



**House
Legislative
Analysis
Section**

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LICENSE ACUPUNCTURISTS

RECEIVED

House Bill 4832 (Substitute H-2)

House Bill 4833

as introduced

First Analysis (2-15-90)

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Mich. State Law Library

Sponsor: Rep. Kay M. Hart

Committee: Public Health

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 more than 100 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 require acupuncturists to be licensed by the state, would allow patients to go to acupuncturists for certain conditions (basically for pain control, substance abuse therapy, or weight control) without physician referral, and would set various licensing fees.

House Bill 4832 would amend the Public Health Code (MCL 333.16131 et al.) to require that individuals wishing to practice acupuncture be licensed by the state, to define the practice of acupuncture, to create a Michigan Board of Acupuncture, and to protect the titles "acupuncturist" and "licensed acupuncturist." "Practice of acupuncture" would be defined as "the stimulation of 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 to prevent or modify the perception of pain or to normalize physiological functions, including pain control and may include the employment of supplementary techniques such as the use of superficial heat, electrical stimulation of needles, or herbal remedies." The bill would specify that the practice of acupuncture would not include "the identification of underlying medical problems or etiologies or the establishment of medical diagnoses." Acupuncturists could treat substance abuse or other addictions, weight control, and other physical conditions for which the patient had previously consulted a licensed physician. An acupuncturist could not treat diseases or dysfunctions without a referral from a licensed physician.

Beginning 18 months after the bills were enacted, people would be prohibited from practicing acupuncture unless licensed (or otherwise authorized) by the bill. The bill would specifically exempt from its provisions people practicing massage as defined in the Occupational Code and other certified or licensed professionals practicing their

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profession as authorized by law, so long as that professional did not claim to be a licensed acupuncturist.

The Michigan Board of Acupuncture. The bill would create a five-member board consisting of one public member, one licensed physician (either MD or DO), and three members, appointed by the governor, who either are nationally certified in acupuncture or have actively practiced or taught acupuncture for at least two years immediately preceding their appointment to the board. The board would be responsible for establishing licensure requirements, for promulgating rules for licenses (including limited licenses), and for approving certain acupuncturists to supervise limited license acupuncturists.

Licensure. In promulgating rules establishing requirements for licensure, as the general duties of a board under the health code requires, the Board of Acupuncture would be allowed to adopt by reference requirements set by a national organization that certifies (or otherwise approves) acupuncturists. In addition, the board would have to adopt as requirements for licensure the successful completion both of a board-approved training program and of an examination administered by the board. After completing the training program and passing the exam, the applicant would be required to complete one year of supervised experience, practicing under a limited license.

"Grandparent" provisions. For up to two years after the board promulgated rules establishing requirements for licensure, the board would be required to grant a license to anyone who had been practicing acupuncture in the state for at least three out of the five years immediately preceding that person's application, provided that the applicant passed the required examination.

Supervisory acupuncturists. An acupuncturist who supervised the year of required supervised practice would have to hold a license other than a limited license, have filed an application with the board, have practiced for at least three consecutive years in the state immediately prior to application, and have been found qualified by the board to supervise limited licensure acupuncturists. Supervising acupuncturists could supervise no more than two limited license acupuncturists at a time, and at least would annually submit to the board the name of each limited license acupuncturist he or she was supervising.

House Bill 4833 would amend the State License Fee Act (MCL 338.52) to set the following fees for someone licensed or seeking to be licensed to practice acupuncture:

Application processing fee	\$20
Examination fee	\$50
Annual license fee	\$50
Temporary license fee	\$25
Annual limited license fee	\$25

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:

Fiscal information is not available. (2-12-90)

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 gatekeepers 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 licensing acupuncturists as independent practitioners, the bills would assure the public that certain minimum standards of education and training had been met by all licensed acupuncturists.

Response: In fact, licensure likely would serve more to protect acupuncturists than the general public. The Public Health Code does say that a health profession should be licensed if licensure would promote "safe and competent health care for the public" and if "the public cannot be effectively protected by means other than licensure" (MCL 333.16155). But licensure also defines an exclusive scope of practice (that is, people who are not licensed are prohibited from performing any of the acts reserved for licensees), and no evidence has been presented that the public currently is being harmed (indeed, proponents of the bill emphasize the safety of the procedure). So the

people most likely to benefit from licensure would be acupuncturists, not the safety of the public (since there appears to be no danger in the first place). Some people also argue that since the existing system of licensure does not adequately protect consumers from unqualified health professionals (as the existence of the current House Ad Hoc Committee on Physician Licensure attests), it makes no sense to claim that licensure will protect people from unqualified acupuncturists and add yet another category of health professional to the already existing inadequate system of licensure. Acupuncturists should not be licensed.

Reply:

Even granted that the lack of licensure for acupuncturists may not pose a danger to the public, and that licensure currently does not guarantee the performance of licensed health professionals, the fact remains that consumers' access to acupuncture is needlessly (and perhaps to their detriment) limited. Licensure would give consumers direct access to acupuncture and would at least guarantee minimum standards of training.

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 legitimate (since any time needles are reused can be an opportunity for infection), would be taken care of by the bills. Acupuncture needles, when properly made and used, are sterilized during their manufacture, packaged in sealed containers, and discarded after being used. Reportedly, in California (which has the greatest number of licensed acupuncturists in the nation and employs some of the strictest licensing standards), a study by UCLA 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.

Against:

Licensure, at the very least, should guarantee a minimum of knowledge and training, but as now written the bills would exempt licensed physicians from the licensing requirements. A medical or osteopathic degree no more qualifies someone to practice acupuncture than does any other non-acupuncture training. In order to guarantee certain minimum knowledge on the part of people allowed to practice acupuncture in the state, physicians should not be exempted from the bills' provisions. This would help eliminate the phenomenon of the so-called "weekend wonders" (physicians who attend a weekend workshop in acupuncture and then proceed to advertise acupuncture as one of the services they provide) and would allow consumers to more adequately evaluate the claims of anyone offering acupuncture services.

Against:

Licensing yet another health professional ultimately will only escalate already skyrocketing health care costs, since, as everyone knows, licensing generally is the first step to gaining insurance coverage. Containment of health care costs has been a major public concern for a number of years. An increase in licensed services eventually means an increase in billable services — which results in increased health care costs for employers and the general public. There already is a glut of health care providers vying for increases in services and claiming to provide high-quality care for lower prices. But an increase in providers ultimately lessens, rather than increases, cost effectiveness, since existing providers receiving third party reimbursement for their services do not reduce the costs of their services to balance the increase in costs for new services. There already are too many providers in competition for health insurance income; the number of providers (and services) should be reduced, not increased.

Response: The public should not be deprived of valuable — and sometimes even unique — health care services just because existing reimbursable providers do not adjust their billable services to match new, less costly services that should replace some existing services.

Against:

The Public Health Code already contains a mechanism — the Health Occupations Council — for deciding licensing questions. The Health Occupations Council is required by law to review new groups of health professionals seeking licensure and to recommend whether licensing or some alternative form of regulation should be established. If acupuncturists want to be licensed, they should go through the existing process.

Response: In recent years the council has somehow been bypassed in regulatory questions by health professions, and in the face of an ineffective regulation mechanism health professions have had to turn to the legislature. The licensing of acupuncturists should not be held up just because the council has not met its mandated duties.

Against:

The recently issued Governor's Report on Health Care Cost Management called for a two-year moratorium on licensing any additional health professions and the development of a comprehensive process to protect the public from inappropriate health care. No additional health professions — not just acupuncture — should be licensed until these recommendations have had time to be implemented.

Response: The potential benefits of acupuncture — including the promising research into the use of acupuncture to treat crack cocaine addiction — are so great that the legitimization of acupuncture should proceed despite this two-year moratorium. If acupuncture does indeed prove effective in treating crack cocaine addiction, without the use of other drugs or any resulting adverse side effects, just think of what this would mean for the possibilities for helping pregnant women who are addicted.

POSITIONS:

The Michigan Acupuncture Coalition supports the bills. (2-9-90)

The Michigan Association of Acupuncture and Oriental Medicine supports the bills. (2-13-90)

Substance Abuse Recovery (a proprietary organization in Flint that uses acupuncture in conjunction with conventional therapy to treat substance abuse) supports the bills. (2-13-90)

The Michigan Chiropractic Society (formerly the Michigan State Chiropractic Association, the Michigan Alliance of Chiropractic Physicians, and the Michigan Fellowship of Straight Chiropractors) supports the concept of the bills. (2-12-90)

The Michigan Physical Therapy Association does not oppose the bills. (2-12-90)

The Department of Licensing and Regulation has no position on the bills at this time. (2-9-90)

The Department of Commerce does not support the bills. (2-12-90)

The Michigan Consumers Council opposes the bills. (2-9-90)

The Michigan State Medical Society opposes the bills. (2-12-90)

The Michigan Association of Osteopathic Physicians and Surgeons opposes the bills. (2-12-90)

Blue Cross/Blue Shield of Michigan opposes the bills. (2-12-90)

The Michigan Chiropractic Council opposes the bills. (2-12-90)

The Michigan Hospital Association opposes the licensure of any additional health professionals at this time. (2-9-90)

The Economic Alliance for Michigan opposes the licensure of any additional health professionals at this time. (2-12-90)