



**House
Legislative
Analysis
Section**

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REGISTER ACUPUNCTURISTS

House Bills 4832 and 4833 as passed by the
House
Second Analysis (9-6-90)

Sponsor: Rep. Kay M. Hart
Committee: Public Health

RECEIVED

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THE APPARENT PROBLEM:

Acupuncture has been used for centuries in Asia, but was relatively unknown to most Americans until President Nixon's trip to China in 1972, when New York Times correspondent James Reston had an emergency appendectomy and was treated successfully with acupuncture for post-operative pain. The following year, a federal National Institutes of Health (NIH) panel found that acupuncture seems to give effective, temporary pain relief for some conditions. The NIH also funded research on acupuncture for a couple of years, though since 1975 it hasn't awarded any grants to study acupuncture. By 1984, according to a Medical World News report, some 2,000 medical doctors were practicing acupuncture in the United States, while by 1987 another 5,000 non-medical practitioners were certified in the 16 states that then issued acupuncture licenses (the number of states licensing acupuncturists has since risen to more than 20). Third-party reimbursement for acupuncture treatment also has occurred. For example, a survey of 11,000 people who sought treatment at the Center for Traditional Acupuncture (in Columbia, MD) indicated that insurance covered 68 percent of the treatments (up from 23 percent in 1981). Blue Cross and Blue Shield policy varies from state to state, but in Michigan some Administrative Service Contract (ASC) groups do choose to offer acupuncture as one of their benefits. The federal Food and Drug Administration still officially considers acupuncture an experimental procedure, so Medicaid and Medicare don't cover it.

Though acupuncture is used in other countries for a wide variety of conditions and diseases, the most promising medical research on acupuncture in the United States has been on using acupuncture for chronic pain relief (especially chronic headaches and backaches), in drug detoxification programs (including tobacco smokers, alcoholics, and cocaine and heroin addicts), and treatment for paralysis in stroke victims. Eight states have funded acupuncture drug detoxification programs (California, Florida, Illinois, Minnesota, Montana, New York, Oregon, and Pennsylvania), and acupuncture is being used for drug detoxification programs in other states (including Texas and Massachusetts) and countries (including England, Hungary, the Netherlands, and India). American athletes also have used acupuncture to control pain, and the International Olympic Committee has approved acupuncturists as therapists on national teams.

Acupuncture also has been used to block the acute pain that accompanies surgical operations. Since the late 1950s, the Chinese have regularly used acupuncture anesthesia, which avoids the post-operative depression caused by chemical anesthetics, in about 30 percent of all their major surgical operations. In the United States, this use is much less common, though acupuncture has been used (alone or combined with drugs) to provide anesthesia in surgery. For example, since the early 1970s the chief of anesthesiology at Delaware County Memorial Hospital in Pennsylvania, Dr.

Alvin Gaary, has used acupuncture in State Law Library surgical procedures (including one on his daughter for knee surgery). Depending on the patient, Dr. Gaary also has used acupuncture (alone or combined with drugs) as an anesthetic for hernia repair, setting fractures, caesarean sections, and mastectomies.

Despite its long history as a therapeutic modality elsewhere in the world, acupuncture is available to people in Michigan only through the referral of a licensed physician. In addition, there is no way for people wishing to avail themselves of acupuncture treatment to independently judge a particular practitioner's qualifications. Finally, some highly trained acupuncturists reportedly have been subjected to legal suits because their profession is not recognized in law. Legislation has been introduced that would address these concerns.

THE CONTENT OF THE BILLS:

The bills would create a state registration system for acupuncturists, allow people to go to acupuncturists under certain circumstances without having to get a physician's referral, and set registration fees.

House Bill 4832 would amend the Public Health Code (MCL 333.16131 et al.) to prohibit people from calling themselves "acupuncturists" or "registered acupuncturists" unless they were registered with the state. The bill would define "acupuncturist," create a board of acupuncture in the Department of Public Health, and specify certain registration requirements.

"Acupuncturist" would be defined as someone who was registered under the bill and who prevented (or "modified the perception of") pain or who normalized physiological functions (including pain control) by stimulating "a certain point or points on or near the surface of the human body by the insertion of needles, application of probe tips, or noninvasive means." Acupuncturists also could use superficial heat and herbal remedies, and could electrically stimulate needles.

Acupuncturists could treat people for weight control and for substance abuse or other addictions without a referral from a physician. In addition, acupuncturists could treat people for other physical conditions if the condition had already been treated or diagnosed by a licensed physician. Acupuncturists would be prohibited from doing medical diagnoses (or from attempting "to identify underlying medical problems or etiologies").

The Michigan Board of Acupuncture. The bill would create a five-member board of acupuncture consisting of one public member, one licensed physician (either MD or DO), and three non-physician acupuncturist members who met the Public Health Code's general requirements for board

H.B. 4832 & 4833 (9-6-90)

members (which includes a minimum age of 18, "good moral character," residency in the state, and having a current license or registration under certain circumstances).

The board would be responsible for establishing registration requirements, and could adopt by reference requirements set by a national certifying organization. The bill would say that, at the very least, requirements would have to include:

- successfully completing a board-accredited acupuncture training program,
- passing a board-administered examination in acupuncture,
- a year's supervised experience in "an organized health care setting" ("or other arrangement as established by the board"), and
- three years education at an accredited "acupunctural education institution."

"Grandparent" provision. For two years after the registration requirements were established, the board of acupuncture would be required to register individuals who had been practicing acupuncture for at least three of the five years immediately preceding their application for registration.

Tie-bar. House Bill 4832 is tie-barred to House Bill 4833, which would amend the State License Fee Act (MCL 338.52) to set the following fees for acupuncturist applications, examinations, and annual registrations: Application processing fee \$20 Examination fee \$50 Annual registration fee \$50

BACKGROUND INFORMATION:

Acupuncture theory. According to the theory behind acupuncture, acupuncture works by balancing the body's vital energy (qi, pronounced "chee"), which is believed to circulate through the body along pathways called "meridians." Disease or pain occurs when this balance of energy has been disturbed, either by an excess or deficiency of energy. Stimulating the proper acupuncture points (by inserting acupuncture needles at the appropriate places along the energy pathways) can rechannel the energy, thereby correcting the imbalance. (Although Western medical researchers are not sure how to translate this theory into Western medical terms, Western medical research on acupuncture has suggested that the efficacy of acupuncture can be attributed to the fact that the proper insertion of needles in the right places stimulates the release of certain brain chemicals, especially those that block pain and relieve tension.

Acupuncture treatments. Acupuncture treatment usually consists of the insertion of sterilized stainless steel needles through the skin at specific points on the body. The needles — which are not the same as hypodermic needles — are extremely thin (for example, an acupuncture needle will fit inside the barrel of a hypodermic needle); the patient feels only a slight sensation when a needle is inserted. When the needle reaches the acupuncture point beneath the skin, a characteristic sensation of heaviness or tingling often is experienced by the patient. (There are no known negative side effects from properly done acupuncture, though after a treatment patients sometimes will report a feeling of mild euphoria, relaxation, or general well-being.)

The number of needles used varies according to the problem being treated, though an average of eight to twelve acupuncture points are used during each treatment. After insertion, the needles may be stimulated to produce

a stronger effect, either by hand or electrically. The needles usually are left in place for 20 to 30 minutes, after which time they are easily and painlessly removed and discarded.

Acupuncture status and education in the United States.

Currently, between 20 and 25 states reportedly license acupuncturists, with licensure legislation pending in another 12 states. Many of the states which license acupuncturists license them as independent health care practitioners, and many of the states that require licensure reportedly use the standards and the examination required by the National Commission for the Certification of Acupuncturists (NCCA). The NCCA is based in Washington, D.C., and certifies acupuncturists to practice throughout the country. In order to become nationally certified, acupuncturists must have graduated from an accredited college or university specializing in acupuncture medicine (as well as passing the qualifying examination). There are about 20 such schools in California alone, as well as in other parts of the country. The nearest school to Michigan is the Midwest Center for the Study of Oriental Medicine in Chicago. In addition to studying the principles and procedures of traditional Chinese medicine and acupuncture, an acupuncturist also must study anatomy, physiology, pathology, and clinical medicine.

Legal status in Michigan. No Michigan statutes specifically govern the practice of acupuncture. However, in 1975, an attorney general's opinion (OAG 4832 of 1975, issued prior to the 1978 revision of the Public Health Code) held that the practice of acupuncture clearly fell within the statutory definition of the practice of medicine and was, therefore, under the jurisdiction of the Medical Practice Board. In that same opinion, the attorney general also found that acupuncture was within the scope of practice of osteopaths, but not within that of chiropractors.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would result in state costs of an undetermined amount. (3-15-90)

ARGUMENTS:

For:

Because of the 1975 attorney general's opinion, acupuncturists who are not themselves licensed physicians but who have undergone years of training in their discipline can practice in Michigan only under the supervision of a medical doctor or an osteopath. This not only interferes with consumers' right to choose their health care practitioners (and often makes acupuncture treatment difficult or impossible to obtain), it also makes no sense to have those trained in Western medical arts supervising experts in an Eastern healing art that proceeds from entirely different premises about human dysfunction and healing measures. Why should someone have to get a physician's permission to use acupuncture to stop smoking or lose weight or deal with chronic pain that Western medicine has been unable to alleviate? And why should Western-trained physicians who may know nothing about acupuncture be allowed to decide when a patient can and cannot see an acupuncturist? The time when physicians were the gate-keepers to all health care is long past, as is the view that physicians should make all of their patients' health care decisions. The bill would benefit the public by allowing them direct access to acupuncturists and would reduce costs by eliminating the need for physician referrals for all acupuncture treatment (while at the same time ensuring that matters that are properly medical would remain under medical supervision).

For:

While consumers should have direct access to acupuncturists, and while more competition in health care could bring cost savings, nevertheless some consumer protection should remain in place. Supposedly, consumers now are protected from unqualified acupuncturists by the requirement that an acupuncturist either be a licensed physician or be under the supervision of a licensed physician. But just because a physician is licensed does not mean he or she is qualified to practice acupuncture, nor can a physician who is ignorant of acupuncture adequately judge whether or not an acupuncturist is qualified. By registering acupuncturists as independent practitioners and requiring them to meet certain standards, the bills would assure the public that certain minimum levels of education and training had been attained by all registered acupuncturists.

For:

The potential benefits of acupuncture — including the promising research into the use of acupuncture to treat crack cocaine addiction — are so great that acupuncture should be legitimized as a treatment modality. If acupuncture does indeed prove effective in treating crack cocaine addiction, without the use of other drugs or any resulting adverse side effects, its use in the "war on drugs" could be invaluable. A treatment with no ill side effects would be particularly useful in helping pregnant women who are addicted.

Response: Acupuncture already can be used as a treatment modality in Michigan; it need only be prescribed by a licensed physician to be used, which surely is not an unreasonable requirement.

Reply:

It seems needlessly meddlesome to require people to get their physician's permission before using acupuncture to try to stop smoking tobacco. And in light of the federal surgeon general's remarks comparing tobacco addiction to heroin addiction, surely if people should be able to use acupuncture to treat an addiction to a legal drug (that is, tobacco) they should be able to use acupuncture to treat other addictions.

Against:

Only licensed physicians are qualified to supervise someone's health care. To allow the public direct access to acupuncturists could seriously endanger some people's health and even their lives. What if the chronic pain is the result of an undiagnosed cancer or other serious disease? Or what if the addictive behavior has some underlying medical condition? Medical conditions may be missed by acupuncturists and pain control through acupuncture may serve only to mask the underlying problem. Also, some people allege that unsterilized acupuncture needles themselves have been responsible for the spread of AIDS and hepatitis. Acupuncture should be kept under physician supervision.

Response: First of all, it is questionable that only (and all) licensed physicians are qualified to supervise an individual's health care. Health care consumers today are much better informed and much more interested in taking responsibility for their own health care (including choosing their health care providers) than even twenty years ago. Secondly, however, it is disingenuous to suppose that concerns about financial competition are not part of the opposition by physicians to allowing acupuncturists to be independent practitioners. But from the point of view of

the patient, more, not less, competition in the health care field can be beneficial and cost effective. In addition, properly trained acupuncturists, like some other non-physician health care professionals, can recognize when they need to refer clients for medical care. Acupuncturists do not wish to replace Western medical practitioners; they want to be able, instead, to practice what basically can be a complementary healing art. Finally, the concern about the spread of infection, while understandable (since any time needles are reused can be an opportunity for infection), is not borne out by statistics. Acupuncture needles, when properly made and used, are sterilized during their manufacture, packaged in sealed containers, and discarded (or resterilized) after being used (much as currently is done with medical instruments). Reportedly, in California (which has the greatest number of licensed acupuncturists in the nation and which employs some of the strictest licensing standards), a study by the University of California at Los Angeles showed that there was not a single case of infection (let alone AIDS or hepatitis) in more than 30,000 acupuncture treatments. In the hands of properly trained professionals — which these bills would ultimately ensure — acupuncture is an extremely safe therapeutic procedure.

Reply:

Even granted that patients should be able to make many health care decisions, laypeople, by definition, are not qualified to make medical diagnoses. The bills allow people to get acupuncture for conditions already treated or diagnosed by physicians, but require no proof (other than the patient's word) that a person going to an acupuncturist actually has seen a physician for his or her physical problem. What is to prevent people from self-diagnosing and simply lying to their acupuncturist about having seen a physician? This lack of mandated proof (such as a physician's affidavit) could prove to be extremely dangerous for the patient in question.

Against:

The Public Health code already contains a mechanism — the Health Occupations Council — for deciding licensing and registration questions. The council is required by law (MCL 333.16151 et al.) to evaluate proposals for the licensure or registration of existing and "emerging" health occupations, and to recommend whether and how these occupations should be regulated. Specific criteria for licensure and registration are given in the health code, with licensure being based on the "single purpose of promoting safe and competent health care for the public" and registration focusing on "providing essential information to the public to increase its ability to make informed choices about the consumption of health services." Those who want acupuncturists registered should go to the Health Occupations Council, rather than requesting special legislation.

Response: For whatever reasons, the licensing and registration functions of the Health Occupations Council envisioned by the 1978 health code apparently have not worked, and groups seeking licensing or registration (such as counselors, occupational therapists, and social workers) have gone directly to the legislature. Establishing registration for acupuncturists should not be held up just because the Health Occupations Council has not functioned as planned.

POSITIONS:

The Michigan Acupuncture Coalition supports the bills. (8-13-90)

The Michigan Association of Acupuncture and Oriental Medicine supports the bills. (8-27-90)

Substance Abuse Recovery (a proprietary organization in Flint that uses acupuncture in conjunction with conventional therapy to treat substance abuse) supports the bills. (8-30-90)

The Michigan Physical Therapy Association does not oppose the bills. (8-9-90)

Blue Cross/Blue Shield of Michigan does not oppose the bills. (8-6-90)

The Michigan Hospital Association does not oppose the bills. (8-6-90)

The Department of Licensing and Regulation has no position on the bills. (8-27-90)

The Michigan State Medical Society has no position on the bills. (8-9-90)

The Department of Commerce does not support the bills. (8-6-90)

The Michigan Consumers Council opposes the bills. (8-31-90)

The Michigan Association of Osteopathic Physicians and Surgeons opposes the bills. (9-5-90)

The Michigan Chiropractic Council opposes the bills. (8-31-90)