

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 303
SENATE BILL 422

AN ACT REGULATING THE PRACTICE OF ACUPUNCTURE AND ADDING THE PRACTICE OF DIETETICS/NUTRITION TO THE LIST OF PRACTICES THAT ARE NOT CONSIDERED PRACTICING MEDICINE WITHOUT A LICENSE.

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.

"§ 90-451. Definitions.

The following definitions apply in this Article:

- (1) Acupuncture. – A form of health care developed from traditional and modern Chinese medical concepts that employ acupuncture diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.
- (2) Board. – The Acupuncture Licensing Board.
- (3) Practice of acupuncture or practice acupuncture. – The insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon acupuncture diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include massage, mechanical, thermal, electrical, and electromagnetic treatment and the recommendation of herbs, dietary guidelines, and therapeutic exercise.

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

(a) Unlawful Acts. – It is unlawful to engage in the practice of acupuncture without a license issued pursuant to this Article. It is unlawful to advertise or otherwise represent oneself as qualified or authorized to engage in the practice of acupuncture without having the license required by this Article. A violation of this subsection is a misdemeanor punishable by imprisonment for up to two years, a fine, or both.

(b) Exemptions. – This section shall not apply to any of the following persons:

- (1) A physician licensed under Article 1 of this Chapter.
- (2) A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the Board.
- (3) A chiropractor licensed under Article 8 of this Chapter.

"§ 90-453. Acupuncture Licensing Board.

(a) Membership. – The Acupuncture Licensing Board shall consist of six members, two appointed by the Governor and four by the General Assembly. The four members appointed by the General Assembly shall be licensed to practice acupuncture in this State and shall not be licensed physicians under Article 1 of this Chapter. The persons initially appointed to those positions by the General Assembly need not be licensed at the time of selection but shall have met the qualifications under G.S. 90-455(a)(4) and (5). Of the Governor's two appointments, one shall be a layperson who is not employed in a health care profession; the other shall be a physician licensed under Article 1 of this Chapter who has successfully completed 200 hours of Category I American Medical Association credit in medical acupuncture training as recommended by the American Academy of Medical Acupuncture. Of the members to be appointed by the General Assembly, two shall be appointed upon the recommendation of the Speaker of the House of Representatives, and two shall be appointed upon the recommendation of the President Pro Tempore of the Senate. The members appointed by the General Assembly must be appointed in accordance with G.S. 120-121.

Members serve at the pleasure of the appointing authority. Vacancies shall be filled by the original appointing authority and the term shall be for the balance of the unexpired term. A vacancy by a member appointed by the General Assembly must be filled in accordance with G.S. 120-122.

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

(c) Meetings. – The Board shall meet at least once each year within 45 days after the appointment of the new members. At the Board's first meeting each year after the new members have been appointed, the members shall elect a chair of the Board and a secretary for the year. No person shall chair the Board for more than five consecutive years. The Board shall meet at other times as needed to perform its duties. A majority of the Board shall constitute a quorum for the transaction of business.

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

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

The Board may:

- (1) Deny, issue, suspend, and revoke licenses in accordance with rules adopted by the Board, and may collect fees, investigate violations of this Article, and otherwise administer the provisions of this Article.
- (2) Sponsor or authorize other entities to offer continuing education programs, and approve continuing education requirements for license renewal.
- (3) Establish requirements for and approve schools of acupuncture in this State. The requirements shall be at least as stringent as the core curricula standards of the Council of Colleges of Acupuncture and Oriental Medicine.
- (4) Sue to enjoin violations of G.S. 90-452. The court may issue an injunction even though no person has yet been injured as a result of the unauthorized practice.
- (5) Adopt and use a seal to authenticate official documents of the Board.
- (6) Employ personnel as may be needed to carry out its functions, and purchase, lease, rent, sell, or otherwise dispose of personal and real property for the operations of the Board.
- (7) Expend funds as necessary to carry out the provisions of this Article from revenues and interest generated by fees collected under this Article.
- (8) Adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.
- (9) Establish practice parameters to become effective July 1, 1995. The practice parameters shall be applicable to general and specialty areas of practice. The Board shall review the parameters on a regular basis and shall require licensees to identify parameters being utilized, the plan of care, and treatment modalities utilized in accordance with the plan of care.

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

(a) Initial License. – To receive a license to practice acupuncture, a person shall meet all of the following requirements:

- (1) Submit a completed application as required by the Board.
- (2) Submit any fees required by the Board.
- (3) Successfully complete a licensing examination administered or approved by the Board.
- (4) Successfully complete a three-year postgraduate acupuncture college or training program approved by the Board.
- (5) Successfully complete the Clean Needle Technique Course offered by the Council of Colleges of Acupuncture and Oriental Medicine.

(b) Renewal of License. – The license to practice acupuncture shall be renewed every two years. To renew a license, a person shall complete 40 hours of Board-approved Continuing Education Units within each renewal period.

"§ 90-456. Prohibited activities.

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

- (1) Engages in false or fraudulent conduct which demonstrates an unfitness to practice acupuncture, including any of the following activities:
 - a. Misrepresentation in connection with an application for a license or an investigation by the Board.
 - b. Attempting to collect fees for services which were not performed.
 - c. False advertising, including guaranteeing that a cure will result from an acupuncture treatment.
 - d. Dividing, or agreeing to divide, a fee for acupuncture services with anyone for referring a patient.
- (2) Fails to exercise proper control over one's practice by any of the following activities:
 - a. Aiding an unlicensed person in practicing acupuncture.
 - b. Delegating professional responsibilities to a person the acupuncturist knows or should know is not qualified to perform.
 - c. Failing to exercise proper control over unlicensed personnel working with the acupuncturist in the practice.
- (3) Fails to maintain records in a proper manner by any of the following:
 - a. Failing to keep written records describing the course of treatment for each patient.
 - b. Refusing to provide to a patient upon request records that have been prepared for or paid for by the patient.
 - c. Revealing personally identifiable information about a patient, without consent, unless otherwise allowed by law.
- (4) Fails to exercise proper care for a patient, including either of the following:
 - a. Abandoning or neglecting a patient without making reasonable arrangements for the continuation of care.
 - b. Exercising, or attempting to exercise, undue influence within the acupuncturist/patient relationship by making sexual advances or requests for sexual activity or making submission to such conduct a condition of treatment.
- (5) Displays habitual substance abuse or mental impairment so as to interfere with the ability to provide effective treatment.
- (6) Is convicted of or pleads guilty or no contest to any crime which demonstrates an unfitness to practice acupuncture.
- (7) Negligently fails to practice acupuncture with the level of skill recognized within the profession as acceptable under such circumstances.
- (8) Willfully violates any provision of this Article or rule of the Board.

- (9) Has had a license denied, suspended, or revoked in another jurisdiction for any reason which would be grounds for this action in this State.

"§ 90-457. Fees.

The Board may establish fees, not to exceed the following amounts, to cover the cost of services rendered:

- (1) For an application and an examination, one hundred dollars (\$100.00).
- (2) For issuance of a license, five hundred dollars (\$500.00).
- (3) For renewal of a license, three hundred dollars (\$300.00).
- (4) For the late renewal of a license, an additional late fee of seventy-five dollars (\$75.00).

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

The titles 'Licensed Acupuncturist' or 'Acupuncturist' shall be used only by persons licensed under this Article. Possession of a license under this Article does not by itself entitle a person to identify oneself as a doctor or physician. Each person licensed to practice acupuncture shall post the license in a conspicuous location at the person's place of practice.

"§ 90-459. Third-party reimbursements.

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

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

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

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

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

- (1) The administration of domestic or family remedies in cases of emergency.
- (2) The practice of dentistry by any legally licensed dentist engaged in the practice of dentistry and dental surgery.
- (3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

- (4) The practice of medicine and surgery by any surgeon or physician of the United States army, navy, or public health service in the discharge of his official duties.
- (5) The treatment of the sick or suffering by mental or spiritual means without the use of any drugs or other material means.
- (6) The practice of optometry by any legally licensed optometrist engaged in the practice of optometry.
- (7) The practice of midwifery as defined in G.S. 90-178.2.
- (8) The practice of chiropody by any legally licensed chiropodist when engaged in the practice of chiropody, and without the use of any drug.
- (9) The practice of osteopathy by any legally licensed osteopath when engaged in the practice of osteopathy as defined by law, and especially G.S. 90-129.
- (10) The practice of chiropractic by any legally licensed chiropractor when engaged in the practice of chiropractic as defined by law, and without the use of any drug or surgery.
- (11) The practice of medicine or surgery by any reputable physician or surgeon in a neighboring state coming into this State for consultation with a resident registered physician. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.
- (12) Any person practicing radiology as hereinafter defined shall be deemed to be engaged in the practice of medicine within the meaning of this Article. 'Radiology' shall be defined as, that method of medical practice in which demonstration and examination of the normal and abnormal structures, parts or functions of the human body are made by use of X ray. Any person shall be regarded as engaged in the practice of radiology who makes or offers to make, for a consideration, a demonstration or examination of a human being or a part or parts of a human body by means of fluoroscopic exhibition or by the shadow imagery registered with photographic materials and the use of X rays; or holds himself out to diagnose or able to make or makes any interpretation or explanation by word of mouth, writing or otherwise of the meaning of such fluoroscopic or registered shadow imagery of any part of the human body by use of X rays; or who treats any disease or condition of the human body by the application of X rays or radium. Nothing in this subdivision shall prevent the practice of radiology by any person licensed under the provisions of Articles 2, 7, 8, and 12A of this Chapter.
- (13) Any act, task or function performed by an assistant to a person licensed as a physician by the Board of Medical Examiners when
 - a. Such assistant is approved by and annually registered with the Board as one qualified by training or experience to function as

- an assistant to a physician, except that no more than two assistants may be currently registered for any physician, and
- b. Such act, task or function is performed at the direction or under the supervision of such physician, in accordance with rules and regulations promulgated by the Board, and
 - c. The services of the assistant are limited to assisting the physician in the particular field or fields for which the assistant has been trained, approved and registered;

Provided that this subdivision shall not limit or prevent any physician from delegating to a qualified person any acts, tasks or functions which are otherwise permitted by law or established by custom.

- (14) The practice of nursing by a registered nurse engaged in the practice of nursing and the performance of acts otherwise constituting medical practice by a registered nurse when performed in accordance with rules and regulations developed by a joint subcommittee of the Board of Medical Examiners and the Board of Nursing and adopted by both boards.
- (15) The practice of dietetics/nutrition by a licensed dietitian/nutritionist under the provisions of Article 25 of this Chapter.
- (16) The practice of acupuncture by a licensed acupuncturist in accordance with the provisions of Article 30 of this Chapter."

Sec. 3. The Acupuncture Licensing Board shall waive the requirements of G.S. 90-455, as enacted by this act, and shall grant a license to practice acupuncture to a resident applicant who had established residency in North Carolina as of January 1, 1993, and presents evidence satisfactory to the Board no later than December 31, 1994, of successful completion of training at an approved acupuncture college or a Board-approved training program.

Sec. 4. If any portion of this act shall be declared invalid or unconstitutional, the declaration shall not affect the validity and constitutionality of the remaining portions.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1993.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives