

Issues in Yoga Therapy

An Overview of Regulatory Issues for Yoga, Yoga Therapy, and Ayurveda

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Abstract: *In order to gain greater credibility, emerging healthcare and health-related fields usually establish a variety of self-regulatory structures and organizations. These structures serve to promote safe and effective practice, strengthen the field's legal status, expand professional opportunities, increase the profession's political influence, and legitimize a field in the eyes of potential patients, potential students, governmental entities, and the healthcare industry. Self-regulatory structures can also set the groundwork for professional licensure and other types of external recognition. Developing self-regulatory structures, however, can pose significant challenges and invariably involve trade-offs. Therefore, practitioners and educators within emerging fields should engage in inclusive, representational, and transparent decision-making processes to build support for any self-regulatory measures being considered.*

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Introduction

The purpose of this article is twofold: (1) to explore several of the key professional/regulatory issues associated with the acceptance and recognition of Yoga, Yoga therapy, and Ayurveda in the United States, and (2) to outline and analyze the options available to these professions to engage in a process of self-regulation.

In the United States, emerging medical fields and fields that are healthcare-related or health enhancing—such as tra-

ditional Chinese medicine, naturopathic medicine, Ayurveda, Yoga, and Yoga therapy—often follow a similar trajectory in their development as a formal profession. This developmental process helps move the field from the fringes of society to a place of greater visibility, credibility, and impact. Movement along this trajectory typically involves creating over time a variety of professional organizations and regulatory structures to better define the range of practices associated with a field and provide a basis for identifying qualified practitioners. Among other things, these organizations and structures serve to:

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- promote safe and effective practice;
- legitimize a field in the eyes of potential patients, the general public, governmental entities and the healthcare industry;
- legally safeguard the right to practice;
- increase the political influence of the practitioner community;
- expand the range and attractiveness of professional opportunities for practitioners.

Once in place, these organizations and regulatory structures serve another key function: they provide a starting place or basis for the ongoing development of the field through upgrading educational standards and related requirements for practice. This, in turn, leads to enhanced knowledge and skills on the part of practitioners.

The formal development of a profession is usually accompanied by strong reactions from practitioners within the emerging field who may disagree on the fundamental goals to pursue or the pragmatic directions to take. There may also be strong reactions from conventional physicians and others who may perceive their professional interests as being threatened or who are opposed to the paradigm represented by the emerging field. There are often rhetorical battles as an emerging field grows in prominence. Proponents characterize their practices in neutral or positive terms such as “complementary and alternative medicine” (CAM), “integrative,” “health and wellness,” “natural,” “holistic,” “traditional,” or “mind-body-spirit,” while opponents—in an attempt to discredit the field—may use terms like “unconventional,” “non-evidence-based,” “unscientific,” or, at an extreme, “quackery.”

Political and legal battles also routinely occur as practitioners of CAM and health-related and health-enhancing fields seek greater legal recognition and expanded professional opportunities. Conventional practitioners may seek to co-opt, limit, or outlaw the practice of certain therapies and even to legally own the use of certain words like “physician” and “diagnose.” At an extreme, a state board of medicine may seek the prosecution of unregulated practitioners for practicing medicine without a license. Conversely, conventional physicians who integrate alternative therapies may be targeted by their licensing board for practicing outside of the scope of practice.

In addition to conflicts with conventional healthcare professions, there are often rivalries among emerging professions due to overlapping practices. Sometimes, newer professions are forced by more established professions to impose limitations on what they consider their rightful scope of practice. For example, naturopathic doctors study acupuncture in

school, but the use of this modality by NDs may be prohibited in states where acupuncture is a licensed profession. The examples above demonstrate that there is an unavoidable messiness associated with professional recognition and regulation due to the many competing interests and stakeholders. Nonetheless, a variety of pragmatic options and strategies are open to practitioners, educators, and professional organizations within an emerging field to develop a stronger, more coherent professional identity. Gaining greater public recognition and credibility, improving the overall quality of practice, opening up new professional opportunities, and strengthening the legal status of a field are, for most practitioners and educators, compelling motives to create some sort of regulatory structure, whether or not the structure is used at a later time as a basis for seeking a state-sanctioned or mandated role in the healthcare system. Despite the challenges in gaining respect and recognition, leaders within an emerging field should take heart in the well-known quote of Mahatma Gandhi: “First they ignore you, then they ridicule you, then they fight you, then you win.”

Internal Versus External Regulation

To better understand the options for professional and regulatory structures, it's useful to distinguish between *internal* (or self-regulatory) and *external* structures. These can be defined as follows:

Internal structures are developed by a profession on its own without involvement of governmental entities or organizations unrelated to the profession; examples of this are an accrediting agency for schools and a professional association's registry of practitioners.

External structures are developed through political action and negotiation with outside entities; an example of this is state licensure of a healthcare field.

Of course, virtually no organization is totally free of the need to interact with external entities. For example, state boards or departments of education have regulatory requirements and processes that would likely apply to formal training programs in an emerging field; establishing a nonprofit organization requires state incorporation; and gaining tax-exempt status or some other special classification requires IRS approval. Also, as a field develops, the distinction between internal and external regulation may shift in regard to an organization. For example, a private, nonprofit accrediting agency might, after having been in existence for a number of years, seek recognition by the U.S. Department of Education (DOE) in order to gain greater credibility in the eyes of regulators and/or provide students with access to federal loans.

Whatever organizational structures an emerging profession may choose to establish, it's safe to say that the profession will initially need to focus its efforts more inwardly to develop educational and practice standards and to define its identity. External recognition is impractical—if not impossible—to achieve until reasonably solid structures are in place.

Even before a profession can develop internal and external regulatory structures, it must first develop organizations that can provide a vehicle for pursuing collective goals and interests. Two of the most basic types of organizations are practitioner associations and school associations. Such organizations provide a forum for the open discussion and the foundational visioning that eventually leads to the creation of a more formal regulatory process. It is beyond the scope of this article to analyze in depth how emerging professions coalesce into formal organizations and how these organizations, in turn, embark on the task of creating internal regulatory structures and processes. However, it should be noted that—as touched upon earlier—efforts toward formalizing a profession are likely to cause apprehension and even conflict within the practitioner and school communities. Thus, as regulatory structures are being developed, it is important to design reasonably inclusive, representational, and transparent decision-making processes and to allow ample opportunity for comment on any proposed standards or requirements.

With the distinction between internal and external regulation in mind, we can now turn to the main subject of this article: (1) a review of the primary options for internal/self-regulation of an emerging medical or health-related profession, and (2) a discussion of the benefits and challenges associated with these options. Internal efforts at self-regulation—if carefully carried out—can lay the necessary groundwork for future efforts to establish external regulatory structures that enhance the recognition and legal status of a field, should the profession choose to pursue these goals.

Primary Types of Internal Regulatory Structures

Registration of Practitioners and Schools

Perhaps the most basic approach to self-regulation within a profession is for a professional membership organization to establish a registry of practitioners. Eligibility for registration may initially be as simple as being a dues-paying member of the organization, or may involve demonstrating completion of certain educational requirements. Usually registration is based on the submission of required documentation that is reviewed for compliance with requirements, accuracy, and authenticity. There are, of course, limitations

inherent in any regulatory process based solely on a paper review, since there may be no independent way of verifying the applicant's education.

Because educational approaches in emerging fields often vary widely in terms of content, duration, philosophy, and delivery, the type of education that qualifies a practitioner for registration is often defined broadly and inclusively at the outset. This is generally a good thing. The pioneers of a field in the U.S. are often engaged in a grand experiment of transplanting traditional arts to a new cultural and legal environment, and diversity allows for creative space to find what works effectively. There are many crosscurrents inherent in this initial experimental phase: traditionalists may question the adaptations that educators make to run programs in the U.S. (e.g., offering shorter programs than exist in the country of origin, eliminating certain practices that may raise issues in a Western culture); the creation of diploma mills and abbreviated training programs—often widespread in the early years of an emerging profession—may compromise the field's reputation by producing substandard practitioners; new theories and techniques may be developed under the rubric of traditional practices; and a welter of professional titles may dilute the professional identity of a field, causing confusion to the consumer.

These sorts of issues point to the ultimate tension in professional regulation: the need to seek a balance between the freedom for individuals to innovate, teach, and practice as they wish, and the collective desire among educators and practitioners to create a reasonably unified set of professional standards that support safe and effective practice and that promote public awareness and confidence.

Registration of schools often develops hand-in-hand with registration of practitioners. Graduates of registered schools are eligible to be registered practitioners, and registered practitioners are seen as qualified to teach at registered schools. While the main goal for registering practitioners is to provide the public with contact information on practitioners, the main goal of school registration is to provide potential students information on training opportunities for the profession.

Once an emerging field starts to attain some measure of stature and public attention, it is natural for the field to reexamine the basic regulatory structures that characterized the initial phase of development. There are typically a number of individuals involved with the field who are knowledgeable about professional education and regulation in the U.S., and some or many members of the practitioner community have aspirations for further growth and recognition of the field.

Also, some organizations will start to develop discretionary financial resources beyond what is needed simply to survive and can invest them in building the profession.

Almost inevitably, during this stage of evolution a group of people within the profession starts questioning the adequacy of the initial registration requirements: the very breadth and inclusivity that helped get the field off the ground are now seen as a limiting factor to its success. This, in turn, often leads to a push to upgrade the registration requirements and/or to develop other approaches to self-regulation. The push to upgrade educational and practice requirements can cause considerable conflict within a profession unless there is extensive open discussion and careful consideration of how to equitably include practitioners trained under the old requirements who are interested in being recognized at a higher level. Even when decisions are arrived at through a genuinely inclusive process, a field may still experience a difficult and perhaps divisive transition to increased standards.

Certification of Practitioners

Certification is a process, often voluntary, by which individuals who have demonstrated the level of knowledge and skill required in a given profession, occupation, role, or skill are identified to the public and other stakeholders. Typically, a single private entity grants recognition—a certificate—to an individual who has met a set of qualifications established by that agency. These qualifications often consist of meeting certain educational standards and passing an examination. The examination may be entirely written or may have both written and practical components.

It should be noted that the word “certification,” as it relates to professional education and practice, causes confusion. In an emerging profession, before schools gain authorization to grant degrees, they generally issue a certificate or diploma signifying completion of the training. This may lead schools to state that they are certifying practitioners. However, certification within a profession is meant to be a uniform, objective credential, not one that varies from training program to training program. In fact, until an agreed-upon certification process is established, the “certification” of practitioners by individual schools and other organizations can, paradoxically, create a “race to the bottom,” as it is likely that some schools will issue a certificate for completion of relatively cursory training programs.

The very creation of a certification examination has a *de facto* defining and constraining effect on the educational programs in the field and on the profession’s scope of practice. This is because the certification agency must articulate

with reasonable specificity the subject matter that the exam will cover. While individual programs may continue to teach a wide variety of approaches and philosophies, their need to equip students with the knowledge and skills to pass the exam will naturally lead to a greater conformity among programs over time. Moreover, the outliers—those programs whose philosophies and practices are furthest from the mainstream—will face the challenge of ensuring that students gain sufficient knowledge of the material that will be tested in the exam, while staying true to their vision. Any emerging profession developing a certification exam will have to work painstakingly and inclusively to ensure buy-in among a critical mass of stakeholders. The process will benefit from seeking an acceptable balance between being prescriptive in terms of subject matter and providing latitude for some nonmainstream approaches in the field.

Creating a reliable certification exam is no small task, and the legitimacy of any certification process—especially at the outset—can be contested, both as to the level or type of education that qualifies someone for certification and the soundness of the exam itself. The challenges of creating a satisfactory certification process include defining the content of the exam, developing a pool of carefully formulated questions, establishing exam policies and secure testing sites and procedures, developing statistically reliable and defensible means to set passing scores, and ensuring sufficient funding to cover start-up expenses and ongoing operations. For a profession that wishes to establish a certification agency and exam, there is a substantial body of technical knowledge available as well as experts in the area of professional testing who can provide advice. However, accessing such resources can be expensive.

Given the complexity of developing a reliable certification process, the credibility of the process can always be questioned. One way that an agency may seek to gain greater credibility is through external “accreditation” of the certification process. Such an accreditation service is offered by the National Commission for Certifying Agencies (NCCA), the accrediting division of the National Organization for Competency Assurance (NOCA). This agency sets quality standards and accredits certification programs covering hundreds of professions and occupations. In seeking external recognition such as NCCA accreditation, there is a natural trade-off for an agency. The costs and time involved—which are not insubstantial—must be weighed against the perceived need to demonstrate the credibility of the certification process to important stakeholders. There is also an international standard, ISO/IEC 17024 (ISO is the International Organization for Standardization), that sets

forth criteria for certification agencies that offer “certification of persons.” The purpose of such a standard is to foster worldwide consistency in how certification agencies conduct their work. Such a standard may pave the way for recognition of professional training across national boundaries—a goal that some governmental entities and other organizations are actively promoting.

Within a medical or healthcare-related field there is sometimes pressure to develop a practical exam component in addition to the written component. This is especially true if minimally trained individuals—or individuals whose training is not easily verified—may be allowed to take the exam. Since a written exam only tests theoretical knowledge at one point in time, there is always a concern that a person could pass the exam regardless of his or her practical skills and abilities; such skills and abilities are, of course, at the heart of being a competent practitioner in any healthcare-related field. Developing a reliable practical exam is, however, even more challenging than developing a reliable written exam, and administering such an exam is costly for applicants. Such exams are also more likely to be challenged by examinees on the basis of inconsistency or bias. For these reasons, some certification agencies choose to use a written format exclusively.

Regardless of whether an agency uses a written exam format or a combination of written and practical components, the agency must address the issue of what educational credentials will qualify someone to sit for the exam. In more well-established fields in the U.S., such as naturopathic medicine and acupuncture, graduation from—or current attendance in—an accredited U.S. program is the primary qualification. The stronger the educational requirements for taking a certification exam, the less pressure there is to ensure that a certification test covers the full range of theoretical knowledge and practical skills, since there is an assumption that the examinees’ formal education ensures basic competence in a wide range of areas. In an emerging field, educational requirements for taking a certification exam tend to be looser—especially if accreditation or some other more rigorous school approval process does not yet exist.

As with a registration process, there is typically some sort of “grandfathering” (also referred to as “grandparenting”) provision at the time when a certification process is implemented that applies to more senior practitioners trained at an earlier time when educational levels and programs were different. The grandfathering process can be applied in two ways: (1) a person who is grandfathered is deemed qualified to take the exam based on educational requirements and/or professional experience that is appropriate to the era in which

he or she was trained, or (2) a person who is grandfathered is not required to take the exam at all based on satisfying era-appropriate educational requirements and/or professional experience. Generally speaking, designing a grandfathering process to be reasonably inclusive will help promote buy-in by a larger proportion of the profession. However, there is almost inevitably a trade-off, since some grandfathered practitioners may be deficient in the knowledge and skills considered necessary for safe and effective practice.

Accreditation of Educational Programs and Institutions

The primary purpose of registration and certification is to identify and qualify individual practitioners of a profession. As noted above, schools, training programs, and instructors can be registered as well. If this process involves making a determination that the school or program is legitimate and offers an acceptable level of training, then school registration is also a de facto approval process aimed at ensuring the quality and rigor of the education.

Accreditation is a widely used approval process for higher education in the U.S. Accreditation that can be defined as the granting of national public recognition to an institution or program of study that meets or exceeds an established set of standards. (Note that “accreditation” in this context is different from the accreditation of certification agencies discussed in the previous section, and use of the same word in a different but related context often causes confusion in the regulatory arena.) The determination of whether the institution or program meets or exceeds the accreditation standards is based on a review of detailed reports and documentation submitted by the institution and a subsequent on-site evaluation conducted by a team of qualified experts, which includes educators and practitioners. Accreditation is primarily a quality control mechanism: a credible, objective third party gives its public stamp of approval to an educational program and/or institution. Additionally, accreditation is a peer-review process that supports the ongoing improvement of institutions and programs.

Accreditation for a healthcare or health-related field in the U.S. is generally carried out by a nongovernmental agency that is initially established by a professional association or a group of schools. The agency’s board of directors is responsible for developing a set of standards that include educational requirements specifying the necessary baseline or entry level knowledge and skills for the field. To ensure their acceptance, accreditation standards are generally developed through an open process involving representatives of the key stakeholders in the field, including educators and

practitioners. An opportunity to comment is given to those not engaged directly in the standards development process.

Accreditors are often divided into two categories: *institutional* and *programmatic*. Institutional accreditors grant accreditation to an entire institution, such as the University of Massachusetts, while programmatic accreditors deal with specific academic programs, such as a medical or chiropractic degree. In some cases, an accrediting agency will combine these functions when dealing with what are called “single purpose institutions”—schools that offer programs in only one field of study. In this case, the accrediting agency grants both an umbrella accreditation for the entire institution and also accredits one or more specific programs.

Programmatic accrediting agencies that focus on a specific profession are also often referred to as “specialized” or “professional” accreditors. The primary focus of the accreditation standards of such agencies is on the content of educational and training programs. However, the accreditation standards of these agencies typically cover a wide range of other areas, including faculty, administrative and governance structures, finances, facilities, and other facets of educational institutions. For example, in the area of faculty, an accreditation agency might have requirements pertaining to educational degrees/credentials of the faculty, the proportion of full-time/core faculty hired by an institution, and the involvement of faculty in academic matters.

It is important to note that in recent years, accreditors have shifted the emphasis from simply listing the required subject areas and hours of study for programs to identifying the range of competencies that students must attain during the course of study in order to be adequately or comprehensively trained. The main idea behind a competencies-oriented approach is that, at the end of the day, the graduate of a training program should be able to demonstrate that he or she has actually learned the knowledge base and skills associated with the field and has not merely spent a prescribed number of hours in a classroom or a clinical setting.

Despite the greater emphasis on competencies, accreditors still normally specify certain broad requirements in terms of classroom hours and/or credits, such as the total minimum length of the program and the time that must be devoted to clinical instruction and internship. This is to guard against a program’s claim that its students are able to master a complex set of competencies within what experts in the field would consider an unreasonably short period of time.

State higher education departments have the responsibility for authorizing schools to grant academic degrees (e.g., bachelor’s, master’s, and doctoral degrees). However, programmatic accreditors specify the degree level of the pro-

grams they accredit. Therefore, one of the key questions that the educational and practitioner communities within a field must address is what degree level is an appropriate starting point for the field. For example, the accrediting agency for acupuncture and Oriental medicine started out by developing educational standards for a single type of program: a master’s degree-level training in acupuncture. The same agency subsequently developed educational standards for a master’s degree-level program in Oriental medicine and, more recently, for a doctoral degree program. The accrediting agency for naturopathic medicine, by contrast, started out accrediting programs at the doctoral degree level (ND programs), and has not markedly changed or extended this mission in three decades—though it has periodically revised its educational requirements.

An agency has the option to create one or more sets of educational standards for a given field that correspond to different scopes of practice, different sets of competencies, and different degree levels. An emerging field needs to consider very strategically what educational program requirements and degree levels are realistically achievable for a critical mass of the programs that it hopes to attract into the accreditation process.

Accreditation is considered a voluntary process. However, once the accreditation process within a field is widely accepted by consumers and practitioners in the field—as well as by practitioners in other healthcare-related fields—schools that forgo accreditation will lose their competitive edge. If a field becomes licensed, gaining accreditation is even more important to a school’s competitiveness, as graduation from an accredited program is typically a requirement for licensure within most jurisdictions.

Many accrediting agencies, though not all, choose to seek recognition from the U.S. Department of Education (DOE) once they are solidly up and running. DOE recognition of an institution’s accrediting body is the basis upon which an institution may be authorized to provide federal financial aid to students. Since federal financial aid greatly increases the marketability of educational programs, many fields are committed to seeking DOE recognition for their accrediting body.

DOE recognition also greatly enhances the credibility and legitimacy of an accrediting agency in the eyes of potential students, external regulators, and the general public. This is because DOE recognition is a demanding regulatory process that requires accreditors to demonstrate conformance to a stringent set of criteria as well as a high degree of professionalism. Generally, if a profession is seeking state licensure, establishing a DOE-recognized accrediting agency is almost

a mandatory prerequisite. Otherwise, a state legislature or administrative agency has no independent way of determining whether the accrediting process is legitimate and effective. In fields where there are numerous diploma-mill operations, the owners of these operations often establish sham accrediting bodies (referred to as “accreditation mills”) that endorse their programs. The existence of multiple accrediting bodies within a field can cause confusion to state officials.

Establishing an accreditation agency—like establishing a certification agency—requires solid financial resources as well as sufficient expertise regarding higher education practices. Typically, an accreditation agency has a board of directors consisting of representatives of schools, practitioners, and members of the public who are **responsible for developing** educational standards and agency policies and for making accreditation decisions. Additionally, an agency needs to assemble and train a pool of individuals who will have the knowledge and skills needed to assess the quality of programs during an onsite visit. Finally, an agency needs administrative staff, which at the outset often consists of a single part-time employee. The costs of running an agency are typically borne by the accredited schools through annual fees. In some cases, professional associations and individuals may also provide financial support, and supporting organizations may also allocate some staffing, space, and other resources.

Unlike registration and certification of practitioners, accreditors do not grandfather schools/programs. This is partly because accreditation is an ongoing process that includes periodic reevaluation and re-accreditation of schools, and partly because the DOE requires recognized accrediting agencies to enforce their standards with equal consistency. However, the initial accreditation standards may be set at a level that is within reach of most of the institutions in existence at the time. Setting the standards at a realistically achievable level encourages buy-in to the process.

Conclusion

The fact that the emerging professions of Yoga, Yoga therapy, and Ayurveda have established—or are in the pro-

cess of establishing—their own registration, credentialing, and/or school-approval processes is an implicit acknowledgement that the forward movement of a profession, at least in the U.S., requires creating a professional regulatory structure and identity. Typically, taking these steps will synergistically raise the quality of practice, increase public awareness and trust of these fields, extend the political influence of the practitioner community, and expand professional opportunities.

For these emerging professions, there is no right answer regarding whether and how to self-regulate or, for that matter, whether it might be advantageous to seek external recognition via professional licensure at some point in the future. Any self-regulatory structure involves a variety of trade-offs and financial costs that can be substantial. Additionally, establishing a self-regulatory structure demands extensive internal discussion—discussion that is open, respectful and inclusive—to ensure a reasonable degree of acceptance by practitioners and educators and to minimize the risk of creating schisms within the field.

While there are tried-and-true approaches to self-regulation that emerging professions can use as models, no emerging profession should be a slave to convention. New paradigms of health and wellness may well require the creation of new regulatory paradigms. At a minimum, efforts to create a conventional self-regulatory structure may benefit from a healthy degree of skepticism and experimentation so that the soul of the field is honored and nurtured as the profession becomes increasingly established and recognized.

The work of self-regulation is never complete. Almost as soon as any regulatory structure is created by an emerging profession, the weaknesses and omissions of the structure will start to become apparent. Also, the growing experience and expertise of practitioners and educators will bring about new aspirations for the development of the field. The sheer growth and success of a profession will, over time, necessitate the reformulation of structures and standards. This ongoing work, painstaking as it usually is, should be welcomed, as it often results in continued improvement in education and in quality of services offered by practitioners.