

## **Legal Opinion provided by Bond Curtis LLP**

(Healthcare, Litigation, Appellate, International Law)

January 17, 2006

### ***IMUNE Comments***

*Any comments are made in Italics and preceded with "IMUNE Comments"*

### ***Summary (extracted from the body of the legal opinion)***

#### ***The Request from IMUNE***

....address the effect of an "International License" bestowed by IMUNE upon a biofeedback technician (practitioner/therapist) who wishes to practice in California (*as a realistic reference point*). (California is generally reflective of the sternest criteria for licensing in the USA. )

#### ***Core of the response***

**Since there is no license or training requirement in California (California is generally reflective of the sternest criteria for licensing in the USA.) biofeedback technicians/ therapists/clinicians/practitioners one can utilize this method of practice (i.e., biofeedback) as long as he or she does not hold himself/herself out as any of California's licensed professions.**

#### ***The full response***

Re: Opinion / IMUNE International License

Per your request, the following comments address the effect of an "International License" bestowed by IMUNE upon a biofeedback technician (practitioner/therapist) who wishes to practice in California. California is generally reflective of the sternest criteria for licensing in the USA.

In formulating this opinion, we have:

1. Reviewed California law related to the use of biofeedback by various licensed professionals such as psychologists, speech therapists, voice

pathologists, physical therapists, physical therapy assistants, physical therapy technicians, naturopathic doctors, acupuncturists, and nurses.

2. *Business & Professions Code* section 2903.1 (related to licensed psychologists)
3. California *Business & Professions Code* sections 1000-1, *et seq.* (related to licensed chiropractors).
4. The Office of the Attorney General State of California opinions (related to licensed physical therapists).

### **Existing Titling/Definitions of Biofeedback as a Profession etc.**

#### *IMUNE Comments:*

*There is no state or federal Licensing or certification of Biofeedback. There are Licensed professions that use biofeedback as part of their “toolkit” and due to their professional recognition may elect to have specific qualification in Biofeedback, for which the BCIA has developed to offer specific criteria.*

*The majority of biofeedback practitioners do not belong to a Licensed profession and for these practitioners there is no existing state or federal Licensing or certification process.*

*This section considers these two areas:*

1. *Professions who are Licensed*
2. *Practitioners who do not hold a license in any modality.*

The U.S. Department of Labor, Director of Occupational Titles does not define a biofeedback clinician/technician/practitioner/therapist nor is there any legally designated title in California. Essentially there is no specific or individual classification of Biofeedback practice. It is this lack of statutory classification that results in Biofeedback being “non regulated.”

Rather, in California the sole mention of Biofeedback is within licensed professions such as those listed above. These are professions that have licensing in their own right (psychologist etc.) and within this license is the legal recognition of certain techniques and devices, which may be used as a tool to achieve that professional’s therapeutic goals. Consequently, the legally recognized group of individuals performing biofeedback techniques are those individuals listed above who are licensed in their own professions and who are knowledgeable in biofeedback techniques. The second legally recognized group of biofeedback technicians are those assistants or individuals who are employed and directed by these licensed professionals in the use of biofeedback techniques on patients/clients.

This means that certain licensed professionals can use biofeedback: it does NOT mean that others cannot.

**EFFECTIVELY: Since there is no license or training requirement in California for biofeedback technicians/ therapists/clinicians/practitioners one can utilize this method of practice (i.e., biofeedback) as long as he or she does not hold himself/herself out as any of California's licensed professions.** A biofeedback technician should not, for example, call himself a physical therapist or any other title that can be mistaken for a profession that is already licensed in California. He should not claim to be "licensed in California."

Currently, California has not legislated any requirements or limitations relative to the practice of biofeedback.

### **Practitioner Exposure**

Based on the above a Biofeedback Practitioner may display and refer to their qualification as an International License as:

- Biofeedback Practitioner
- Biofeedback Technician
- Biofeedback Therapist
- Biofeedback Clinician
- Quantum Biofeedback Technician
- Quantum Biofeedback Practitioner
- Quantum Biofeedback Therapist
- Quantum Biofeedback Clinician

According to the titling that the examination enables

### **PROVIDED THAT:**

1. The practitioner does not represent the qualification as a license in a profession that is licensed by a regulatory authority.
2. The practitioner in no way misrepresents the International License as a state license.
3. The practitioner recognizes that the IMUNE International license *makes no representation whatsoever regarding state licensure or compliance with any local, state or federal laws governing the practice of biofeedback.*
4. The practitioner acknowledges the permitted use criteria applied by the FDA.

**IMUNE Comment:** *this is the responsibility of the Manufacturer/Broker/Distributor and is addressed as part of information provided by the manufacturer during the sales and technical training process. It is outside the remit of IMUNE in its role as an education facilitator.*

5. The client is informed of the above and consents to the therapy.

### **Qualification Bodies**

It is noteworthy that two main institutions exist which provide “certification” in biofeedback. *Of the two the BCIA has significant depth in its approach and criteria.*

- The Neurotherapy & Biofeedback Certification Board (NBCB)- this does NOT provide training: it examines and certifies in (basic) Biofeedback only. It is my understanding it is not accredited by NOCA.
- Biofeedback Certification Institute of America (BCIA). This is a professional body which seeks to ensure that Biofeedback training is rigorous and professional. The Association for Applied Psychophysiology & Biofeedback (AAPB) as well as the American Psychological Association (APA), currently recognize BCIA certification or its equivalent as the minimum recommended standard for providers. BCIA requires specific coursework, clinical supervision and completion of a certification examination. BCIA certification also requires licensure/credential in a healthcare field or working under supervision of one who is so licensed. Although we cannot predict when California (or any other state) will enact legislation related to biofeedback, based upon what has happened in other states (Virginia, Washington), someone with BCIA certification (or an organization with parallel requirements that is accredited by NOCA) would appear to be in a better position for gaining licensure than someone without BCIA certification (or its equivalent).

*IMUNE Comments: the BCIA is not accessible to practitioners who are not licensed in certain professions. Thus the BCIA is not a route for the majority of Biofeedback practitioners.*

### **Preparing for Licensing**

Essentially the BCIA model is robust (certainly in comparison to other certification boards) and it is this robustness that places those practitioners with BCIA certification in an advantageous position for grandfathering into future licensing.

The BCIA credentialing is still certification (*NOT Licensing*)

As I (*Bond Curtis*) understand it, the IMUNE model is set out to build up to the same level as the BCIA as a professional model and to facilitate the movement of Biofeedback practitioners towards being in a position to be grandfathered into “regulatory” licensure (or equivalent) when it comes via being able to demonstrate a professional health education process.

It appears there is a trend for societies that provide biofeedback certification such as BCIA to create a code of ethics by which the technician adheres. That code of ethics later translates into enhanced credibility for the organization, which then gives that organization more credence in terms of directing future legislation and/or insurance reimbursement for biofeedback providers. *Such will be a requirement for IMUNE International Licensure.*

***IMUNE additional comments:*** *These notes are specific to the USA where it is appropriate to understand qualification terminology in order to represent qualifications appropriately.*

*In general:*

*Certification* (and in some cases diplomas) are generally issued by non statutory bodies i.e. bodies that are self regulating, have no legal educational standing and have been established by groups of individuals who generally have an interest in trying to promote educational standards (although they are also commercial organizations). Certificates are not generally recognized by government organizations. The awarding body may or may not have links to another auditing organization. The value depends on the quality of the course and examination. Certification is often used where there is no established Licensing Authority.

*Licensing* in the USA may be federal or state. For example The House of Representatives February 7, 1939 passed a Licensing Act for Naturopathy. Whilst the common perspective is that Naturopathic Licensing is a State Regulatory function naturopaths have apparently successfully contested that the imposition of State Licensing for naturopathy is unconstitutional and illegal. There may or may not be other Acts of Congress that override State Licensing in the regulation of other health areas: such Acts of Congress do not however appear to exist in respect of Biofeedback. Where there is no federal licensing but there is State Licensing then legal opinion is that this is valid and legal. There is however currently no licensing, either federal or state, for Biofeedback.

*Licensing carries, within the USA, a higher rating than certification. Potentially a practitioner who has an International License is in a stronger position than with a certificate, provided that the training and examination is robust.*

*The global marketplace and new technology are contributing to the rapid globalization of higher education. This is driving the recognition of International Credentials, such as those that may be issued by an organization like IMUNE.*

*Thus an organization (such as IMUNE) credentialing a robust educational program and credentialing via an International License in principle places its graduates in a strong position to fulfill the criteria for grandfathering into future country and state specific licensing. and potentially a stronger position than USA based certification.*

This release has been compiled by Dr John Kelsey PhD, Vice Chancellor  
IMUNE.