

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 261*

Short Title: Acupuncture License Required.

(Public)

Sponsors: Representatives Colton, Barnhill, Cunningham, Easterling, Gray; Beall, Black, Brubaker, Cole, Culp, Decker, Dickson, Fitch, Flaherty, Gist, Gottovi, Holt, Howard, H. Hunter, Ives, James, Jarrell, Kennedy, Lemmond, Luebke, McAllister, McLawhorn, Mercer, Michaux, Mitchell, Oldham, J. Preston, Stamey, Wainwright, and P. Wilson.

Referred to: Judiciary I.

February 25, 1993

A BILL TO BE ENTITLED
AN ACT REGULATING THE PRACTICE OF ACUPUNCTURE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 30.
"PRACTICE OF ACUPUNCTURE.

"§ 90-450. Purpose.

It is the purpose of this Article to promote the health, safety, and welfare of the people of North Carolina by establishing an orderly system of acupuncture licensing and to provide a valid, effective means of establishing licensing requirements without undue financial burden to the people of North Carolina, through use of a national certifying board which has been established to certify the competency of acupuncturists.

"§ 90-451. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) 'Acupuncture' means a form of health care developed from traditional and modern Chinese medical concepts that employs acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

1 (2) 'Board' means the Acupuncture Licensing Board.

2 (3) 'Practice of acupuncture' means the insertion of acupuncture needles
3 and the application of moxibustion to specific areas of the human body
4 based upon acupuncture diagnosis as a primary mode of therapy.
5 Adjunctive therapies within the scope of acupuncture may include
6 manual, mechanical, thermal, electrical, and electromagnetic
7 treatment, and the recommendation of herbs, dietary guidelines, and
8 therapeutic exercise.

9 **"§ 90-452. Practice of acupuncture without license prohibited.**

10 (a) It is unlawful to practice acupuncture without a license issued pursuant to this
11 Article. This restriction does not apply, however, to the following:

12 (1) A physician licensed pursuant to Article I of this Chapter;

13 (2) A student practicing acupuncture under the direct supervision of a
14 licensed acupuncturist as part of a course of study approved by the
15 Board; or

16 (3) A chiropractor licensed pursuant to Article 8 of this Chapter.

17 It is also unlawful to advertise or otherwise represent oneself as qualified or
18 authorized to practice acupuncture without having the license required by this Article.

19 (b) A violation of this section is a misdemeanor punishable by imprisonment for
20 up to two years, a fine, or both.

21 **"§ 90-453. Acupuncture Licensing Board.**

22 (a) The Acupuncture Licensing Board shall consist of five members, one
23 appointed by the Governor and four by the General Assembly. The four members
24 appointed by the General Assembly must be licensed to practice acupuncture in this
25 State. The persons initially appointed to those positions need not be licensed at the time
26 of selection, but must meet all the qualifications for a license. The member appointed
27 by the Governor must be a layperson who is not employed in a health care profession.

28 (b) Of the members to be appointed by the General Assembly, two shall be
29 appointed upon the recommendation of the Speaker of the House of Representatives and
30 two shall be appointed upon the recommendation of the President Pro Tempore of the
31 Senate.

32 (c) The member appointed initially by the Governor shall serve a term ending on
33 June 30, 1994. Of the General Assembly's initial appointments upon the
34 recommendation of the Speaker of the House of Representatives, one shall serve a term
35 ending June 30, 1995, and the other shall serve a term ending June 30, 1996. Of the
36 General Assembly's initial appointments upon the recommendation of the President Pro
37 Tempore of the Senate, one shall serve a term ending June 30, 1995, and the other shall
38 serve a term ending June 30, 1996. After the initial appointments, all members shall be
39 appointed for terms of three years beginning on July 1. No person may serve more than
40 two consecutive full terms as a member of the Board.

41 (d) At the Board's first meeting each year after the new members have been
42 appointed, the members shall choose one member to chair the Board for the year and
43 another to serve as secretary. No person may chair the Board for more than five
44 consecutive years.

1 (e) The Board shall meet at least once each year within 45 days after the
2 appointment of the new members. The Board shall meet at other times as needed to
3 perform its duties.

4 (f) Members of the Board are entitled to compensation and to reimbursement for
5 travel and subsistence as provided in G.S. 93B-5.

6 **"§ 90-454. Powers and duties of Board.**

7 (a) The Board is authorized to:

8 (1) Issue, suspend, and revoke licenses, collect fees, investigate violations
9 of this Article, and otherwise administer the provisions of this Article.

10 (2) Adopt rules to implement the provisions of this Article.

11 (3) Establish requirements for and approve schools of acupuncture in this
12 State, the requirements for which shall be at least as stringent as the
13 core curricula standards of the Council of College of Acupuncture.

14 (4) Adopt rules concerning continuing education programs and continuing
15 education requirements for license renewal.

16 (5) Issue advisory opinions interpreting this Article.

17 (6) Sue to enjoin violations of G.S. 90-347. An injunction may be issued
18 even though no person has yet been injured as a result of the
19 unauthorized practice.

20 (7) Adopt and use a seal to authenticate official documents of the Board.

21 (8) Employ such personnel as may be needed to carry out its functions,
22 and purchase, lease, rent, sell, or otherwise dispose of personal and
23 real property for the operations of the Board.

24 (9) Expend funds as necessary to carry out the provisions of this Article
25 from revenues generated by fees collected under this Article and
26 interest earned thereon.

27 **"§ 90-455. Qualifications for license; renewal.**

28 (a) To receive a license to practice acupuncture, a person must successfully
29 complete:

30 (1) A licensing examination administered or approved by the Board;

31 (2) A three-year postgraduate acupuncture college or training program
32 approved by the Board; and

33 (3) The Clean Needle Technique Course offered by the Council of
34 Colleges of Acupuncture and Oriental Medicine.

35 (b) The Board shall waive the requirements of subsection (a) and shall grant a
36 license to practice acupuncture to a resident applicant who presents evidence
37 satisfactory to the Board no later than December 31, 1994, of successful completion of
38 training at an approved acupuncture college or a Board-approved apprenticeship or
39 tutorial program.

40 (c) The license to practice acupuncture must be renewed every two years. To
41 renew a license, a person must complete 40 hours of Board-approved Continuing
42 Education Units (CEU) within each renewal period.

43 **"§ 90-456. Prohibited activities.**

1 The Board may deny, suspend, or revoke a license, require remedial education, or
2 issue a letter of reprimand, if a licensed acupuncturist or applicant:

- 3 (1) Engages in false or fraudulent conduct which demonstrates an
4 unfitness to practice acupuncture, including:
5 a. Misrepresentation in connection with an application for a
6 license or an investigation by the Board;
7 b. Attempting to collect fees for services which were not
8 performed;
9 c. False advertising, including guaranteeing that a cure will result
10 from an acupuncture treatment; or
11 d. Dividing, or agreeing to divide, a fee for acupuncture services
12 with anyone for referring the patient.
- 13 (2) Fails to exercise proper control over one's practice by:
14 a. Aiding an unlicensed person in practicing acupuncture;
15 b. Delegating professional responsibilities to a person the
16 acupuncturist knows or should know is not qualified to perform;
17 or
18 c. Failing to exercise proper control over unlicensed personnel
19 working with the acupuncturist in the practice.
- 20 (3) Fails to maintain records in a proper manner by:
21 a. Failing to keep written records describing the course of
22 treatment for each patient;
23 b. Refusing to provide to a patient upon request records that have
24 been prepared for or paid for by the patient; or
25 c. Revealing personally identifiable information about a patient,
26 without consent, unless otherwise allowed by law.
- 27 (4) Fails to exercise proper care for a patient, including:
28 a. Abandoning or neglecting a patient without making reasonable
29 arrangements for the continuation of care; or
30 b. Exercising, or attempting to exercise, undue influence within
31 the acupuncturist/patient relationship by making sexual
32 advances or requests for sexual activity, or making submission
33 to such conduct a condition of treatment.
- 34 (5) Displays habitual substance abuse or mental impairment to such a
35 degree as to interfere with the ability to provide effective treatment.
- 36 (6) Is convicted or pleads guilty or no contest to any crime which
37 demonstrates an unfitness to practice acupuncture.
- 38 (7) Negligently fails to practice acupuncture with the level of skill
39 recognized within the profession as acceptable under such
40 circumstances.
- 41 (8) Willfully violates any provision of this Article or rule of the Board.
- 42 (9) Has had a license denied, suspended, or revoked in another jurisdiction
43 for any reason which would be grounds for such action in this State.

44 **"§ 90-457. Fees.**

1 The Board may charge fees not to exceed:

- 2 (1) Five hundred dollars (\$500.00) for the issuance of an initial license.
3 (2) One hundred dollars (\$100.00) for application fees and examination
4 fees.
5 (3) Three hundred dollars (\$300.00) for renewal of a license.
6 (4) Seventy-five dollars (\$75.00) as an additional amount for late renewal
7 of a license.
8 (5) The cost of administering the examination.

9 **"§ 90-458. Use of titles and display of license.**

10 (a) The titles 'Licensed Acupuncturist' and 'Acupuncturist' may be used by, and
11 only by, persons licensed under this Article. Possession of a license under this Article
12 does not by itself entitle a person to identify himself or herself as a doctor or physician.

13 (b) Each person licensed to practice acupuncture shall post the license in a
14 conspicuous location at the person's place of practice.

15 **"§ 90-459. Third-party reimbursements.**

16 Nothing in this Article shall be construed to require direct third-party reimbursement
17 to persons licensed under this Article."

18 Sec. 2. G.S. 90-18 reads as rewritten:

19 **"§ 90-18. Practicing without license; practicing defined; penalties.**

20 No person shall practice medicine or surgery, or any of the branches thereof, nor in
21 any case prescribe for the cure of diseases unless he shall have been first licensed and
22 registered so to do in the manner provided in this Article, and if any person shall
23 practice medicine or surgery without being duly licensed and registered, as provided in
24 this Article, he shall not be allowed to maintain any action to collect any fee for such
25 services. The person so practicing without license shall be guilty of a misdemeanor, and
26 upon conviction thereof shall be fined not less than fifty dollars (\$50.00) nor more than
27 one hundred dollars (\$100.00), or imprisoned at the discretion of the court for each and
28 every offense.

29 Any person shall be regarded as practicing medicine or surgery within the meaning
30 of this Article who shall diagnose or attempt to diagnose, treat or attempt to treat,
31 operate or attempt to operate on, or prescribe for or administer to, or profess to treat any
32 human ailment, physical or mental, or any physical injury to or deformity of another
33 person: Provided, that the following cases shall not come within the definition above
34 recited:

- 35 (1) The administration of domestic or family remedies in cases of
36 emergency.
37 (2) The practice of dentistry by any legally licensed dentist engaged in the
38 practice of dentistry and dental surgery.
39 (3) The practice of pharmacy by any legally licensed pharmacist engaged
40 in the practice of pharmacy.
41 (4) The practice of medicine and surgery by any surgeon or physician of
42 the United States army, navy, or public health service in the discharge
43 of his official duties.

- 1 (5) The treatment of the sick or suffering by mental or spiritual means
2 without the use of any drugs or other material means.
- 3 (6) The practice of optometry by any legally licensed optometrist engaged
4 in the practice of optometry.
- 5 (7) The practice of midwifery as defined in G.S. 90-178.2.
- 6 (8) The practice of chiropody by any legally licensed chiropodist when
7 engaged in the practice of chiropody, and without the use of any drug.
- 8 (9) The practice of osteopathy by any legally licensed osteopath when
9 engaged in the practice of osteopathy as defined by law, and especially
10 G.S. 90-129.
- 11 (10) The practice of chiropractic by any legally licensed chiropractor when
12 engaged in the practice of chiropractic as defined by law, and without
13 the use of any drug or surgery.
- 14 (11) The practice of medicine or surgery by any reputable physician or
15 surgeon in a neighboring state coming into this State for consultation
16 with a resident registered physician. This proviso shall not apply to
17 physicians resident in a neighboring state and regularly practicing in
18 this State.
- 19 (12) Any person practicing radiology as hereinafter defined shall be
20 deemed to be engaged in the practice of medicine within the meaning
21 of this Article. 'Radiology' shall be defined as, that method of medical
22 practice in which demonstration and examination of the normal and
23 abnormal structures, parts or functions of the human body are made by
24 use of X ray. Any person shall be regarded as engaged in the practice
25 of radiology who makes or offers to make, for a consideration, a
26 demonstration or examination of a human being or a part or parts of a
27 human body by means of fluoroscopic exhibition or by the shadow
28 imagery registered with photographic materials and the use of X rays;
29 or holds himself out to diagnose or able to make or makes any
30 interpretation or explanation by word of mouth, writing or otherwise of
31 the meaning of such fluoroscopic or registered shadow imagery of any
32 part of the human body by use of X rays; or who treats any disease or
33 condition of the human body by the application of X rays or radium.
34 Nothing in this subdivision shall prevent the practice of radiology by
35 any person licensed under the provisions of Articles 2, 7, 8, and 12A
36 of this Chapter.
- 37 (13) Any act, task or function performed by an assistant to a person
38 licensed as a physician by the Board of Medical Examiners when
39 a. Such assistant is approved by and annually registered with the
40 Board as one qualified by training or experience to function as
41 an assistant to a physician, except that no more than two
42 assistants may be currently registered for any physician, and

- 1 b. Such act, task or function is performed at the direction or under
2 the supervision of such physician, in accordance with rules and
3 regulations promulgated by the Board, and
4 c. The services of the assistant are limited to assisting the
5 physician in the particular field or fields for which the assistant
6 has been trained, approved and registered;
7 Provided that this subdivision shall not limit or prevent any physician
8 from delegating to a qualified person any acts, tasks or functions
9 which are otherwise permitted by law or established by custom.
- 10 (14) The practice of nursing by a registered nurse engaged in the practice of
11 nursing and the performance of acts otherwise constituting medical
12 practice by a registered nurse when performed in accordance with
13 rules and regulations developed by a joint subcommittee of the Board
14 of Medical Examiners and the Board of Nursing and adopted by both
15 boards.
- 16 (15) The practice of acupuncture by a licensed acupuncturist in accordance
17 with the provisions of Article 30 of this Chapter."
18 Sec. 3. This act is effective upon ratification.