

By: Representatives Peranich, Fredericks,
Read

To: Public Health and
Welfare

HOUSE BILL NO. 1063

1 AN ACT TO PROVIDE FOR THE LICENSURE AND REGULATION OF THE
2 PRACTICE OF ACUPUNCTURE; TO CREATE THE STATE BOARD OF ACUPUNCTURE
3 AND PRESCRIBE ITS POWERS AND DUTIES; TO PROVIDE THAT THE STATE
4 DEPARTMENT OF HEALTH SHALL PROVIDE NECESSARY ADMINISTRATIVE AND
5 FISCAL SUPPORT FOR THE BOARD; TO PRESCRIBE THE QUALIFICATIONS FOR
6 A PERSON TO BE ELIGIBLE TO TAKE THE LICENSURE EXAMINATION; TO
7 PRESCRIBE THE QUALIFICATIONS FOR AN ACUPUNCTURE SCHOOL TO BE
8 ACCEPTABLE; TO PROVIDE FOR LICENSE RENEWAL AND CONTINUING
9 EDUCATION REQUIREMENTS; TO PROVIDE FOR EXAMINATION AND LICENSE
10 FEES; TO PRESCRIBE CERTAIN SANITATION PRACTICES TO BE FOLLOWED IN
11 THE PRACTICE OF ACUPUNCTURE; TO SPECIFY GROUNDS FOR DISCIPLINARY
12 ACTION BY THE BOARD; TO AUTHORIZE CERTAIN DISCIPLINARY ACTIONS
13 THAT THE BOARD MAY TAKE AGAINST LICENSEES; TO PROVIDE CRIMINAL
14 PENALTIES FOR CERTAIN ACTIONS; TO PROVIDE THAT THIS ACT DOES NOT
15 APPLY TO ANY HEALTH CARE PROFESSIONAL LICENSED UNDER ANOTHER STATE
16 STATUTE; TO CREATE A SPECIAL FUND IN THE STATE TREASURY FOR MONIES
17 RECEIVED BY THE BOARD, WHICH SHALL BE USED BY THE BOARD IN
18 IMPLEMENTING AND ADMINISTERING THE ACT; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. The Legislature finds that the interests of the
21 public health require the regulation of the practice of
22 acupuncture in this state for the purpose of protecting the
23 health, safety, and welfare of our citizens while making this
24 healing art available to those who seek it.

25 SECTION 2. As used in this act:

26 (a) "Acupuncture" means treatment by means of
27 mechanical, thermal or electrical stimulation effected by the
28 insertion of acupuncture needles at a point or combination of
29 points on the surface of the body predetermined on the basis of
30 the theory of the physiological interrelationship of body organs
31 with an associated point or combination of points, or the
32 application of heat or electrical stimulation to such point or
33 points, for the purpose of inducing anesthesia, relieving pain, or
34 healing diseases, disorders and dysfunctions of the body, or

35 achieving a therapeutic or prophylactic effect with respect
36 thereto.

37 (b) "Acupuncturist" means any person licensed under
38 this act to practice acupuncture.

39 (c) "Board" means the State Board of Acupuncture.

40 (d) "License" means the document of authorization
41 issued by the board for a person to engage in the practice of
42 acupuncture.

43 SECTION 3. (1) The State Board of Acupuncture is created to
44 license and regulate acupuncturists. The board shall be composed
45 of five (5) members, all of whom shall be licensed acupuncturists.

46 (2) For at least four (4) years immediately preceding his or
47 her appointment, each appointee to the board must have been
48 actively engaged as an acupuncturist, and during the two (2) years
49 preceding his or her appointment, must have spent the majority of
50 the time devoted to that activity in this state. The initial
51 appointees to the board shall be deemed to be and shall become
52 licensed practicing acupuncturists immediately upon their
53 appointment and qualification as members of the board. All
54 subsequent appointees to the board must be licensed acupuncturists
55 before their appointment.

56 (3) The Governor shall appoint the members of the board,
57 with the advice and consent of the Senate. The initial
58 appointments to the board shall be made as follows: One (1)
59 member shall be appointed for a term that expires on June 30,
60 2000, two (2) members shall be appointed for terms that expire on
61 June 30, 2001, and two (2) members shall be appointed for terms
62 that expire on June 30, 2003. After the expiration of the initial
63 terms, all subsequent appointments shall be made by the Governor
64 for terms of four (4) years from the expiration date of the
65 previous term. Upon the expiration of his or her term of office,
66 a board member shall continue to serve until his or her successor
67 has been appointed and has qualified. No person may be appointed
68 more than once to fill an unexpired term or more than two (2)
69 consecutive full terms.

70 (4) Any vacancy on the board before the expiration of a term
71 shall be filled by appointment of the Governor for the remainder

72 of the unexpired term.

73 (5) The board shall select one (1) of its members to serve
74 as chairman during the term of his or her appointment to the
75 board. No person may serve as chairman for more than four (4)
76 years.

77 (6) Three (3) members of the board shall constitute a quorum
78 for all business.

79 (7) Board members shall receive no compensation for their
80 services, but shall be reimbursed for their actual and necessary
81 expenses incurred in the performance of official board business as
82 provided in Section 25-3-41.

83 (8) No board member shall participate in any matter before
84 the board in which he or she has a pecuniary interest, personal
85 bias or other similar conflict of interest.

86 (9) The State Department of Health shall provide
87 administrative and fiscal support for the board as necessary for
88 the board to carry out this act, and the board shall pay the State
89 Department of Health the cost of providing that support.

90 SECTION 4. The board may adopt rules and regulations that
91 are necessary to carry out the powers and duties conferred upon
92 the board by this act, in accordance with the Administrative
93 Procedures Law (Section 25-43-1 et seq.).

94 SECTION 5. (1) It is unlawful for any person to practice
95 acupuncture in this state unless the person has been licensed by
96 the board, is in a board-approved course of study, or is otherwise
97 exempted by this act.

98 (2) Except for persons licensed by reciprocity under Section
99 6 of this act, no person shall be licensed to practice acupuncture
100 unless he has passed an examination and has been found to have the
101 necessary qualifications as prescribed in the rules adopted by the
102 board. To be eligible for the examination, an applicant must:

103 (a) Be at least twenty-one (21) years of age;

104 (b) Have completed at least forty-eight (48) semester

105 hours of courses from an accredited postsecondary institution,
106 including basic science courses as determined by the board;

107 (c) Be a graduate of an acceptable acupuncture school
108 whose entrance requirements and course of instruction meet the
109 standards set by the board; and

110 (d) Have paid the required fees, which shall be set by
111 the board by rule as follows:

112 (i) An application fee not exceeding Two Hundred
113 Fifty Dollars (\$250.00); and

114 (ii) An examination fee not exceeding Three
115 Hundred Fifty Dollars (\$350.00), plus the actual per applicant
116 cost to the board for purchase of the written and practical
117 portions of the examination from a national organization approved
118 by the board; or

119 (iii) A reexamination fee not exceeding Five
120 Hundred Dollars (\$500.00), plus the actual per applicant cost to
121 the board for purchase of the written and practical portions of
122 the examination from a national organization approved by the
123 board.

124 (3) To be an acceptable acupuncture school, the school must:

125 (a) Maintain a resident course of instruction
126 equivalent to not less than six (6) terms of four (4) months each
127 for a total of not less than one thousand eight hundred (1,800)
128 instructional hours;

129 (b) Provide supervised patient treatment for at least
130 two (2) terms of the resident court of instruction;

131 (c) Maintain a course of instruction in
132 anatomy-histology, bacteriology, physiology, symptomatology,
133 pathology, meridian and point locations, hygiene, sanitation
134 practices, and public health; and

135 (d) Have the necessary teaching force and facilities
136 for proper instruction in required subjects.

137 (4) In establishing standards for the entrance requirements

138 and course of instruction of an acupuncture school, the board may
139 consider the standards set by the National Accreditation
140 Commission for Schools and Colleges of Acupuncture and Oriental
141 Medicine.

142 (5) The examination shall test the applicant's competency
143 and knowledge of the practice of acupuncture. At the request of
144 any applicant, oriental nomenclature for the points shall be used
145 in the examination. The examination shall include a practical
146 examination of the knowledge and skills required to practice
147 acupuncture, covering diagnostic and treatment techniques and
148 procedures. The board shall give an examination at least once
149 each calendar year, and all applicants shall be notified in
150 writing of the date, time and place of the examination. The board
151 may utilize a nationally recognized examination if it deems the
152 national exam to be sufficient to qualify a person for licensure
153 in this state.

154 SECTION 6. (1) The board shall issue a license to practice
155 acupuncture in this state to any person who meets the requirements
156 of this act, and who passes the examination given by the board. A
157 license shall be valid for one (1) year, unless earlier revoked.

158 (2) The board shall renew a license upon receipt of the
159 renewal application and the fee set by the board by rule, not to
160 exceed Three Hundred Dollars (\$300.00).

161 (3) The board may waive any prerequisite to obtaining a
162 license for an applicant after reviewing the applicant's
163 credentials and determining that the applicant holds a valid
164 license from another state that has license requirements
165 substantially equivalent to those of this state. The initial fee
166 for a license by reciprocity shall not exceed Four Hundred Dollars
167 (\$400.00).

168 (4) The board by rule shall prescribe continuing education
169 requirements, not to exceed fifteen (15) hours annually, as a
170 condition for renewal of a license. The criteria for those

171 programs or courses shall be approved by the board. In order to
172 meet continuing education requirements, prior approval by the
173 board of the programs or courses is required. All education
174 programs that contribute to the advancement, extension, or
175 enhancement of professional skills and knowledge related to the
176 practice of acupuncture, whether conducted by a nonprofit or
177 profitmaking entity, are eligible for approval. The board may set
178 a fee, not to exceed One Hundred Dollars (\$100.00), for each
179 continuing education provider or program submitted for approval.

180 SECTION 7. (1) The board shall adopt rules relating to the
181 prevention of infection, the safe disposal of any potentially
182 infectious materials, and other requirements to protect the
183 health, safety, and welfare of the public.

184 (2) All acupuncture needles that are to be used on a patient
185 must be presterilized and disposable, and each needle may be used
186 only once. The use of staples in the practice of acupuncture is
187 unlawful.

188 (3) Sanitation practices in the practice of acupuncture
189 shall include:

190 (a) Hands shall be washed with soap and water or other
191 disinfectant before handling needles and between treatment of
192 different patients; and

193 (b) Skin in the area of penetration shall be thoroughly
194 swabbed with alcohol or other germicidal solution before inserting
195 needles.

196 SECTION 8. (1) The following acts shall constitute grounds
197 for which the disciplinary actions specified in subsection (2) may
198 be taken:

199 (a) Attempting to obtain, obtaining, or renewing a
200 license to practice acupuncture by bribery, by fraudulent
201 misrepresentations, or through an error of the board.

202 (b) Having a license to practice acupuncture revoked,
203 suspended, or otherwise acted against, including the denial of

204 licensure, by the licensing authority of another state, territory,
205 or country.

206 (c) Being convicted or found guilty, regardless of
207 adjudication, in any jurisdiction of a crime that directly relates
208 to the practice of acupuncture or to the ability to practice
209 acupuncture. Any plea of nolo contendere shall be considered a
210 conviction for purposes of this act.

211 (d) False, deceptive, or misleading advertising or
212 advertising that claims that acupuncture is useful in curing any
213 disease.

214 (e) Advertising, practicing, or attempting to practice
215 under a name other than one's own.

216 (f) Failing to report to the board any person who the
217 licensee knows is in violation of this act or of the rules of the
218 board.

219 (g) Aiding, assisting, procuring, employing, or
220 advising any unlicensed person to practice acupuncture contrary to
221 this act or to a rule of the board.

222 (h) Failing to perform any statutory or legal
223 obligation placed upon a licensed acupuncturist.

224 (i) Making or filing a report that the licensee knows
225 to be false, intentionally or negligently failing to file a report
226 or record required by state or federal law, willfully impeding or
227 obstructing such filing or inducing another person to do so. Such
228 reports or records shall include only those which are signed in
229 the capacity as a licensed acupuncturist.

230 (j) Exercising influence within a patient-acupuncturist
231 relationship for purposes of engaging a patient in sexual
232 activity. A patient shall be presumed to be incapable of giving
233 free, full, and informed consent to sexual activity with his or
234 her acupuncturist.

235 (k) Making deceptive, untrue, or fraudulent
236 representations in the practice of acupuncture or employing a

237 trick or scheme in the practice of acupuncture when such scheme or
238 trick fails to conform to the generally prevailing standards of
239 treatment in the community.

240 (l) Soliciting patients, either personally or through
241 an agent, through the use of fraud, intimidation, undue influence,
242 or a form of overreaching or vexatious conduct. A solicitation is
243 any communication that directly or implicitly requests an
244 immediate oral response from the recipient.

245 (m) Failing to keep written medical records justifying
246 the course of treatment of the patient.

247 (n) Exercising influence on the patient to exploit the
248 patient for the financial gain of the licensee or of a third
249 party.

250 (o) Being unable to practice acupuncture with
251 reasonable skill and safety to patients by reason of illness or
252 use of alcohol, drugs, narcotics, chemicals, or any other type of
253 material or as a result of any mental or physical condition.

254 (p) Gross or repeated malpractice or the failure to
255 practice acupuncture with that level of care, skill, and treatment
256 which is recognized by a reasonably prudent similar acupuncturist
257 as being acceptable under similar conditions and circumstances.

258 (q) Practicing or offering to practice beyond the scope
259 permitted by law or accepting and performing professional
260 responsibilities that the licensee knows or has reason to know
261 that he or she is not competent to perform.

262 (r) Delegating professional responsibilities to a
263 person when the licensee delegating those responsibilities knows
264 or has reason to know that such person is not qualified by
265 training, experience, or licensure to perform them.

266 (s) Violating any provision of this act, a rule of the
267 board, or a lawful order of the board previously entered in a
268 disciplinary hearing or failing to comply with a lawfully issued
269 subpoena of the board.

270 (t) Conspiring with another to commit an act, or
271 committing an act, that would tend to coerce, intimidate, or
272 preclude another licensee from lawfully advertising his or her
273 services.

274 (u) Fraud or deceit or gross negligence, incompetence,
275 or misconduct in the operation of a course of study.

276 (v) Failing to comply with state or local regulations
277 or reporting requirements relating to public health and the
278 control of contagious and infectious diseases.

279 (w) Failing to comply with any rule of the board
280 relating to health and safety, including, but not limited to, the
281 sterilization of needles and equipment and the disposal of
282 potentially infectious materials.

283 (2) When the board finds any person guilty of any of the
284 acts set forth in subsection of this section, it may enter an
285 order imposing one or more of the following penalties:

286 (a) Refusal to accept an application for licensure.

287 (b) Revocation or suspension of a license.

288 (c) Restriction of practice.

289 (d) Imposition of an administrative fine not to exceed
290 One Thousand Dollars (\$1,000.00) for each count or separate
291 offense.

292 (e) Issuance of a reprimand.

293 (f) Placement of the acupuncturist on probation for a
294 period of time and subject to such conditions as the board may
295 specify.

296 (3) The board shall not reinstate the license of an
297 acupuncturist, or cause a license to be issued to a person it has
298 deemed to be unqualified, until such time as the board is
299 satisfied that he or she has complied with all the terms and
300 conditions set forth in the final order and is capable of safely
301 engaging in the practice of acupuncture.

302 SECTION 9. (1) It is unlawful for any person to:

303 (a) Hold himself or herself out as a licensed
304 acupuncturist unless licensed under this act.

305 (b) Practice or attempt to practice acupuncture without
306 an active license or as otherwise provided by this act.

307 (c) Obtain or attempt to obtain a license to practice
308 acupuncture by fraudulent misrepresentation.

309 (d) Permit an employed person to engage in the practice
310 of acupuncture unless that person holds an active license as an
311 acupuncturist, except as otherwise provided by this act.

312 (2) Any person who violates any provision of this section is
313 guilty of a misdemeanor, and upon conviction thereof, shall be
314 punished by a fine of not more than Five Hundred Dollars
315 (\$500.00), or by imprisonment in the county jail for not more than
316 six (6) months, or both.

317 SECTION 10. This act does not apply to any health care
318 professional licensed under another statute of this state and
319 acting within the scope of the license. Nothing in this act shall
320 be construed to limit, restrict, enlarge or alter the scope of
321 practice authorized for any health care professional licensed
322 under another statute of this state.

323 SECTION 11. (1) No appropriations from the State General
324 Fund shall be used to operate the board. The board shall be
325 supported by fees collected for license applications and renewals
326 and other monies received by the board.

327 (2) All fees and any other monies received by the board,
328 except for administrative fines imposed under Section 8 of this
329 act, shall be deposited in a special fund that is created in the
330 State Treasury and shall be used for the implementation and
331 administration of this act, when appropriated by the Legislature
332 for such purpose. The monies in the special fund shall be subject
333 to all provisions of the state budget laws that are applicable to
334 special fund agencies, and shall be disbursed by the State
335 Treasurer only upon warrants issued by the State Fiscal Officer

336 upon requisitions signed by the chairman of the board or another
337 board member designated by the chairman, and countersigned by the
338 secretary of the board. Any interest earned on this special fund
339 shall be credited by the State Treasurer to the fund and shall not
340 be paid into the State General Fund. Any unexpended monies
341 remaining in the special fund at the end of a fiscal year shall
342 not lapse into the State General Fund. Administrative fines
343 imposed by the board under Section 8 of this act shall be
344 deposited in State General Fund.

345 SECTION 12. This act shall take effect and be in force from
346 and after July 1, 1999.