in this era of growing acceptance of TCM and other forms of ACM, most Americans still see TCM as an alternative approach to take when other medical interventions have failed.

RM: You have alluded to the 1980s as having been a turning point in the introduction of TCM education and practice to the U.S. What got the ball rolling?

NW: It was the first major milestone in the government's gradual and—to this day—still skeptical recognition (notwithstanding the Report of the White House Commission on CAM Policy) that acupuncture is a professional occupation, in 1986. In order to get a temporary work permit (the H-1 mentioned before), we had to show that the job was a "profession."

At that time, the immigration service relied on statistics from the DOL to determine whether any particular job was "professional." The DOL's early data had been collected before the advent of advanced TCM schools in China, and said that a person could become an acupuncturist in 1–2 years, which is not considered enough educational preparation time to warrant calling acupuncture a profession. As a result, even cases for acupuncture instructors were denied because the INS felt they weren't eligible for "professional" employment in the U.S.

Ironically, many of the early inseminators of TCM education in this country qualified for employment in the U.S. not because of their TCM training but rather because their academic credentials were in Western medical education in China. Many of them, in

fact, had completed their medical education in China before the establishment of the parallel system of TCM education. How ironic it was that Mao, as an economy measure in the heat of the Cold War, sowed the seeds of modern TCM education and practice in the U.S. and indeed throughout the entire world.

In 1986, the federal court found that there were some "limited" positions for acupuncturists who had professional TCM education from China, as opposed to those acupuncturists who possessed sub-professional education, ranging from Barefoot Doctor apprenticeships to 1- or 2-year training programs. Subsequently and gradually, it became possible to bring over practitioners of Chinese medicine.

This was the jump start necessary for assuring the survival and expansion of acupuncture education and—in turn, the acceptance of TCM in the U.S.

RM: So who is attending these schools today?

NW: The earliest students in Western schools of TCM ranged from combat medics who had encountered acupuncture in Southeast Asia to nurses and other health care professionals. Today, students run the gamut from Western trained physicians to nationals of Far Eastern countries such as Japan and Korea, that had marginalized traditional methodologies during the rampant modernization of the past century. Others come from medically underserved areas in the U.S. and developing countries throughout the world.

RM: As TCM becomes mainstreamed, isn't your job getting easier?

NW: No such luck. New problems turn up every day. For one, paranoia over terrorism exposes visa applicants from China and India to often months-long waits for security checks to clear, an often daunting task in China, where over a billion people share an astonishingly small number of surnames. My files include scores of Zhaos, Zhangs, and Lis in various orthographic permutations.

Other problems stem from our success. Back in the 1980s we had to struggle to get any recognition for TCM as a profession, and now the DOL thinks the instructors should be paid the same rate as dental school faculty members. Recently, the DOL has expressed a belief that TCM faculty at a northwest college should be paid commensurately with faculty members at conventional medical, dental, and veterinary schools in the northwest. The reality is that acupuncture instructors barely make half of the salaries that clinical instructors in allopathic modalities make.

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RM: Most of us have heard of the "green card" for permanent residence in this country. Do TCM practitioners typically arrive in this country with green cards?

NW: Although many would like the economic flexibility that unfettered permanent residence—the "green card"—implies, few of them arrive in this country as permanent residents. In general, the mechanisms for obtaining permanent residence take years, not weeks or months. Few U.S. employers can defer the gratification of obtaining critically needed personnel for that long. As a result, the vast majority of TCM personnel come on a variety of distinct "non-immigrant" visa categories.

We have already mentioned the H-1, regarded as the standard form of temporary (up to 6 years) employment authorization. Unfortunately, Congress currently limits new H-1s outside of higher education (including affiliated teaching hospitals or federal research facilities) to a measly 65,000 per year. Other categories available to TCM professionals include E-1 or E-2 investment or trade visas, regrettably unavailable to persons from China or India; O-1 visas are available to persons of extensively documented national or international renown in their fields; and L-1 visas are appropriate for managerial or highly specialized personnel being transferred to the U.S. affiliate of an overseas company.

Finally, researchers and scholars often rely on the J-1 foreign exchange visa. J-1 nationals of many countries, including China and India, however, are required to return to their home countries for 2 years (with rare exceptions) before they can obtain permanent residence. Curiously, this anachronistic home residence requirement was imposed in the Marshall Plan, post-World War II era, to ensure the flow of the technical know-how that Congress of that generation believed was absent in a world threatened by the perceived evils of Communism.

A survey of the permanent residence options for ACM practitioners is way beyond the scope of this discussion. I have written quite extensively on the subject and would be happy to send your readers a .pdf copy of my recent article "Mainstreaming the Alternative: An Outline of Immigration Issues and Opportunities in Complementary and Alternative Health Care," which appeared in a book called *Immigration Options for Physicians*.[‡]

RM: Do you confine your practice to any specific geographical area?

NW: Although my office is in New York City, I work in all four of the immigration regions throughout the country.

RM: We've been focusing on TCM. Do you represent practitioners and researchers in other ACM modalities?

NW: We have handled cases for clients in parallel non-Western traditional and alternative modalities, such as Ayurvedic and Tibetan medicine and Altaic (Siberian) herbalism. However, these

[‡]Waxman N. Mainstreaming the alternative: An outline of immigration issues and opportunities in complementary and alternative health care. In: Catillaz M, ed. *Immigration Options for Physicians*, 2nd ed. Washington, DC: American Immigration Lawyers Association, 2004:237.

conceptually distinct healing traditions—unlike TCM and acupuncture—have not as yet achieved the status of recognized health professions, with licensure and educational accreditation. Nonetheless, Ayurvedic and other culturally distinct healing systems may be and are legitimately studied and taught in the U.S. Such traditions as Ayurveda and Islamic medicine are of considerable crosscultural and clinical interest in Western countries, and the experts who are bringing these traditions to this country have, almost without exception, come here through the mechanisms we discussed earlier.

RM: What was it about immigration law that appealed to you in the first place?

NW: I had not been attracted to litigation in law school, and I wasn't aware of the creative possibilities of immigration practice. Basically, I thought that immigration lawyers handled deportation cases and marriages like the one later parodied in the (1990) movie *Green Card*.[¶] Toward the end of law school, while I was interviewing for a job in corporate law, the owners of my favorite Thai restaurant were denied their immi-

grant visas at the American consulate in Bangkok, largely as a result of inadequate representation by the lawyer who had been handling their cases. I launched into an intense study of a field that was decidedly simpler then, in the early 1980s. I represented the owners and helped them to get their green cards and stay in the U.S. They are now U.S. citizens and still own my favorite Thai restaurant and at least one more. Of course, my lifelong passion for

geography and exotic languages did make immigration law distinctly more appealing than drafting corporate real estate contracts.

RM: What keeps you interested in the field after 20 years?

NW: Immigration law is a field where a sole practitioner can actually make a difference not only in the lives of his or her clients but in helping to resolve ambiguities in one of the most amorphous subfields of the law. □

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[¶]Buena Vista Home Video, St. Barnabas, CA, 1990.

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