

By: Holland

To: Public Health and  
Welfare

HOUSE BILL NO. 108

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 2001, two (2) members shall be appointed for terms that expire on

61 June 30, 2002, and two (2) members shall be appointed for terms  
62 that expire on June 30, 2004. 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. However, any doctor of medicine or doctor  
98 of osteopathy who is licensed by the State of Mississippi may  
99 practice acupuncture in this state if he or she meets the  
100 acupuncture educational and training requirements of the board for  
101 physicians and osteopaths and is licensed by the board under this  
102 act.

103       (2) Except for persons licensed by reciprocity under Section  
104 6 of this act, no person shall be licensed to practice acupuncture  
105 unless he has passed an examination and has been found to have the  
106 necessary qualifications as prescribed in the rules adopted by the  
107 board. To be eligible for the examination, an applicant must:

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

109               (b) Have completed at least forty-eight (48) semester  
110 hours of courses from an accredited postsecondary institution,  
111 including basic science courses as determined by the board or if  
112 the applicant is a licensed physician or osteopath, have completed  
113 a course of study in acupuncture that is approved by the board;

114               (c) Be a graduate of an acceptable acupuncture school  
115 or, if the applicant is a licensed physician or osteopath, an  
116 acceptable acupuncture program, whose entrance requirements and

117 course of instruction meet the standards set by the board; and

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

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

122 (ii) An examination fee not exceeding Three  
123 Hundred Fifty Dollars (\$350.00), plus the actual per applicant  
124 cost to the board for purchase of the written and practical  
125 portions of the examination from a national organization approved  
126 by the board; or

127 (iii) A reexamination fee not exceeding Five  
128 Hundred Dollars (\$500.00), plus the actual per applicant cost to  
129 the board for purchase of the written and practical portions of  
130 the examination from a national organization approved by the  
131 board.

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

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

137 (b) Provide supervised patient treatment for at least  
138 two (2) terms of the resident course of instruction;

139 (c) Maintain a course of instruction in  
140 anatomy-histology, bacteriology, physiology, symptomatology,  
141 pathology, meridian and point locations, hygiene, sanitation  
142 practices, and public health; and

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

145           (4) In establishing standards for the entrance requirements  
146 and course of instruction of an acupuncture school, the board may  
147 consider the standards set by the National Accreditation  
148 Commission for Schools and Colleges of Acupuncture and Oriental  
149 Medicine.

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

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

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

169           (3) The board may waive any prerequisite to obtaining a  
170 license for an applicant after reviewing the applicant's  
171 credentials and determining that the applicant holds a valid  
172 license from another state that has license requirements

173 substantially equivalent to those of this state. The initial fee  
174 for a license by reciprocity shall not exceed Four Hundred Dollars  
175 (\$400.00).

176 (4) The board by rule shall prescribe continuing education  
177 requirements, not to exceed fifteen (15) hours annually, as a  
178 condition for renewal of a license. The criteria for those  
179 programs or courses shall be approved by the board. In order to  
180 meet continuing education requirements, prior approval by the  
181 board of the programs or courses is required. All education  
182 programs that contribute to the advancement, extension, or  
183 enhancement of professional skills and knowledge related to the  
184 practice of acupuncture, whether conducted by a nonprofit or  
185 profitmaking entity, are eligible for approval. The board may set  
186 a fee, not to exceed One Hundred Dollars (\$100.00), for each  
187 continuing education provider or program submitted for approval.

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

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

196 (3) Sanitation practices in the practice of acupuncture  
197 shall include:

198 (a) Hands shall be washed with soap and water or other  
199 disinfectant before handling needles and between treatment of  
200 different patients; and

201           (b) Skin in the area of penetration shall be thoroughly  
202 swabbed with alcohol or other germicidal solution before inserting  
203 needles.

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

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

210           (b) Having a license to practice acupuncture revoked,  
211 suspended, or otherwise acted against, including the denial of  
212 licensure, by the licensing authority of another state, territory,  
213 or country.

214           (c) Being convicted or found guilty, regardless of  
215 adjudication, in any jurisdiction of a crime that directly relates  
216 to the practice of acupuncture or to the ability to practice  
217 acupuncture. Any plea of nolo contendere shall be considered a  
218 conviction for purposes of this act.

219           (d) False, deceptive, or misleading advertising or  
220 advertising that claims that acupuncture is useful in curing any  
221 disease.

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

224           (f) Failing to report to the board any person who the  
225 licensee knows is in violation of this act or of the rules of the  
226 board.

227           (g) Aiding, assisting, procuring, employing, or  
228 advising any unlicensed person to practice acupuncture contrary to

229 this act or to a rule of the board.

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

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

238 (j) Exercising influence within a patient-acupuncturist  
239 relationship for purposes of engaging a patient in sexual  
240 activity. A patient shall be presumed to be incapable of giving  
241 free, full, and informed consent to sexual activity with his or  
242 her acupuncturist.

243 (k) Making deceptive, untrue, or fraudulent  
244 representations in the practice of acupuncture or employing a  
245 trick or scheme in the practice of acupuncture when such scheme or  
246 trick fails to conform to the generally prevailing standards of  
247 treatment in the community.

248 (l) Soliciting patients, either personally or through  
249 an agent, through the use of fraud, intimidation, undue influence,  
250 or a form of overreaching or vexatious conduct. A solicitation is  
251 any communication that directly or implicitly requests an  
252 immediate oral response from the recipient.

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

255 (n) Exercising influence on the patient to exploit the  
256 patient for the financial gain of the licensee or of a third

257 party.

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

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

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

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

274           (s) Violating any provision of this act, a rule of the  
275 board, or a lawful order of the board previously entered in a  
276 disciplinary hearing or failing to comply with a lawfully issued  
277 subpoena of the board.

278           (t) Conspiring with another to commit an act, or  
279 committing an act, that would tend to coerce, intimidate, or  
280 preclude another licensee from lawfully advertising his or her  
281 services.

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

284           (v) Failing to comply with state or local regulations

285 or reporting requirements relating to public health and the  
286 control of contagious and infectious diseases.

287 (w) Failing to comply with any rule of the board  
288 relating to health and safety, including, but not limited to, the  
289 sterilization of needles and equipment and the disposal of  
290 potentially infectious materials.

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

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

295 (b) Revocation or suspension of a license.

296 (c) Restriction of practice.

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

300 (e) Issuance of a reprimand.

301 (f) Placement of the acupuncturist on probation for a  
302 period of time and subject to such conditions as the board may  
303 specify.

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

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

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

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

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

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

320 (2) Any person who violates any provision of this section is  
321 guilty of a misdemeanor, and upon conviction thereof, shall be  
322 punished by a fine of not more than Five Hundred Dollars  
323 (\$500.00), or by imprisonment in the county jail for not more than  
324 six (6) months, or both.

325 SECTION 10. This act does not apply to any health care  
326 professional licensed under another statute of this state and  
327 acting within the scope of the license. Nothing in this act shall  
328 be construed to limit, restrict, enlarge or alter the scope of  
329 practice authorized for any health care professional licensed  
330 under another statute of this state.

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

335 (2) All fees and any other monies received by the board,  
336 except for administrative fines imposed under Section 8 of this  
337 act, shall be deposited in a special fund that is created in the  
338 State Treasury and shall be used for the implementation and  
339 administration of this act, when appropriated by the Legislature  
340 for such purpose. The monies in the special fund shall be subject

341 to all provisions of the state budget laws that are applicable to  
342 special fund agencies, and shall be disbursed by the State  
343 Treasurer only upon warrants issued by the State Fiscal Officer  
344 upon requisitions signed by the chairman of the board or another  
345 board member designated by the chairman, and countersigned by the  
346 secretary of the board. Any interest earned on this special fund  
347 shall be credited by the State Treasurer to the fund and shall not  
348 be paid into the State General Fund. Any unexpended monies  
349 remaining in the special fund at the end of a fiscal year shall  
350 not lapse into the State General Fund. Administrative fines  
351 imposed by the board under Section 8 of this act shall be  
352 deposited in State General Fund.

353 SECTION 12. This act shall take effect and be in force from  
354 and after July 1, 2000.