

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

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SENATE BILL 422*
Introduced and Referred 3/11/93
Judiciary I Committee Substitute Adopted 4/14/93

Short Title: Acupuncture License Required.

(Public)

Sponsors:

Referred to: Finance.

February 25, 1993

1 A BILL TO BE ENTITLED
2 AN ACT REGULATING THE PRACTICE OF ACUPUNCTURE.
3 The General Assembly of North Carolina enacts:

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

"ARTICLE 30.
"PRACTICE OF ACUPUNCTURE.

8 **"§ 90-450. Purpose.**

9 It is the purpose of this Article to promote the health, safety, and welfare of the
10 people of North Carolina by establishing an orderly system of acupuncture licensing and
11 to provide a valid, effective means of establishing licensing requirements.

12 **"§ 90-451. Definitions.**

13 The following definitions apply in this Article:

- 14 (1) 'Acupuncture' means a form of health care developed from traditional
15 and modern Chinese medical concepts that employ acupuncture
16 diagnosis and treatment, and adjunctive therapies and diagnostic
17 techniques, for the promotion, maintenance, and restoration of health
18 and the prevention of disease.
- 19 (2) 'Board' means the Acupuncture Licensing Board.
- 20 (3) 'Practice of acupuncture' or 'practice acupuncture' means the insertion
21 of acupuncture needles and the application of moxibustion to specific
22 areas of the human body based upon acupuncture diagnosis as a

1 primary mode of therapy. Adjunctive therapies within the scope of
2 acupuncture may include manual, mechanical, thermal, electrical and
3 electromagnetic treatment, and the recommendation of herbs, dietary
4 guidelines, and therapeutic exercise.

5 **"§ 90-452. Practice of acupuncture without license prohibited.**

6 (a) It is unlawful to engage in the practice of acupuncture without a license
7 issued pursuant to this Article.

8 (b) It is unlawful to advertise or otherwise represent oneself as qualified or
9 authorized to engage in the practice of acupuncture without having the license required
10 by this Article.

11 (c) This section shall not apply to any of the following persons:

12 (1) A physician licensed under Article 1 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.

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

17 (d) A violation of this section is a misdemeanor punishable by imprisonment for
18 up to two years, a fine, or both.

19 **"§ 90-453. Acupuncture Licensing Board.**

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

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

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

39 (d) Vacancies shall be filled by the original appointing authority, and the term
40 shall be for the balance of the unexpired term.

41 (e) Members serve at the pleasure of the appointing authority.

42 (f) At the Board's first meeting each year after the new members have been
43 appointed, the members shall elect a chair of the Board and a secretary for the year. No
44 person shall chair the Board for more than five consecutive years.

1 (g) 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 (h) A majority of the Board shall constitute a quorum for the transaction of
5 business.

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

8 **"§ 90-454. Powers and duties of Board.**

9 (a) The Board may:

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

12 (2) Adopt rules to implement the provisions of this Article, including
13 continuing education programs and continuing education requirements
14 for license renewal.

15 (3) Establish requirements for and approve schools of acupuncture in this
16 State. The requirements shall be at least as stringent as the core
17 curricula standards of the Council of College of Acupuncture.

18 (4) Issue advisory opinions interpreting this Article.

19 (5) Sue to enjoin violations of G.S. 90-452. An injunction may be issued
20 even though no person has yet been injured as a result of the
21 unauthorized practice.

22 (6) Adopt and use a seal to authenticate official documents of the Board.

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

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

29 **"§ 90-455. Qualifications for license; renewal.**

30 (a) To receive a license to practice acupuncture, a person shall successfully
31 complete all of the following:

32 (1) A licensing examination administered or approved by the Board.

33 (2) A three-year postgraduate acupuncture college or training program
34 approved by the Board.

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

37 (b) The Board shall waive the requirements of subsection (a) of this section and
38 shall grant a license to practice acupuncture to a resident applicant who had established
39 residency in North Carolina as of January 1, 1993, and presents evidence satisfactory to
40 the Board no later than December 31, 1994, of successful completion of training at an
41 approved acupuncture college or a Board-approved apprenticeship or tutorial program.

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

1 **§ 90-456. Prohibited activities.**

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

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

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

3 **"§ 90-457. Fees.**

4 The Board may charge fees not to exceed:

5 (1) Five hundred dollars (\$500.00) for the issuance of an initial license.

6 (2) One hundred dollars (\$100.00) for application fees and examination
7 fees.

8 (3) Three hundred dollars (\$300.00) for renewal of a license.

9 (4) Seventy-five dollars (\$75.00) as an additional amount for late renewal
10 of a license.

11 (5) The cost of administering the examination.

12 **"§ 90-458. Use of titles and display of license.**

13 (a) The titles 'Licensed Acupuncturist' or 'Acupuncturist' shall be used only by
14 persons licensed under this Article. Possession of a license under this Article does not
15 by itself entitle a person to identify oneself as a doctor or physician.

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

18 **"§ 90-459. Third-party reimbursements.**

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

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

22 **"§ 90-18. Practicing without license; practicing defined; penalties.**

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

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

38 (1) The administration of domestic or family remedies in cases of
39 emergency.

40 (2) The practice of dentistry by any legally licensed dentist engaged in the
41 practice of dentistry and dental surgery.

42 (3) The practice of pharmacy by any legally licensed pharmacist engaged
43 in the practice of pharmacy.

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

1 an assistant to a physician, except that no more than two
2 assistants may be currently registered for any physician, and

3 b. Such act, task or function is performed at the direction or under
4 the supervision of such physician, in accordance with rules and
5 regulations promulgated by the Board, and

6 c. The services of the assistant are limited to assisting the
7 physician in the particular field or fields for which the assistant
8 has been trained, approved and registered;

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

12 (14) The practice of nursing by a registered nurse engaged in the practice of
13 nursing and the performance of acts otherwise constituting medical
14 practice by a registered nurse when performed in accordance with
15 rules and regulations developed by a joint subcommittee of the Board
16 of Medical Examiners and the Board of Nursing and adopted by both
17 boards.

18 (15) The practice of acupuncture by a licensed acupuncturist in accordance
19 with the provisions of Article 30 of this Chapter."

20 Sec. 3. If any portion of this act shall be declared invalid or unconstitutional,
21 the declaration shall not affect the validity and constitutionality of the remaining
22 portions.

23 Sec. 4. This act is effective upon ratification.