

By: Representative Holland (By Request)

To: Public Health and Human
ServicesHOUSE BILL NO. 458
(As Sent to Governor)

1 AN ACT TO CREATE THE ACUPUNCTURE PRACTICE ACT; TO DEFINE
2 CERTAIN TERMS FOR THE PURPOSES OF THE ACT; TO PROVIDE THAT
3 PRACTITIONERS OF ACUPUNCTURE MAY PERFORM ACUPUNCTURE FOR A PATIENT
4 ONLY IF THE PATIENT HAS RECEIVED A WRITTEN REFERRAL OR
5 PRESCRIPTION FOR ACUPUNCTURE FROM A PHYSICIAN; TO PROVIDE THAT THE
6 PRACTITIONER SHALL PERFORM ACUPUNCTURE UNDER THE GENERAL
7 SUPERVISION OF THE PATIENT'S REFERRING OR PRESCRIBING PHYSICIAN;
8 TO EMPOWER THE STATE BOARD OF MEDICAL LICENSURE TO ADMINISTER THE
9 ACT; TO CREATE THE MISSISSIPPI COUNCIL OF ADVISORS IN ACUPUNCTURE
10 TO ADVISE THE BOARD IN THE ADMINISTRATION OF THIS ACT; TO PROVIDE
11 FOR THE APPOINTMENT OF THE MEMBERS OF THE COUNCIL; TO REQUIRE THAT
12 A PERSON MUST HOLD A LICENSE UNDER THE ACT IN ORDER TO PRACTICE OR
13 HOLD ONESELF OUT AS PRACTICING ACUPUNCTURE; TO SPECIFY THE
14 QUALIFICATIONS FOR LICENSURE AND THE SUBJECTS OF EXAMINATION FOR
15 APPLICANTS FOR LICENSURE; TO PROVIDE FOR RECIPROCITY WITH
16 LICENSEES FROM OTHER STATES; TO REQUIRE CONTINUING EDUCATION FOR
17 LICENSEES; TO PROVIDE THAT THE BOARD SHALL ESTABLISH STANDARDS FOR
18 APPROVAL OF SCHOOLS AND COLLEGES OFFERING EDUCATION AND TRAINING
19 IN THE PRACTICE OF ACUPUNCTURE; TO SPECIFY REPORTING AND RECORD
20 KEEPING REQUIREMENTS AND SANITATION PRACTICES FOR LICENSEES; TO
21 SPECIFY THE GROUNDS FOR DISCIPLINARY ACTION AND THE PENALTIES THAT
22 THE BOARD MAY IMPOSE FOR DISCIPLINE; TO PROVIDE THAT CERTAIN
23 ACTIONS SHALL BE MISDEMEANORS; TO PROVIDE FOR BIENNIAL RENEWAL OF
24 LICENSES; TO ALLOW LICENSES TO BE PLACED ON INACTIVE STATUS; TO
25 AUTHORIZE THE BOARD TO CHARGE REASONABLE FEES; TO PROVIDE THAT
26 FEES AND OTHER FUNDS COLLECTED UNDER THE ACT SHALL BE DEPOSITED
27 INTO A SPECIAL FUND IN THE STATE TREASURY TO THE CREDIT OF THE
28 BOARD; AND FOR RELATED PURPOSES.

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

30 **SECTION 1.** This act shall be known and may be cited as the
31 "Acupuncture Practice Act." Whenever a reference is made to the
32 Acupuncture Practice Act by the provisions of any statute, it is
33 to be construed as referring to the provisions of this act.

34 **SECTION 2.** (1) In its concern with the need to eliminate
35 the fundamental causes of illness and with the need to treat the
36 whole person, the Legislature intends to establish in this act a
37 framework for the practice of the art and science of acupuncture.



38 (2) The purposes of this act are to encourage the effective
39 utilization of the skills relative to practitioners of acupuncture
40 by citizens desiring their services; to remove the existing legal
41 constraints that unnecessarily hinder the effective provision of
42 health care services; and to subject individuals practicing
43 acupuncture to regulation and control as a primary and independent
44 health care profession.

45 **SECTION 3.** As used in this act, unless the context otherwise
46 requires, the following terms shall have the following meanings:

47 (a) "Accredited college of acupuncture" means any
48 college, school or division of a university or college that offers
49 the degree of Master of Science in Oriental Medicine (MSOM) or its
50 equivalent and that is accredited by the Accreditation Commission
51 of Acupuncture and Oriental Medicine (ACAOM).

52 (b) "Acupuncturist" means a person who has received a
53 professional degree from a college of acupuncture and Oriental
54 medicine.

55 (c) "Acupuncturist-patient relationship" means that the
56 acupuncturist has assumed the responsibility for making clinical
57 judgments regarding the health of the patient and the need for
58 medical treatment, and the patient has agreed to follow the
59 acupuncturist's instructions.

60 (d) "Acupuncture practitioner" means a practitioner
61 licensed under this act to practice the techniques of acupuncture
62 in this state and includes the term "acupuncturist."

63 (e) "Advisory council" means the Mississippi Council of
64 Advisors in Acupuncture established in this act.

65 (f) "Board" means the State Board of Medical Licensure
66 established in Section 73-43-1 et seq.

67 (g) "Complementary and integrative therapies" means a
68 heterogeneous group of preventive, diagnostic and therapeutic
69 philosophies and practices, which at the time they are performed
70 may differ from current scientific knowledge, or whose theoretical



71 basis and techniques may diverge from western medicine routinely
72 taught in accredited medical colleges, or both. These therapies
73 include, but are not limited to, acupuncture, acutherapy and
74 acupressure.

75 (h) "Impaired practitioner" means a practitioner who is
76 unable to practice acupuncture with reasonable skill and safety
77 because of a physical or mental disability as evidenced by a
78 written determination from a competent authority or written
79 consent based on clinical evidence, including deterioration of
80 mental capacity, loss of motor skills, or abuse of drugs or
81 alcohol of sufficient degree to diminish the person's ability to
82 deliver competent patient care.

83 (i) "Informed consent" means the acupuncture
84 practitioner has informed the patient, in a manner that would be
85 understood by a reasonable person, of the diagnostic and treatment
86 options, risk assessment and prognosis and has provided the
87 patient with an estimate of the charges for treatment to be
88 rendered and the patient has consented to the recommended
89 treatment.

90 (j) "NCCAOM" means the National Certification
91 Commission for Acupuncture and Oriental Medicine.

92 (k) "Physician" means a doctor of medicine or
93 osteopathy who is legally authorized to practice medicine in the
94 State of Mississippi.

95 (l) "Practice of acupuncture" means:

96 (i) To treat, correct, change, alleviate or
97 prevent disease, illness, pain, deformity, defect, injury or other
98 physical or mental conditions by the techniques of acupuncture,
99 including:

100 1. The administering or applying of an
101 apparatus or other therapeutic technique as defined in this act;

102 or



103 2. The using of complementary and integrative
104 therapies as defined in this act; or

105 3. The rendering of advice or recommendation
106 by any means including telephonic and other electronic
107 communications with regard to any of the above.

108 (ii) To represent, directly or indirectly,
109 publicly or privately, an ability and willingness to do an act
110 described in this paragraph.

111 (iii) To use any title, words, abbreviation or
112 letters in a manner or under circumstances that induce the belief
113 that the person using them is qualified to do any act described in
114 this paragraph.

115 (m) "Techniques of acupuncture" includes acupuncture,
116 moxibustion or heating modalities, cupping, magnets, ion pumping
117 cords, electroacupuncture including electrodermal assessment,
118 application of cold packs, dietary, nutritional and lifestyle
119 counseling, manual therapy (Tui Na), massage, breathing and
120 exercise techniques, the administration of any herb and
121 nutritional supplement and meridian therapy. The terms used in
122 this paragraph are defined as follows:

123 (i) "Acupuncture" means the insertion and
124 manipulation of needles to the body, and the use of Oriental
125 medicine and other modalities and procedures at specific locations
126 on the body, for the prevention or correction of any disease,
127 illness, injury, pain or other condition.

128 (ii) "Cupping" means the heating of air or
129 mechanical creation of suction in a cup, application to specific
130 locations on the body to induce local vasodialation and mechanical
131 expansion of underlying tissue.

132 (iii) "Ion pumping cords" means the application of
133 wires containing diodes to acupuncture needles that have been
134 placed on the body.



135 (iv) "Magnets" means the application of magnets to
136 specific locations on the body.

137 (v) "Electroacupuncture including electrodermal
138 assessment" means the use of electronic biofeedback, and
139 electrostimulation instruments.

140 (vi) "Cold packs" means the application of cold
141 packs and ice to specific locations on the body to reduce heat
142 conditions or inflammation in surface tissues of the body.

143 (vii) "Dietary, nutritional and lifestyle
144 counseling" means in depth patient interviews and counseling to
145 determine whether poor dietary, lifestyle or nutritional practices
146 are a factor in a patient's illness and to educate toward a
147 healthier lifestyle.

148 (viii) "Manual therapy (Tui Na) and Massage" means
149 mobilization of skeletal and soft tissues.

150 (ix) "Breathing and exercise techniques" means the
151 use of Qi Gong and other techniques of therapeutic breathing and
152 exercise.

153 (x) "Administration of herbal and botanical
154 substances" means the administration of herbs of animal, vegetable
155 or mineral origin for health maintenance and the treatment of
156 effects of disease.

157 (xi) "Vitamin, mineral or nutritional supplement"
158 means a nutritional substance, including a concentrate or extract
159 of such a substance.

160 (xii) "Devices for meridian therapy" means all
161 assessment and/or treatment devices for use with acupuncture
162 meridians.

163 **SECTION 4.** All of the following shall apply to an
164 acupuncture practitioner who is licensed to practice in
165 Mississippi:

166 (a) The practitioner shall perform the technique of
167 acupuncture for a patient only if the patient has received a



168 written referral or prescription for acupuncture from a physician.
169 As specified in the referral or prescription, the acupuncturist
170 shall provide reports to the physician on the patient's condition
171 or progress in treatment and comply with the conditions or
172 restrictions on the acupuncturist's course of treatment.

173 (b) The practitioner shall perform the technique of
174 acupuncture under the general supervision of the patient's
175 referring or prescribing physician. General supervision does not
176 require that the acupuncturist and physician practice in the same
177 office.

178 (c) Before treating a patient, the practitioner shall
179 advise the patient that acupuncture is not a substitute for
180 conventional medical diagnosis and treatment and shall obtain the
181 informed consent of the patient.

182 (d) On initially meeting a patient in person, the
183 practitioner shall provide in writing the practitioner's name,
184 business address, and business telephone number, and information
185 on acupuncture, including the techniques that are used.

186 (e) While treating a patient, the practitioner shall
187 not make a diagnosis. If a patient's condition is not improving
188 or a patient requires emergency medical treatment, the
189 practitioner shall consult promptly with a physician.

190 **SECTION 5.** All of the following shall apply to an
191 acupuncture practitioner's supervising physician for a patient:

192 (a) Before making the referral or prescription for
193 acupuncture, the physician shall perform a medical diagnostic
194 examination of the patient or review the results of a medical
195 diagnostic examination recently performed by another physician.

196 (b) The physician shall make the referral or
197 prescription in writing and specify in the referral or
198 prescription all of the following:

199 (i) The physician's diagnosis of the ailment or
200 condition that is to be treated by acupuncture;



201 (ii) A time by which or the intervals at which the
202 practitioner must provide reports to the physician regarding the
203 patient's condition or progress in treatment; and

204 (iii) The conditions or restrictions placed on the
205 practitioner's course of treatment.

206 (c) The physician shall be personally available for
207 consultation with the practitioner. If the physician is not on
208 the premises at which acupuncture is performed, the physician
209 shall be readily available to the practitioner through some means
210 of telecommunication and be in a location that under normal
211 circumstances is not more than sixty (60) minutes travel time away
212 from the location where the practitioner is practicing.

213 **SECTION 6.** (1) There is hereby established the Mississippi
214 Council of Advisors in Acupuncture to aid the State Board of
215 Medical Licensure in administering the provisions of this act.

216 (2) The council shall consist of three (3) persons appointed
217 by the Executive Director of the State Medical Licensure Board to
218 be selected from a list of six (6) nominees of the Mississippi
219 Oriental Medicine Association. Members of the council shall
220 either be acupuncture practitioners who are not medical,
221 osteopathic or chiropractic doctors or surgeons, or medical
222 doctors who are registered to practice acupuncture or qualify as
223 an acupuncture practitioner.

224 (3) The initial members of the council shall be appointed by
225 the Governor for staggered terms as follows: one (1) member shall
226 be appointed for a term ending on July 1, 2011, and two (2)
227 members shall be appointed for terms ending on July 1, 2012.
228 After the expiration of the initial terms, each successor member
229 shall be appointed for a term of three (3) years. A vacancy shall
230 be filled by appointment by the Governor for the remainder of the
231 unexpired term. Council members shall serve until their
232 successors have been appointed and qualified.



233 (4) No council member shall serve more than two (2)
234 consecutive full terms, and any member failing to attend three (3)
235 consecutive meetings after proper notice has been given by the
236 council shall automatically be removed as a council member, unless
237 excused for reasons set forth in council regulations.

238 (5) The Governor may remove any member from the council for
239 neglect of any duty required by law, for incompetence, for
240 improper or unprofessional conduct as defined by board
241 regulations, for conflict of interest, or for any reason that
242 would justify the suspension or revocation of his or her license
243 to practice acupuncture.

244 (6) A majority of the members of the council shall
245 constitute a quorum to conduct business. It shall require an
246 affirmative vote of a majority of those members present at a
247 meeting to take any action or pass any motion. The council shall,
248 not later than September 1, 2009, and annually thereafter in the
249 month of July, hold a meeting and elect from its membership a
250 chairman and vice chairman. The council shall meet at any other
251 times as it deems necessary or advisable by the chairman, a
252 majority of its members, or the Governor. Reasonable notice of
253 all meetings shall be given in the manner prescribed by the Open
254 Meetings Law (Section 25-3-41 et seq.). Members of the council
255 are not liable to civil action for any act performed in good faith
256 in the execution of duties as a council member.

257 (7) Members of the council shall be reimbursed for expenses
258 and mileage as provided in Section 25-3-41, but shall receive no
259 other compensation, perquisite or allowance for service on the
260 council.

261 (8) The council shall report annually to the Legislature
262 statistics regarding the number of licensees, results of the
263 licensing examinations, and violations investigated during the
264 previous year.



265 **SECTION 7.** (1) The State Board of Medical Licensure is
266 hereby empowered, authorized and directed to adopt, amend,
267 promulgate and enforce such rules, regulations and standards
268 governing the practice of acupuncture as may be necessary to
269 further the accomplishment of the purpose of this act, and in so
270 doing shall utilize as the basis thereof the corresponding
271 recommendations of the advisory council.

272 (2) The board's authority and responsibility include the
273 following:

274 (a) Grant, deny, renew, restrict, suspend or revoke
275 licenses to practice acupuncture in accordance with the provisions
276 of this act or other applicable state law;

277 (b) Examine by established protocol the qualifications
278 and fitness of applicants for a license to practice acupuncture in
279 this state;

280 (c) Conduct investigations of suspected violations of
281 this act to determine whether there are sufficient grounds to
282 initiate disciplinary proceedings;

283 (d) Inspect premises and equipment, on a triennial
284 basis and assess an inspection fee in the amount of One Hundred
285 Dollars (\$100.00) per inspection and an additional fee of Fifty
286 Dollars (\$50.00) for each licensed acupuncturist employed by the
287 inspected establishment;

288 (e) Hold hearings on all matters properly brought
289 before the board, to administer oaths, receive evidence, make
290 necessary determinations and enter orders consistent with the
291 findings. The board may require by subpoena the attendance and
292 testimony of witnesses and the production of papers, records or
293 other documentary evidence and commission depositions. The board
294 may designate one or more of its members to serve as its hearing
295 officer. The board shall adopt rules and regulations for hearings
296 before the board and the rules shall afford any person appearing



297 before the board the safeguards of procedural due process. Formal
298 rules of evidence shall not apply;

299 (f) Contract with independent consultants or other
300 appropriate agencies to administer examinations for licensure,
301 according to the provisions of this act, and establish a fee for
302 such examination not to exceed Five Hundred Dollars (\$500.00);

303 (g) Establish and publish a schedule of fees for annual
304 licensing, certification and renewal not to exceed Four Hundred
305 Dollars (\$400.00) annually; and

306 (h) Keep and maintain accurate records of all board
307 business in accordance with state law.

308 The powers enumerated in this section are granted for the
309 purpose of enabling the board to supervise effectively the
310 practice of acupuncture and are to be construed liberally to
311 accomplish this objective.

312 **SECTION 8.** Unless licensed as an acupuncture practitioner
313 under this act, or exempt from licensure under the provisions of
314 this act, no person shall practice or hold himself or herself out
315 as practicing or engaging in the practice of acupuncture, either
316 for compensation or gratuitously.

317 **SECTION 9.** (1) An acupuncture practitioner license
318 authorizes the holder to engage in the practice of acupuncture.

319 (2) This act shall not be construed to limit, interfere
320 with, or prevent any other class of licensed health care
321 professionals from practicing within the scope of their licenses
322 as defined by each profession's state licensing statute.

323 (3) This act shall not be construed to make unlawful the
324 activities of persons involved in research performed under the
325 auspices of a federal or state regulated research institution.

326 (4) The practice and techniques of acupuncture shall not
327 include the practice of physical therapy as defined in the
328 Mississippi Physical Therapy Practice Law, Title 73, Chapter 23 of
329 the Mississippi Code of 1972.



330 **SECTION 10.** (1) No person shall be licensed to practice
331 acupuncture unless he or she has passed an examination and/or has
332 been found to have the necessary qualifications as prescribed in
333 the regulations adopted by the board.

334 (2) Before any applicant is eligible for an examination or
335 qualification, he or she shall furnish satisfactory proof that he
336 or she:

337 (a) Is a citizen or permanent resident of the United
338 States;

339 (b) Has demonstrated proficiency in the English
340 language;

341 (c) Is at least twenty-one (21) years of age;

342 (d) Is of good moral character;

343 (e) Has completed a program of acupuncture and has
344 received a certificate or diploma from an institute approved by
345 the board, according to the provisions of this act;

346 (f) Has completed a clinical internship training as
347 approved by the board; and

348 (g) Has received training in cardiopulmonary
349 resuscitation (CPR).

350 (3) The board may hold an examination at least once a year,
351 and all applicants shall be notified in writing of the date and
352 time of all examinations. The board may use a NCCAOM examination
353 if it deems that national examination to be sufficient to qualify
354 a practitioner for licensure in this state. In no case shall the
355 state's own examination be less rigorous than the nationally
356 recognized examination.

357 (4) In addition to the written examination, if the
358 nationally recognized examination does not provide a suitable
359 practical examination comparable to board standards, the board
360 shall examine each applicant in the practical application of
361 Oriental medical diagnostic and treatment techniques in a manner
362 and by methods that reveal the applicant's skill and knowledge.



363 (5) The board shall require all qualified applicants to be
364 examined in the following subjects:

- 365 (a) Anatomy and physiology;
- 366 (b) Pathology;
- 367 (c) Diagnosis;
- 368 (d) Hygiene, sanitation and sterilization techniques;
- 369 (e) All major acupuncture principles, practices and
370 techniques; and
- 371 (f) Clean Needle Technique Exam.

372 (6) The board shall issue a license to every applicant whose
373 application has been filed with and approved by the board and who
374 has paid the required fees and who either:

375 (a) Has passed the board's written examination and
376 practical examination, with a score of not less than seventy
377 percent (70%) on each examination; or

378 (b) Has achieved a passing score on a board approved
379 nationally recognized examination, which examination includes a
380 written and practical portion, as determined by the board; or

381 (c) Has received certification from a board approved
382 national certification process; or

383 (d) Has achieved a passing score on a board approved
384 nationally recognized written examination and has passed the
385 board's practical examination with a score of not less than
386 seventy percent (70%).

387 (7) The board shall keep a record of all examinations held,
388 together with the names and addresses of all persons taking
389 examinations, and the examination results. Within forty-five (45)
390 days after the examination, the board shall give written notice of
391 the results of the examination to each applicant.

392 **SECTION 11.** The board may, at its discretion, issue a
393 license without examination to an acupuncture practitioner who has
394 been licensed, certified or otherwise formally legally recognized
395 as an acupuncturist or acupuncture practitioner in any state or



396 territory if all three (3) of the following conditions are met to
397 its satisfaction:

398 (a) The applicant meets the requirements of practice in
399 the state or territory in which the applicant is licensed,
400 certified, or registered as an acupuncturist or acupuncture
401 practitioner;

402 (b) The requirements for practice in the state or
403 territory in which the applicant is licensed, certified or
404 registered as an acupuncturist or acupuncture practitioner are at
405 least as stringent as those of this state; and

406 (c) The state or territory in which the applicant is
407 licensed, certified or legally recognized as an acupuncturist or
408 acupuncture practitioner permits an acupuncture practitioner
409 licensed in this state to practice acupuncture or acupuncture in
410 that jurisdiction by credentials examination.

411 **SECTION 12.** (1) The board shall establish, by regulation,
412 mandatory continuing education requirements for acupuncture
413 practitioners licensed in this state, including the following:

414 (a) Each person licensed under this act, whether or not
415 residing within the state, shall complete thirty (30) hours of
416 continuing education within each biennial renewal period, except
417 during the initial biennial renewal period; and

418 (b) Each person not obtaining the required number of
419 hours of continuing education may have his or her license renewed
420 for just cause, as determined by the board, so long as the board
421 requires that the deficient hours of continuing education, and all
422 unpaid fees, are made up during the following renewal period in
423 addition to the current continuing education requirements for the
424 renewal period. If any acupuncture practitioner fails to make up
425 the deficient hours and complete the later renewal period, or
426 fails to make up any unpaid fees, then his or her license shall
427 not be renewed until all fees are paid and all of the required
428 hours are completed and documented to the board.



429 (2) The board shall establish by regulation education
430 standards and record keeping requirements for continuing education
431 providers. A provider of continuing education courses shall apply
432 to the board for approval to offer continuing education courses
433 for credit toward this requirement on a form developed by the
434 board, shall pay a fee covering the cost of approval and for
435 monitoring of the provider by the board. Institutions,
436 associations and individuals providing continuing education shall
437 maintain records of attendance, including sign-in sheets, for a
438 period of three (3) years.

439 **SECTION 13.** (1) The board shall establish standards for
440 approval of schools and colleges offering education and training
441 in the practice of acupuncture.

442 (2) Before approval of an institute of acupuncture, the
443 board shall determine that the institute meets standards of
444 professional education. These standards shall provide that the
445 institute:

446 (a) Require, as a prerequisite to graduation, a program
447 of study of at least two thousand five hundred (2,500) hours;

448 (b) Meet the minimum requirements of a board approved
449 national accrediting body;

450 (c) Require participation in a carefully supervised
451 clinical or internship program; and

452 (d) Confer a certificate, diploma or degree in
453 acupuncture only after personal attendance in classes and clinics.

454 **SECTION 14.** (1) Any acupuncturist validly licensed,
455 certified or registered under prior law of this state shall be
456 deemed as licensed under the provisions of this act.

457 (2) All acupuncturists licensed under this section shall not
458 accept or perform professional responsibilities that the licensee
459 knows or has reason to know that the person is not qualified by
460 training, experience or certification to perform. Violation of
461 this section shall subject the licensee to the revocation or



462 suspension of his or her license. The board shall make
463 regulations on those requirements and shall grant previously
464 licensed, certified or registered acupuncturists qualification on
465 a case-by-case basis.

466 (3) The board shall require each licensee to obtain and
467 maintain an adequate amount of professional liability insurance
468 and provide proof of that insurance to the board.

469 **SECTION 15.** (1) Persons licensed under this act shall be
470 subject to the following reporting requirements:

471 (a) All morbidity, mortality, infectious disease, abuse
472 and neglect reporting requirements of this state;

473 (b) Reporting completion of the required continuing
474 education study to the board with his or her license renewal;

475 (c) Notification of the board in writing of any change
476 of address within thirty (30) days of the change;

477 (d) Notification of the board in writing of termination
478 or temporary closing of the licensee's practice if the cessation
479 of business is expected to be over ninety (90) days, or otherwise
480 limit access to patient records. The licensee shall notify the
481 board upon resuming practice; and

482 (e) Posting his or her license in a conspicuous
483 location in his or her place of practice at all times.

484 (2) Persons licensed under this act shall be subject to the
485 following record keeping requirements:

486 (a) Maintenance of accurate records of each patient
487 that he or she treats. The records shall include the name of the
488 patient, medical history, subjective symptoms, objective findings
489 and treatment rendered;

490 (b) Maintenance of patient records for a period of
491 seven (7) years; and

492 (c) Maintenance of documents proving completion of
493 required continuing education study for a period of three (3)
494 years.



495 **SECTION 16.** (1) Acupuncture practitioners shall comply with
496 all applicable public health laws of this state.

497 (2) Sanitation practices shall include:

498 (a) Hands shall be washed with soap and water or other
499 disinfectant between treatment of different patients;

500 (b) Skin in the area of penetration shall be swabbed
501 with alcohol or other germicidal solution before inserting
502 needles;

503 (c) Needles and other equipment used in the practice of
504 acupuncture shall be sterilized before using;

505 (d) Needles and other hazardous waste shall be disposed
506 of in a manner prescribed by law; and

507 (e) Other sanitation practices shall be observed to
508 insure health and safety of patients, as prescribed by the board.

509 **SECTION 17.** The following acts constitute grounds for which
510 the board may initiate disciplinary actions:

511 (a) Attempting to obtain, or renewing a license to
512 practice acupuncture by bribery or misinterpretation;

513 (b) Having a license to practice acupuncture revoked,
514 suspended, or otherwise acted against, including the denial of
515 licensure by the licensing authority of another state or territory
516 for reasons that would preclude licensure in this state;

517 (c) Being convicted or found guilty, regardless of
518 adjudication, in any jurisdiction of a felony, or a crime of moral
519 turpitude, or a crime that directly relates to acupuncture. For
520 the purposes of this paragraph, a plea of guilty or a plea of nolo
521 contendere accepted by the court shall be considered as a
522 conviction;

523 (d) Advertising, practicing, or attempting to practice
524 under a name other than one's own;

525 (e) The use of advertising or solicitation that is
526 false or misleading;



527 (f) Aiding, assisting, procuring, employing or
528 advertising an unlicensed person to practice acupuncture contrary
529 to this act or a rule of the board;

530 (g) Failing to perform any statutory or legal
531 obligation placed upon an acupuncture practitioner;

532 (h) Making or filing a report that the licensee knows
533 to be false, intentionally or negligently failing to file a report
534 required by state or federal law, willfully impeding or
535 obstructing that filing or inducing another person to do so.
536 Those reports shall include only those that are signed in the
537 capacity of an acupuncture practitioner;

538 (i) Exercising coercion, intimidation or undue
539 influence in entering into sexual relations with a patient, or
540 continuing the patient-practitioner relationship with a patient
541 with whom the licensee has sexual relations, if those sexual
542 relations cause the licensee to perform services incompetently.
543 This paragraph shall not apply to sexual relations between
544 acupuncture practitioners and their spouses;

545 (j) Making deceptive, untrue or fraudulent
546 misrepresentations in the practice of acupuncture;

547 (k) Soliciting patients, either personally or through
548 an agent, through the use of fraud, intimidation or undue
549 influence, or a form of overreaching conduct;

550 (l) Failing to keep written medical records justifying
551 the course of treatment of the patient;

552 (m) Exercising undue influence on the patient to
553 exploit the patient for financial gain of the licensee or of a
554 third party;

555 (n) Being unable to practice acupuncture with
556 reasonable skill and safety to patients by reason of illness or
557 intemperate use of alcohol, drugs, narcotics, chemicals, or any
558 other type of material or as a result of any mental or physical
559 condition;



560 (o) Malpractice or the failure to practice acupuncture
561 to that level of care, skill and treatment that is recognized by a
562 reasonably prudent similar practitioner of acupuncture as being
563 acceptable under similar conditions and circumstances;

564 (p) Practicing or offering to practice beyond the scope
565 permitted by law or accepting or performing professional
566 responsibilities that the licensee knows or has reason to know
567 that he or she is not qualified by training, experience or
568 certification to perform;

569 (q) Delegating professional responsibilities to a
570 person when the licensee delegating those responsibilities knows,
571 or has reason to know, that the person is not qualified by
572 training, experience or licensure to perform them;

573 (r) Violating any provision of this act, a rule of the
574 board, or a lawful order of the board previously entered in a
575 disciplinary hearing or failing to comply with a lawfully issued
576 subpoena of the board;

577 (s) Conspiring with another to commit an act, or
578 committing an act, that coerces, intimidates or precludes another
579 licensee from lawfully advertising or providing his or her
580 services;

581 (t) Fraud or deceit, or gross negligence, incompetence
582 or misconduct in the operation of a course of study;

583 (u) Failing to comply with state, county or municipal
584 regulations or reporting requirements relating to public health
585 and the control of contagious and infectious disease;

586 (v) Failing to comply with any rule of the board
587 relating to health and safety, including, but not limited to,
588 sterilization of equipment and the disposal of potentially
589 infectious materials;

590 (w) Incompetence, gross negligence or other malpractice
591 in the practice of acupuncture;

592 (x) Aiding the unlawful practice of acupuncture;



593 (y) Fraud or dishonesty in the application or reporting
594 of any test for disease;

595 (z) Failure to report, as required by law, or making
596 false or misleading report of, any contagious or infectious
597 disease;

598 (aa) Failure to keep accurate patient records; or

599 (bb) Failure to permit the board or its agents to enter
600 and inspect acupuncture premises and equipment as set by rules
601 promulgated by the board.

602 **SECTION 18.** (1) Disciplinary proceedings under this act
603 shall be conducted in the same manner as other disciplinary
604 proceedings are conducted by the State Board of Medical Licensure.

605 (2) When the board finds any person guilty of any of the
606 acts set forth in Section 17 of this act, it may then enter an
607 order imposing one or more of the following penalties:

608 (a) Refusal to certify to the board an application for
609 licensure;

610 (b) Revocation or suspension of a license;

611 (c) Restriction of practice;

612 (d) Imposition of an administrative fine not to exceed
613 One Thousand Dollars (\$1,000.00) for each count or separate
614 offense;

615 (e) Issuance of a reprimand;

616 (f) Placement of the acupuncture practitioner on
617 probation for a period of time and subject to the conditions as
618 the board may specify.

619 (3) In enforcing this act, upon finding of the board that
620 probable cause exists to believe that the licensee is unable to
621 serve as an acupuncture practitioner because of committing any of
622 the acts set forth in Section 17 of this act or any of the crimes
623 set forth in Section 19 of this act, the board shall have to issue
624 an order to compel the licensee to submit to a mental or physical
625 examination by a physician designated by the board. If the



626 licensee refuses to comply with the order, the board's order
627 directing the examination may be enforced by filing a petition for
628 enforcement in any court of competent jurisdiction. The licensee
629 against whom the petition is filed shall not be named or
630 identified by initials in any public court record or document, and
631 the proceedings shall be closed to the public unless the licensee
632 stipulates otherwise. The board shall be entitled to the summary
633 procedure provided in applicable state law. An acupuncture
634 practitioner affected under this subsection shall at reasonable
635 intervals be afforded an opportunity to demonstrate that he or she
636 can resume the competent practice of acupuncture with reasonable
637 skill and safety of the patients. In any proceeding under this
638 subsection, neither the record of proceedings nor the orders
639 entered by the board shall be used against the acupuncture
640 practitioner in any other proceeding.

641 (4) The board shall not reinstate the license of an
642 acupuncture practitioner, or cause a license to be issued to a
643 person it has deemed to be unqualified, until such time as the
644 board is satisfied that he or she has complied with all the terms
645 and conditions set forth in the final order and that he or she is
646 capable of safely engaging in the practice of acupuncture.

647 **SECTION 19.** (1) It is unlawful for any person to:

648 (a) Hold himself or herself out as an acupuncture
649 practitioner unless licensed as provided in this act;

650 (b) Practice acupuncture, or attempt to practice
651 acupuncture, without an active license or as otherwise permitted
652 by board rule established under the authority of this act;

653 (c) Obtain, or attempt to obtain, a license to practice
654 acupuncture by fraud or misrepresentation; or

655 (d) Permit an employed person to engage in the practice
656 of acupuncture unless the person holds an active license as a
657 practitioner of acupuncture, except as provided by this act.



658 (2) Any person who violates any provision of this section is
659 guilty of a misdemeanor and, upon conviction, shall be punished by
660 a fine of not more than One Thousand Dollars (\$1,000.00), or by
661 imprisonment in the county jail for not more than six (6) months,
662 or both.

663 **SECTION 20.** (1) The board shall establish a program of
664 care, counseling or treatment for impaired acupuncturists.

665 (2) The program of care, counseling or treatment shall
666 include a written schedule of organized treatment, care,
667 counseling, activities or education satisfactory to the board
668 designed for the purposes of restoring an impaired person to a
669 condition by which the impaired person can practice acupuncture
670 with reasonable skill and safety of a sufficient degree to deliver
671 competent patient care.

672 (3) All persons authorized to practice by the board shall
673 report in good faith any acupuncturist they reasonably believe to
674 be an impaired practitioner as defined in Section 3 of this act.

675 **SECTION 21.** (1) No licensed acupuncturist shall disclose
676 any information concerning the licensed acupuncturist's care of a
677 patient except on written authorization or by waiver by the
678 licensed acupuncturist's patient or by court order, by subpoena,
679 or as otherwise provided in this section.

680 (2) Any licensed acupuncturist releasing information under
681 written authorization or other waiver by the patient or under
682 court order, by subpoena, or as otherwise provided by this section
683 shall not be liable to the patient or any other person.

684 (3) The privilege provided by this section shall be waived
685 to the extent that the licensed acupuncturist's patient places the
686 licensed acupuncturist's care and treatment of the patient or the
687 nature and extent of injuries to the patient at issue in any civil
688 criminal proceeding.



689 **SECTION 22.** Each licensee shall be required to pay biennial
690 license renewal fees and meet continuing education requirements as
691 provided in this act.

692 **SECTION 23.** (1) A license that has expired may be renewed
693 at any time within ninety (90) days after its expiration upon
694 filing of an application for renewal on a form provided by the
695 board and payment of the renewal fee in effect on the last regular
696 renewal date. If the license is not renewed within ninety (90)
697 days after its expiration, the acupuncture practitioner, as a
698 condition precedent to renewal, shall pay the renewal fees plus a
699 late fee to be set by the board.

700 (2) A person who fails to renew his or her license within
701 four (4) years after its expiration may not renew that license,
702 and it may not be restored, reissued or reinstated after that
703 time; but that person may apply for and obtain a new license if he
704 or she meets the following requirements:

705 (a) Takes and passes a suitable examination, or
706 demonstrates continued practice and continuing education
707 acceptable to the board; and

708 (b) Pays all fees that would be required if an initial
709 application for licensure were being made.

710 **SECTION 24.** At any time while a license is valid, or expired
711 but not lapsed, the licensee may request that his or her license
712 be placed on inactive status. While on inactive status, the
713 licensee is not subject to fees or continuing education
714 requirements. As a condition of reinstatement, the licensee must
715 satisfy the following requirements:

716 (a) Demonstrate that he or she has not committed any
717 acts or crimes constituting grounds for denial of licensure under
718 any provisions of this act;

719 (b) Pay fees to reactivate status as designated by the
720 board;



721 (c) Meet continuing education requirements equivalent
722 to those that would have been met in the preceding two (2) years;
723 and

724 (d) Establish to the satisfaction of the board that,
725 with due regard for the public interest, he or she is qualified to
726 practice as an acupuncture practitioner.

727 **SECTION 25.** (1) A suspended license is subject to
728 expiration and shall be renewed as provided in this act, but while
729 the license remains suspended, and until it is reinstated, the
730 renewal does not entitle the practice of acupuncture, or any other
731 activity or conduct in violation of the order of the board by
732 which the license was suspended.

733 (2) A revoked license is subject to expiration as provided
734 in this act but it may not be renewed. If it is reinstated after
735 its expiration, the former licensee, as a condition of
736 reinstatement, shall pay a reinstatement fee in an amount equal to
737 the renewal fee in effect on the last regular renewal fee date, if
738 any, accrued at the time of its expiration.

739 **SECTION 26.** (1) The board may charge reasonable fees for
740 the following:

741 (a) Initial application fee for licensing;

742 (b) Written and practical examination not including the
743 cost of the nationally recognized examination;

744 (c) Biennial licensing renewal for acupuncture
745 practitioners;

746 (d) Late renewal more than thirty (30) days, but not
747 later than one (1) year, after expiration of a license, which late
748 fee is in addition to any other fees;

749 (e) Reciprocal licensing fee;

750 (f) Annual continuing education provider registration
751 fee; and



752 (g) Any and all fees to cover reasonable and necessary
753 administrative expenses as established by the Council of Advisors
754 in Acupuncture.

755 (2) All fees shall be set forth in regulations duly adopted
756 by the board.

757 (3) All fees and other funds collected under this act shall
758 be deposited into the special fund of the State Board of Medical
759 Licensure.

760 **SECTION 27.** Sections 1 through 26 of this act shall stand
761 repealed on July 1, 2013.

762 **SECTION 28.** This act shall take effect and be in force from
763 and after July 1, 2009.

