

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Wingfield**

A Bill

HOUSE BILL 1707

For An Act To Be Entitled

8 "AN ACT TO CREATE A BOARD OF ORIENTAL MEDICINE; AND FOR
9 OTHER PURPOSES."

Subtitle

12 "TO CREATE A BOARD OF ORIENTAL MEDICINE."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16 SECTION 1. Definitions. As used in this act:

17 (a) "acupuncture" means the insertion, manipulation, and removal of
18 needles from the body, and the use of other modalities and procedures at
19 specific locations on the body, for the prevention, cure, or correction of any
20 disease, illness, injury, pain, or other condition by controlling and
21 regulating the flow and balance of energy and functioning of the patient to
22 restore and maintain health;

23 (b) "board" means the board of oriental medicine;

24 (c) "moxibustion" means the use of heat on, or above, or on acupuncture
25 needles, at specific locations on the body for the prevention, cure, or
26 correction of any disease, illness, injury, pain, or other condition;

27 (d) "doctor of oriental medicine" means a physician licensed under this
28 act to practice oriental medicine in this state and includes the terms
29 oriental medical doctor, oriental medical physician, doctor of acupuncture,
30 acupuncture physician, acupuncture practitioner and acupuncturist; and

31 (e) "oriental medicine" means the distinct system of primary health
32 care that uses all allied diagnostic and treatment techniques of oriental
33 medicine, both traditional and modern, for the prevention or correction of
34 disease, illness, injury, pain or other condition by controlling and
35 regulating the flow and balance of energy and functioning of the patient to

1 restore and maintain health. As used in this subsection "techniques of
2 oriental medicine" include, but are not limited to, acupuncture, moxibustion
3 or other heating modalities, cupping, magnets, cold laser, electroacupuncture
4 including electrodermal assessment, application of cold packs, ion pumping
5 cord, dietary, nutritional and lifestyle counseling, manual therapy (tui na),
6 massage, breathing and exercise techniques, and the prescription or
7 administration of any herbal medicine, homeopathic medicine, vitamin, mineral
8 or nutritional supplement, and the ordering of diagnostic imaging or
9 laboratory testing.

10

11 SECTION 2. License required. No person shall, after January 1, 1994,
12 practice oriental medicine, either for compensation or gratuitously unless
13 licensed under this act. *Provided, any person who is licensed as a*
14 *chiropractic physician and who meets the requirements of this act for*
15 *licensure to practice oriental medicine may be licensed to practice oriental*
16 *medicine by the State Board of Chiropractic Examiners.*

17

18 SECTION 3. Exemptions. (a) Nothing in this act is intended to limit,
19 interfere with or prevent any other class of licensed health care
20 professionals from practicing within the scope of their licenses as defined by
21 each profession_s state licensing statutes, but they shall not hold themselves
22 out to the public or any private group of business by any title or description
23 of services that includes the term oriental medicine, acupuncture, or
24 acupuncturist unless they are licensed under this act. *Provided however,*
25 *physicians licensed by the State Medical Board or the State Board of*
26 *Chiropractic Examiners may practice acupuncture and hold themselves out as*
27 *providing that service without being subject to licensing under this act*
28 *provided that their licensing board regulates the practice of acupuncture by*
29 *their licensees.*

30 (b) The provisions of this act shall not be construed to make unlawful
31 the activities of persons involved in research performed under the auspices of
32 an institutional review board.

33

34 SECTION 4. Board created - appointment - officers - compensation.

35 (a) There is created the Board of Oriental Medicine. The board shall

1 consist of five (5) persons appointed by the Governor. Three (3) members of
2 the board shall be doctors of oriental medicine, who are not licensed by the
3 State Medical Board, and who have practiced oriental medicine for at least
4 five (5) years and are licensed in accordance with the Oriental Medicine
5 Practice Act, except those doctors of oriental medicine first appointed to the
6 board need not be licensed. Two (2) members shall be appointed to represent
7 the public and shall not have practiced oriental medicine in this, or any
8 other jurisdiction, nor have any financial interest in the occupation
9 regulated.

10 (b) The initial members of the board shall be appointed by the Governor
11 for staggered terms as follows: one (1) member_s term shall expire after one
12 (1) year, two (2) members_ terms shall expire after two (2) years, and two (2)
13 members_ terms shall expire after three (3) years. Successors shall be
14 appointed for three (3) year terms. Vacancies shall be filled by appointment
15 by the Governor for the unexpired term. Board members shall serve until their
16 successors have been appointed and qualified.

17 (c) The board shall, within sixty (60) days of the effective date of
18 this act, and annually thereafter, hold a meeting and elect from its
19 membership a chairman and vice chairman. The board shall meet at such other
20 times as deemed necessary and advisable by the chairman, a majority of its
21 members or the Governor. Reasonable notice of all meetings shall be given in
22 the manner prescribed by the board.

23 (d) The Governor may remove any member from the board for neglect of
24 any duty required by law, for incompetence, for improper or unprofessional
25 conduct as defined by board regulations, for conflict of interest, or for any
26 reason that would justify the suspension or revocation of his license to
27 practice oriental medicine.

28 (e) No board member shall serve more than two (2) consecutive full
29 terms, and any member failing to attend three (3) consecutive meetings after
30 proper notice given by the board shall automatically be removed as a board
31 member, unless excused for reasons set forth in board regulations.

32 (f) Members of the board shall be reimbursed for expenses and mileage
33 from funds appropriated therefor and shall receive no other compensation,
34 perquisite or allowance.

35 (g) Members of the board are not liable to civil action for any act

1 performed in good faith in the execution of duties as a board member.

2 (h) A person who is required to register with the state as a lobbyist
3 may not serve on the board.

4 (i) A person who is, or has been in the preceding two (2) years, on the
5 faculty of a school which is subject to review by the board, may not serve on
6 the board.

7

8 SECTION 5. Authority to make rules. The board is authorized to make
9 rules which are necessary to carry out the duties and authority conferred upon
10 the board by this act.

11

12 SECTION 6. Board procedures. (a) A majority of the members of the
13 board shall constitute a quorum to conduct business.

14 (b) It shall require an affirmative vote of a majority of those present
15 at a meeting of the board to pass any motion.

16

17 SECTION 7. Personnel. (a) The board shall employ personnel necessary
18 for the administration of this act.

19 (b) The board may appoint an executive officer who does not have any
20 financial interest in the profession of oriental medicine.

21

22 SECTION 8. Powers and duties. The board shall:

23 (a) enforce the provisions of this act;

24 (b) adopt, publish and file, in accordance with state law, all rules
25 and regulations for the implementation and enforcement of the provisions of
26 this act;

27 (c) administer oaths and take testimony on any matters within the
28 board_s jurisdiction;

29 (d) keep an accurate record of all its meetings, receipts and
30 disbursements;

31 (e) conduct examinations, or contract with persons or entities to
32 conduct examinations. Within forty-five (45) days after an examination, the
33 board shall give written notice of the results of his examination to each
34 applicant;

35 (f) keep a record of licensure in which the names, addresses, and

1 license numbers of all doctors of oriental medicine shall be recorded together
2 with a record of all license renewals, suspensions and revocations;

3 (g) grant, deny, renew, suspend or revoke licenses to practice oriental
4 medicine for any cause stated in this act;

5 (h) adopt standards for applicants wishing to take the licensing
6 examination; and

7 (i) have the power to employ agents or attorneys.

8

9 SECTION 9. Funds created, fees. (a) All fees and other funds
10 collected under this act shall be deposited into a financial institution
11 designated by the board which shall use the same to defray the costs of
12 administration of that act.

13 (b) The board may charge the following fees:

14 (1) initial application for licensing, a fee not to exceed two
15 hundred fifty dollars (\$250.00);

16 (2) written and practical examination not including the cost of
17 the nationally recognized examination, a fee not to exceed three hundred fifty
18 dollars (\$350.00);

19 (3) biennial licensing renewal for doctors of oriental medicine,
20 a fee not to exceed four hundred dollars (\$400.00);

21 (4) late renewal more than thirty (30) days, but not later than
22 one (1) year, after expiration of a license, which late fee is in addition to
23 any other fees, a fee not to exceed one hundred dollars (\$100.00);

24 (5) reciprocal licensing, a fee not to exceed seven hundred fifty
25 dollars (\$750.00);

26 (6) annual continuing education provider registration, a fee not
27 to exceed two hundred dollars (\$200.00);

28 (7) any and all fees to cover reasonable and necessary
29 administrative expenses.

30

31 SECTION 10. Qualifications for examination. (a) No person shall be
32 licensed to practice oriental medicine unless he has passed an examination and
33 has been found to have the necessary qualifications as prescribed in the
34 regulations adopted by the board.

35 (b) Before any applicant shall be eligible for an examination, he shall

1 furnish satisfactory proof to the board that:

2 (1) he is of good moral character;

3 (2) he has completed a program in oriental medicine and has
4 received a certificate or diploma from an institute approved by the board.

5 The training received in the program shall be for a period of not less than
6 four (4) academic years, and shall include a minimum of eight hundred (800)
7 hours of supervised clinical practice;

8 (3) he is at least eighteen (18) years of age;

9 (4) he is a citizen of the United States and/or a legal resident;
10 and

11 (5) he has demonstrated proficiency in the English language.

12

13 SECTION 11. Requirements for institutes. Prior to approval of an
14 institute of oriental medicine, the board shall determine that the institute
15 meets standards of professional education. These standards shall provide that
16 the institute:

17 (a) require, as a prerequisite to graduation, a program of study of at
18 least four (4) academic years and two thousand five hundred (2,500) hours;

19 (b) meet the minimum requirements of a board approved national
20 accrediting body;

21 (c) require participation in a carefully supervised clinical or
22 internship program; and

23 (d) confer a certificate, diploma, or degree in oriental medicine only
24 after personal attendance in classes and clinics.

25

26 SECTION 12. Examinations. (a) The board shall require all qualified
27 applicants to be examined on the following subjects:

28 (1) anatomy and physiology;

29 (2) pathology;

30 (3) diagnosis;

31 (4) hygiene, sanitation, and sterilization techniques;

32 (5) oriental medical principles, practices and techniques;

33 (6) herbal medicine.

34 (b) The board may hold an examination at least once each year, and all
35 applicants shall be notified in writing of the date and time of all

1 examinations. The board may utilize a nationally recognized examination if it
2 deems the national exam is sufficient to qualify a practitioner for licensure
3 in this state. In no case shall the state_s own exam be less rigorous than
4 the nationally recognized examination.

5 (c) In addition to the written examination, if the nationally
6 recognized examination does not provide a suitable practical examination
7 comparable to board standards, the board shall examine each applicant in the
8 practical application of oriental medical diagnostic and treatment techniques
9 in such a manner and by such methods as shall reveal the applicant_s skill and
10 knowledge.

11 (d) The board shall issue a license to every applicant whose
12 application has been filed with and approved by the board and who has paid the
13 required fees and who either:

14 (1) has passed the board_s written examination and practical
15 examination, with a score of not less than seventy percent (70%) on each
16 examination; or

17 (2) has achieved a passing score on a board-approved nationally
18 recognized examination, which examination includes a written and a practical
19 portion, as determined by the board; or

20 (3) has achieved a passing score on a board-approved nationally
21 recognized written examination and has passed the board_s practical
22 examination with a score of not less than seventy percent (70%).

23 (e) Board members shall not have access to questions used in the
24 licensing examination.

25 (f) Students who are within six (6) months of graduation may sit for
26 the examination but may not receive a license until all requirements for
27 licensure are met.

28

29 SECTION 13. Reciprocal licensing requirements. The board may, in its
30 discretion, issue a license without examination to a doctor of oriental
31 medicine who has been licensed, certified or otherwise formally legally
32 recognized as an acupuncturist or doctor of oriental medicine in any state or
33 territory if all three (3) of the following conditions are met:

34 (1) the applicant meets the requirements of practice in the state or
35 territory in which the applicant is licensed, certified, or registered as an

1 acupuncturist or doctor of oriental medicine;

2 (2) the requirements for practice in the state or territory in which
3 the applicant is licensed, certified or registered as an acupuncturist or
4 doctor of oriental medicine are similar to those of this state; and

5 (3) the state or territory in which the applicant is licensed,
6 certified or legally recognized as an acupuncturist or doctor of oriental
7 medicine permits a doctor of oriental medicine licensed in this state to
8 practice acupuncture or oriental medicine in that jurisdiction by credentials
9 examination.

10

11 SECTION 14. Display of license. A person licensed under this act shall
12 post his license in a conspicuous location in his place of practice at all
13 times.

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15 SECTION 15. License renewal. Each licensee shall be required to pay
16 biennial license renewal fees and meet continuing education requirements as
17 outlined in this act.

18

19 SECTION 16. Renewal of expired or lapsed certificate. (a) A
20 certificate which has expired may be renewed at any time within ninety (90)
21 days after its expiration upon filing of an application for renewal on a form
22 provided by the board and payment of the renewal fee in effect on the last
23 regular renewal date. If the certificate is not renewed within ninety (90)
24 days after its expiration, the doctor of oriental medicine, as a condition
25 precedent to renewal, shall pay double the renewal fee.

26 (b) A person who fails to renew his certificate within three (3) years
27 after its expiration may not renew it, and it may not be restored, reissued,
28 or reinstated thereafter; but that person may apply for and obtain a new
29 certificate if he meets the following requirements:

30 (1) takes and passes the examination; and

31 (2) pays all of the fees that would be required if any initial
32 application for licensure were being made.

33

34 SECTION 17. Inactive license. At any time while a license is valid, or
35 expired but not lapsed, the licensee may request that his license be placed on

1 inactive status. While on inactive status, the licensee is not subject to
2 fees or continuing education requirements. As a condition of reinstatement,
3 the licensee must satisfy the following requirements:

4 (1) demonstrate that he has not committed any acts or crimes
5 constituting grounds for denial of licensure under any provisions of this act;

6 (2) pay fees equivalent to those which would have been paid in the
7 preceding three (3) years;

8 (3) meet continuing education requirements equivalent to those which
9 would have been met in the preceding three (3) years; and

10 (4) establish to the satisfaction of the board that, with due regard
11 for the public interest, he is qualified to practice as a doctor of oriental
12 medicine.

13

14 SECTION 18. Continuing education. The board shall establish, by
15 regulation, mandatory continuing education requirements for doctors of
16 oriental medicine licensed in this state, including but not limited to the
17 following:

18 (1) each person licensed under this act shall complete twenty (20)
19 hours of continuing education within each biennial renewal period, except
20 during the initial biennial licensing period;

21 (2) licensees residing out of state shall comply with the continuing
22 education requirements;

23 (3) providers of continuing education shall be approved by and
24 monitored by the board;

25 (4) if the board determines that a licensee has not obtained the
26 required number of hours of continuing education with just cause, it may renew
27 that license and require that the deficient hours of continuing education be
28 made up during the following renewal period in addition to the current
29 continuing education requirements for that renewal period. If any doctor of
30 oriental medicine fails to make up the deficient hours and complete the
31 subsequent renewal period, then his license shall not be renewed until all of
32 the required hours are completed and documented to the board;

33 (5) each licensee shall send proof of completion of the required
34 continuing education to the board with his license renewal; and

35 (6) institutions, associations, and individuals providing continuing

1 education shall maintain records of attendance, including sign-in sheets, for
2 a period of two (2) years.

3

4 SECTION 19. Disciplinary actions; grounds; action by the board.

5 (a) The following acts shall constitute grounds for which the
6 disciplinary actions specified in subsection (b) may be taken:

7 (1) attempting to obtain, obtaining, or renewing a license to
8 practice oriental medicine by bribery, by fraudulent misrepresentations, or
9 through an error of the board;

10 (2) having a license to practice oriental medicine revoked,
11 suspended, or otherwise acted against, including the denial of licensure for
12 reasons that would preclude licensure under this act by the licensing
13 authority of another state or territory;

14 (3) having plead guilty or nolo contendere or having been found
15 guilty, regardless of adjudication, in any jurisdiction of a crime which
16 directly related to the practice of oriental medicine or to the ability to
17 practice oriental medicine;

18 (4) advertising, practicing, or attempting to practice under a
19 name other than one_s own;

20 (5) failing to report to the board any person who the licensee
21 knows is in violation of this act or of the rules of the board;

22 (6) aiding, assisting, procuring, employing, or advertising any
23 unlicensed person to practice oriental medicine contrary to this act or a rule
24 of the board;

25 (7) failing to perform any statutory or legal obligation placed
26 upon a doctor of oriental medicine;

27 (8) making or filing a report which the licensee knows to be
28 false, intentionally or negligently failing to file a report or record
29 required by state or federal law, willfully impeding or obstructing such
30 filing or inducing another person to do so. Such reports or records shall
31 include only those which are signed in the capacity of a doctor of oriental
32 medicine;

33 (9) exercising influence within a patient-doctor relationship for
34 purposes of engaging a patient in sexual activity. A patient shall be
35 presumed to be incapable of giving free, full, and informed consent to sexual

1 activity with his doctor of oriental medicine;

2 (10) making deceptive, untrue, or fraudulent representations in
3 the practice of oriental medicine, or employing a trick or scheme in the
4 practice of oriental medicine, when such scheme or trick fails to conform to
5 the generally prevailing standards of treatment in the community;

6 (11) soliciting patients, either personally or through an agent,
7 through the use of fraud, intimidation, or undue influence, or a form of
8 overreaching or vexatious conduct. A solicitation is any communication which
9 directly or implicitly requests an immediate oral response from the recipient;

10 (12) failing to keep written medical records justifying the
11 course of treatment of the patient;

12 (13) exercising influence on the patient to exploit the patient
13 for financial gain of the licensee or of a third party;

14 (14) being unable to practice oriental medicine with reasonable
15 skill and safety to patients by reason of illness or use of alcohol, drugs,
16 narcotics, chemicals, or any other type of material or as a result of any
17 mental or physical condition. A doctor of oriental medicine affected under
18 this paragraph shall at reasonable intervals be afforded an opportunity to
19 demonstrate that he can resume the competent practice of oriental medicine
20 with reasonable skill and safety to the patients. In any proceeding under
21 this paragraph, neither the record of proceedings nor the orders entered by
22 the board shall be used against a doctor of oriental medicine in any other
23 proceeding;

24 (15) gross or repeated malpractice or the failure to practice
25 oriental medicine with the level of care, skill, or treatment which is
26 recognized by a reasonably prudent doctor of oriental medicine as being
27 acceptable under similar conditions and circumstances;

28 (16) practicing or offering to practice beyond the scope
29 permitted by law or accepting or performing professional responsibilities
30 which the licensee knows, or has reason to know, that he is not competent to
31 perform;

32 (17) delegating professional responsibilities to a person when
33 the licensee delegating such responsibilities knows, or has reason to know,
34 that such person is not qualified by training, experience, or licensure to
35 perform them;

1 (18) violating any provision of this act, a rule of the board, or
2 a lawful order of the board;

3 (19) conspiring with another to commit an act, or committing an
4 act, which would tend to coerce, intimidate, or preclude another licensee from
5 lawfully advertising his services;

6 (20) fraud, or deceit, or gross negligence, incompetence, or
7 misconduct in the operation of a course of study;

8 (21) failing to comply with state, county, or municipal
9 regulations or reporting requirements relating to public health and the
10 control of contagious and infectious diseases; or

11 (22) failing to comply with any rule of the board relating to
12 health and safety, including but not limited to, the sterilization of
13 equipment and the disposal of potentially infectious materials.

14 (b) When the board finds any person guilty of any of the acts set forth
15 in subsection (a), it may:

16 (1) refuse to issue a license to the offender;

17 (2) revoke or suspend the offender_s license;

18 (3) restrict the practice of the offender;

19 (4) impose an administrative fine not to exceed one thousand
20 dollars (\$1,000) for each count or separate offense;

21 (5) reprimand the offender; or

22 (6) place the offender on probation for a period of time and
23 subject to such conditions as the board may specify.

24 (c) The board shall not reinstate the license of a doctor of oriental
25 medicine, or cause a license to be issued to a person it has deemed to be
26 unqualified, until such time as the board is satisfied that he has complied
27 with all the terms and conditions set forth in the final order and that he is
28 capable of safely engaging in the practice of oriental medicine.

29

30 SECTION 20. Prohibited acts; penalty. (a) it is unlawful for any
31 person to:

32 (1) hold himself out as a doctor of oriental medicine unless
33 licensed as provided herein;

34 (2) practice oriental medicine, or attempt to practice oriental
35 medicine, without an active license or as otherwise permitted by board rule

1 established under the authority of this act;

2 (3) obtain, or attempt to obtain, a license to practice oriental
3 medicine by fraudulent misrepresentation; or

4 (4) permit an employed person to engage in the practice of
5 oriental medicine unless such person holds an active license as a doctor of
6 oriental medicine, except as otherwise provided by this act.

7 (b) Any person who violates any provision of this act is guilty of a
8 Class B misdemeanor.

9

10 SECTION 21. Public health and sanitation. (a) Doctors of oriental
11 medicine shall use only presterilized, disposable, needles in their
12 administration of acupuncture treatments. The use of staples in the practice
13 of acupuncture is unlawful.

14 (b) Sanitation practices shall include:

15 (1) hands shall be washed with soap and water or other
16 disinfectant before handling needles and between treatment of different
17 patients;

18 (2) skin in the area of penetration shall be thoroughly swabbed
19 with alcohol or other germicidal solution before inserting needles; and

20 (3) no person shall be allowed to practice acupuncture or
21 oriental medicine without first having passed a nationally recognized clean
22 needle technique course.

23

24 SECTION 22. Previously practicing acupuncturists or doctor of oriental
25 medicine, status valid under new act. Any acupuncturist or doctor of oriental
26 medicine, having resided and practiced in this state for one (1) year prior to
27 enactment of this act, and validly certified by the National Commission for
28 the Certification of Acupuncture, shall upon application to the board be
29 issued a license, without examination, to practice oriental medicine.

30

31 SECTION 23. All provisions of this act of a general and permanent
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
33 Code Revision Commission shall incorporate the same in the Code.

34

35 SECTION 24. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

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6 SECTION 25. All laws and parts of laws in conflict with this act are
7 hereby repealed.

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/s/Gus Wingfield