

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H1/24/97 H2/14/97 H2/19/97 H3/4/97

A Bill

HOUSE BILL 1031

4 By: Representative Stalnaker

5
6

For An Act To Be Entitled

8 "AN ACT TO CREATE A BOARD OF ACUPUNCTURE AND RELATED
9 TECHNIQUES; AND FOR OTHER PURPOSES."

10

Subtitle

11

12 "TO CREATE A BOARD OF ACUPUNCTURE AND
13 RELATED TECHNIQUES."

14

15

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

17

18 SECTION 1. Short Title.

19 This act shall be known as the "Arkansas Acupuncture Practices Act."

20

21 SECTION 2. Definitions.

22 As used in this Act:

23 (a) "Acupuncture" means the insertion, manipulation, and removal of
24 needles from the body, and the use of other modalities and procedures at
25 specific locations on the body, for the prevention, cure, or correction of a
26 malady, illness, injury, pain, or other condition or disorder by controlling
27 and regulating the flow and balance of energy and functioning of the patient
28 to restore and maintain health, *but acupuncture shall not be considered*
29 *surgery;*

30 (b) "Board" means the Arkansas State Board of Acupuncture and Related
31 Techniques;

32 (c) "Moxibustion" means the use of heat on, or above, or on
33 acupuncture needles, at specific locations on the body for the prevention,
34 cure, or correction of a malady, illness, injury, pain, or other condition or
35 disorder;

36 (d) "Chiropractic physician" means a person licensed under the Arkansas

1 *Chiropractic Practices Act, A.C.A. § 17-81-101 et seq.*

2 (e) "Acupuncturist" means a person licensed under this Act as a doctor
3 of healing arts to practice acupuncture and related techniques in this state
4 and includes the terms licensed acupuncturist, certified acupuncturist,
5 acupuncture practitioner, and oriental acupuncture practitioner;

6 (f) "Related techniques" means the distinct system of basic health
7 care that uses all allied diagnostic and treatment techniques of acupuncture,
8 oriental, traditional and modern, for the prevention or correction of a
9 malady, illness, injury, pain or other condition or disorder by controlling
10 and regulating the flow and balance of energy and functioning of the patient
11 to restore and maintain health. As used in this subsection "related
12 techniques" include, but are not limited to, acupuncture, moxibustion or other
13 heating modalities, cupping, magnets, cold laser, electroacupuncture including
14 electrodermal assessment, application of cold packs, ion pumping cord,
15 *lifestyle counseling, including general eating guidelines, tui na, massage*
16 *incidental to acupuncture, breathing and exercising techniques, and the*
17 *recommendation of Chinese herbal medicine lawfully and commercially available*
18 *in the United States. Provided, "related techniques," including but not*
19 *limited to tui na, shall not involve manipulation, mobilization or adjustment*
20 *to the spine or extraspinal articulations.*

21

22 SECTION 3. *Effect on existing license.*

23 (a) *Notwithstanding the requirements set forth in Section 17 of this*
24 *act, any acupuncturist validly certified by the National Commission for the*
25 *Certification of Acupuncturists as of the effective date of this act, and*
26 *residing and practicing acupuncture in this state as of December 31, 1996,*
27 *shall upon application to the board be issued a license without an*
28 *examination.*

29 (b) *Notwithstanding the requirements set forth in Section 17 of this*
30 *act, any acupuncturist not validly certified by the National Commission for*
31 *the Certification of Acupuncturists as of the effective date of this act, but*
32 *residing and practicing acupuncture in this state as of December 31, 1996,*
33 *shall upon application to the board be issued a provisional license*
34 *conditioned upon such acupuncturist becoming certified by the National*
35 *Commission for the Certification of Acupuncturists within two (2) years of the*
36 *effective date of this act. Upon obtaining such certification and presenting*

1 it to the board, the acupuncturist shall be issued a non-provisional license
2 by the board. Should such certification not be obtained within the two-year
3 period, the board shall immediately revoke the provisional license. While the
4 license is provisional, the acupuncturist may practice acupuncture and related
5 techniques in this state pursuant to a scope of practice set forth by the
6 board in writing after review of the qualifications, training and practice
7 experience of the acupuncturist.

8 SECTION 4. Exemptions.

9 Nothing in this Act is intended to limit, interfere with or prevent any
10 other class of licensed health care professionals from practicing acupuncture
11 and related techniques when permitted by their state licensing board. However,
12 a chiropractic physician shall be entitled to practice acupuncture as part of
13 chiropractic practice after completing an educational program in acupuncture
14 from a college accredited by the Council on Chiropractic Education.

15 SECTION 5. False advertising.

16 No person defined in Section 2(d) herein may solicit for patronage or
17 advertise for patronage by any means whatever which is misleading, fraudulent,
18 deceptive or dishonest.

19

20 SECTION 6. Prosecution of violations.

21 It shall be the duty of the several prosecuting attorneys of the State
22 of Arkansas to prosecute to final judgment every criminal violation of this
23 Act committed within their jurisdictions when requested and authorized by the
24 board.

25

26 SECTION 7. Creation of board - Members - Appointment.

27 (a) There is created the Arkansas State Board of Acupuncture and
28 Related Techniques. The board shall consist of three (3) persons appointed by
29 the Governor as full members and one appointed by the Governor as an ex
30 officio member. Two (2) full members of the board shall be qualified
31 acupuncturists. One (1) full member shall be appointed to represent the
32 public and shall not have practiced acupuncture and related techniques in
33 this, or any other jurisdiction, nor be retired from or have any financial
34 interest in the occupation regulated. The public member shall be subject to
35 confirmation by the Senate. The public member shall be a full voting member
36 but shall not participate in the grading of examinations. The ex officio

1 member shall be a physician licensed pursuant to the Arkansas Medical
2 Practices Act and shall be entitled to be notified of all board meetings and
3 to participate in the deliberations of the board, but shall have no vote,
4 shall not serve as an officer of the board, and shall not be counted to
5 establish a quorum or a majority necessary to conduct business.

6 (b) The initial full members of the board shall be appointed by the
7 Governor for staggered terms as follows: One (1) member's term shall expire
8 after one (1) year, one (1) shall expire after two (2) years, and one (1)
9 shall expire after three (3) years. The initial ex officio board member shall
10 be appointed to a term of three (3) years. Successors shall be appointed for
11 three (3) year terms. Vacancies shall be filled by appointment by the
12 Governor for the unexpired term. Board members shall serve until their
13 successors have been appointed and qualified.

14 (c) The Governor may remove any full member from the board for any
15 reason that would justify the suspension or revocation of his license to
16 practice acupuncture and related techniques.

17 (d) A person who is, or has been in the preceding two (2) years, on
18 the faculty of a school which is subject to review by the board, may not serve
19 on the board.

20

21 SECTION 8. Board members - Qualifications.

22 (a) Each member of the board shall be a citizen of the United States, a
23 resident of this state, and shall, before entering upon the duties of the
24 office, take the oath prescribed by the Constitution for state officers and
25 shall file it with the Secretary of State who shall thereupon issue to each
26 person so appointed a certificate of appointment.

27 (b) Each full professional member also shall be a graduate of a
28 reputable school or institute of acupuncture or oriental medicine and be
29 certified by the National Commission for the Certification of Acupuncturists.

30

31 SECTION 9. Board members - Liability.

32 No member of the board, during the term of his office or thereafter,
33 shall be liable for damages as a result of any official act in the performance
34 of his duty as such member. Any action therefor shall, upon motion, be
35 dismissed with prejudice at the cost of the plaintiff.

36

1 SECTION 10. Board organization - Meetings.

2 (a) The board shall, within sixty (60) days of the effective date of
3 this Act, and every May thereafter, hold a meeting and elect from its
4 membership a president, secretary and treasurer for terms set by the board.

5 (b)(1) It shall be the duty of the board to meet regularly once in
6 every six (6) months.

7 (2) Special meetings of the board may be called at any time at
8 the pleasure of the president or by the secretary on the request of any two
9 (2) full members of the board.

10 (3) Three (3) full members shall constitute a quorum at any
11 meeting of the board.

12 (c) The board shall determine by its own rules the time and manner of
13 giving notice to members of meetings and other matters.

14 (d) Any action of the board shall require an affirmative vote of a
15 majority of the full membership of the board, excluding the ex officio member.

16 SECTION 11. Board minutes - Records

17 (a) The secretary of the board shall keep a record of the minutes of
18 its meetings and a record of all persons making application for license and
19 the action of the board thereon.

20 (b) The secretary shall also keep a record of the names, addresses and
21 license numbers of all acupuncturists licensed by the board, together with a
22 record of license renewals, suspensions and revocations.

23

24 SECTION 12. Board duties and powers.

25 (a)(1) The Arkansas State Board of Acupuncturists and Related
26 Techniques is empowered to incur whatever expenses it may deem necessary or
27 expedient in performing its functions. It may employ or engage whatever
28 personnel, legal counsel, independent contractors or assistants it may deem
29 necessary or expedient therefor and fix their compensation, however no
30 employee of the board shall have any financial interest in the occupation of
31 acupuncture and related techniques.

32 (2) All of the disbursements provided for in this section shall
33 be out of the fees and fines collected by the board.

34 (b) The board is authorized to:

35 (1) Make suitable bylaws for carrying out its duties under the
36 provisions of this Act;

1 (2) Sue and be sued;

2 (3) Have an official seal which shall bear the words "Arkansas
3 State Board of Acupuncture and Related Techniques;

4 (4) Provide a secretary's certificate. The certificate of the
5 secretary of the board under seal shall be accepted in the courts of the state
6 as the best evidence as to the minutes of the board and shall likewise be
7 accepted in the courts of the state as the best evidence as to the licensure
8 or nonlicensure of any person under the requirements of this Act;

9 (5) Adopt, publish and, from time to time, revise such rules and
10 regulations not inconsistent with the law as may be necessary to enable it to
11 carry into effect the provisions of this Act;

12 (6) Keep a record of all its proceedings, receipts and
13 disbursements;

14 (7) Adopt standards for applicants wishing to take the licensing
15 examination and conduct examinations, or contract with persons or entities to
16 conduct examinations, of applicants;

17 (8) Grant, deny, renew, suspend or revoke licenses to practice
18 acupuncture and related techniques for any cause stated in this Act. Except
19 as otherwise provided by this Act, the board shall have exclusive jurisdiction
20 to determine who shall be permitted to practice acupuncture and related
21 techniques in the State of Arkansas; and

22 (9) Conduct disciplinary proceedings as provided in this Act.

23 (c)(1) In the performance of its duties, the board is empowered to
24 administer oaths and take testimony on any matters within the board's
25 jurisdiction and issue subpoenas and thereby compel the attendance of persons
26 before it for the purpose of examining any facts or conditions properly
27 pending before the board for its action.

28 (2) All subpoenas issued by the board shall be served in the
29 manner prescribed by law for the service of subpoenas issuing from the courts,
30 and all persons so served shall obey the subpoenas or be subject to the
31 penalties provided by law for the disobedience of subpoenas issuing from the
32 courts.

33

34 SECTION 13. Disposition of funds.

35 (a) All fees authorized by this Act are the property of the board and
36 shall be provided to its treasurer to be disposed of as provided in this Act.

1 Any surplus in the treasury of the board at the end of the fiscal year shall
2 remain in the treasury and may be expended in succeeding years for the
3 purposes herein set out.

4 (b) All funds received by the board shall be deposited into a financial
5 institution designated by the board and expended in the furtherance of the
6 purposes of this Act and the board's duties thereunder, which include, but are
7 not limited to:

8 (1) The publication and distribution of the Arkansas Acupuncture
9 Practices Act;

10 (2) The publication and yearly distribution of a directory of all
11 licensed acupuncturists;

12 (3) Investigations of violations of this Act;

13 (4) Institution of actions to compel compliance with the
14 provisions of this Act; and

15 (5) Defense of actions brought against it as a result of its
16 actions under the provisions of this Act.

17

18 SECTION 14. License required.

19 In order to safeguard life and health, any person practicing acupuncture
20 and related techniques in the state for compensation or gratuitously shall be
21 required to submit evidence that he or she is qualified to practice and
22 licensed as provided in this Act.

23

24 SECTION 15. Exempted activities.

25 Nothing herein shall be construed to prohibit or to require a license
26 hereunder with respect to the practice of medicine and surgery, chiropractic,
27 osteopathy, dentistry, podiatry, optometry, Christian Science, physical
28 therapy, cosmetology, massage therapy, or any branch of the healing arts as
29 defined by the laws of this state as now or hereafter enacted, it not being
30 intended by the Act to limit, restrict, enlarge or alter the privileges and
31 practices of any of these professions or branches of the healing arts.

32

33 SECTION 16. Unlawful practice - Penalty - Injunction.

34 (a) Except as otherwise provided in this Act, it shall be unlawful for
35 any person not licensed under the provisions of this Act:

36 (1) To practice or offer to practice acupuncture and related

1 techniques; or

2 (2) To use any sign, card, or device to indicate that the person
3 is a acupuncturist.

4 (b) Except as otherwise provided in this Act, any person who shall
5 attempt to practice acupuncture and related techniques, as defined in this
6 Act, without having first been licensed or otherwise permitted under the
7 provisions of this Act to do so, shall be deemed guilty of a misdemeanor.
8 Upon conviction, he shall be punished by a fine of not less than one thousand
9 dollars (\$1,000) nor more than five thousand dollars (\$5,000) or by
10 imprisonment in the county jail for a period of not less than one (1) month
11 nor more than eleven (11) months, or by both fine and imprisonment. Each day
12 shall constitute a separate offense.

13 (c) The courts of this state having general equity jurisdiction are
14 vested with jurisdiction and power to enjoin the unlawful practice of
15 acupuncture and related techniques in a proceeding by the board or any member
16 thereof, or by any citizen of this state, in the county in which the alleged
17 unlawful practice occurred or in which the defendant resides, or in Pulaski
18 County. The issuance of an injunction shall not relieve a person from
19 criminal prosecution for violation of the provisions of this Act, but the
20 remedy of injunction shall be in addition to liability to criminal
21 prosecution.

22

23 SECTION 17. Application - Fees - Qualifications.

24 (a)(1) No person shall be licensed to practice acupuncture and related
25 techniques unless he has passed an examination and has been found to have the
26 necessary qualifications as prescribed in the rules adopted by the board.
27 Applications for license to practice acupuncture and related techniques in the
28 State of Arkansas pursuant to this Act shall be made to the secretary of the
29 board in writing on forms furnished by the board. The application shall be
30 signed by the applicant in his own handwriting and acknowledged before an
31 officer authorized to administer oaths.

32 (2) Before any applicant shall be eligible for an examination, he
33 shall furnish satisfactory proof to the board that:

34 (i) he is of good moral character by filing with his
35 application the affidavits of at least two (2) reputable acupuncturists who
36 attest to such character;

1 (ii) he has successfully completed not less than sixty (60)
2 semester credit hours of college education, to include a minimum of thirty
3 (30) semester credit hours in the field of science; and

4 (iii) he has completed a program in acupuncture and related
5 techniques and has received a certificate or diploma from an institute
6 approved by the board as herein described. The training received in the
7 program shall be for a period of not less than four (4) academic years, and
8 shall include a minimum of eight hundred (800) hours of supervised clinical
9 practice;

10 (b) Prior to approval of an institute of acupuncture and related
11 techniques, the board shall determine that the institute meets standards of
12 professional education. These standards shall provide that the institute:

13 (1) require, as a prerequisite to graduation, a program of study
14 of at least four (4) academic years and

15 (2) meet the minimum requirements of a board approved national
16 accrediting body;

17 (3) require participation in a carefully supervised clinical or
18 internship program; and

19 (4) confer a certificate, diploma, or degree in acupuncture and
20 related techniques only after personal attendance in classes and clinics.

21 (c) To qualify to take the examination, an applicant additionally must:

22 (1) Be at least twenty-one (21) years of age;

23 (2) Be a citizen of the United States and/or a legal resident;

24 (3) Not have had a license to practice acupuncture and related
25 techniques in any other state suspended or revoked nor have been placed on
26 probation for any cause;

27 (4) Not have been convicted of a felony; and

28 (5) Not be a habitual user of intoxicants, drugs or hallucinatory
29 preparations;

30 (d) The board may charge the following fees:

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

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

36 (3) biennial licensing renewal, a fee not to exceed four hundred

1 dollars (\$400.00);

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

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

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

9 (7) any and all fees to cover reasonable and necessary
10 administrative expenses.

11 (e) If the applicant is approved, the applicant shall be admitted for
12 examination. Should the applicant pass the examination, no part of the fee
13 shall be returned and the applicant shall be issued a license to practice
14 acupuncture and related techniques in accordance with this Act.

15 (f) If the applicant is not approved, the application and one-half of
16 the examination fee shall be returned to the applicant with the reasons for
17 the disapproval clearly stated.

18 (g) Should an applicant be approved but fail to appear for the
19 examination, no part of his fee shall be returned, but he shall be eligible
20 for examination at a later date.

21 (h) Should the approved applicant fail the examination, no part of his
22 fee shall be returned, and the applicant shall be eligible for reexamination
23 at a later date, at the discretion of the board, and upon paying an
24 examination fee of fifty dollars (\$50.00) per failed subject up to one hundred
25 and fifty dollars (\$150.00).

26

27 SECTION 18. Examinations.

28 (a) Examinations shall be given in English and in writing and shall
29 include the following subjects:

30 (1) anatomy and physiology;

31 (2) pathology;

32 (3) diagnosis;

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

34 (5) acupuncture and related principles, practices and techniques;

35 (6) Chinese herbal medicine.

36 (b) The board shall hold an examination at least once each calendar

1 year, and all applicants shall be notified in writing of the date and time of
2 all examinations. The board may utilize a nationally recognized examination
3 if it deems the national exam is sufficient to qualify a practitioner for
4 licensure in this state.

5 (c) The board shall issue a license to every applicant whose
6 application has been filed with and approved by the board and who has paid the
7 required fees and who either:

8 (1) has passed the board's examination with a score on each
9 subject of not less than seventy percent (70%); or

10 (2) has achieved a passing score on a board-approved nationally
11 recognized examination.

12

13 SECTION 19. Display of license.

14 A person licensed under this Act shall post his or her license in a
15 conspicuous location in his place of practice.

16

17 SECTION 20. License Renewal.

18 Each licensee shall be required to pay biennial license renewal fees and
19 meet continuing education requirements as specified in this Act. A licensee
20 who fails to renew his or her license within one (1) year after its expiration
21 may not renew it, and it may not be restored, reissued or reinstated
22 thereafter, but that person may apply for and obtain a new license if he or
23 she meets the following requirements:

24 (a) meets all current board standards; and

25 (b) takes and passes the examination and pays all fees associated
26 therewith as if seeking a license for the first time.

27

28 SECTION 21. Continuing education.

29 (a) The board shall not renew the license of any person engaged in the
30 practice of acupuncture and related techniques unless the licensee presents to
31 the board evidence of attendance at a board-approved educational session or
32 sessions of not less than twenty-four (24) hours of continuing education
33 within the previous biennial period.

34 (b) Licensees residing out of state shall comply with the continuing
35 education requirements.

36 (c) The presentation of a fraudulent or forged evidence of attendance

1 at an educational session shall be a cause for suspension or revocation of the
2 holder's license.

3

4 SECTION 22. Disciplinary actions; grounds; action by the board.

5 (a) The following acts by an applicant for a license or by a licensed
6 acupuncturist shall constitute grounds for which the disciplinary actions
7 specified in subsection (b) may be taken by the board:

8 (1) attempting to obtain, obtaining, or renewing a license to
9 practice acupuncture and related techniques by bribery, fraud or deceit;

10 (2) having pled guilty or nolo contendere to, or having been
11 found guilty of, a crime in any jurisdiction which directly
12 relates to the practice of acupuncture and related techniques or to the
13 ability to practice same;

14 (3) advertising, practicing, or attempting to practice under a
15 name other than one's own;

16 (4) making deceptive, untrue, or fraudulent representations in
17 the practice of acupuncture and related techniques;

18 (5) becoming mentally incompetent or unfit or incompetent by
19 reason of negligence, habits or other causes;

20 (6) becoming habitually intemperate or addicted to the use of
21 habit-forming drugs, illegal drugs, or alcohol;

22 (7) acting unprofessionally in the practice of acupuncture and
23 related techniques;

24 (8) committing fraud or deceit in filing insurance forms,
25 documents, or information pertaining to the health or welfare of a patient;

26 (9) willfully or repeatedly violating any of the provisions of
27 this Act or any rule or order of the board;

28 (b) When the board finds any person guilty of any of the acts set forth
29 in subsection (a), it has the sole authority to:

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

31 (2) revoke or suspend the offender's license;

32 (3) restrict the practice of the offender;

33 (4) impose an administrative fine not to exceed five thousand
34 dollars (\$5,000.00) for each count or separate offense;

35 (5) reprimand the offender; or

36 (6) place the offender on probation for a period of time and

1 subject to such conditions as the board may specify.

2 (c) The board shall not reinstate the license of a acupuncturist, or
3 cause a license to be issued to a person it has deemed to be unqualified,
4 until such time as the board is satisfied that he or she has complied with all
5 the terms and conditions set forth in the final order and that he or she is
6 capable of safely engaging in the practice of acupuncture and related
7 techniques.

8 (d) Disciplinary proceedings taken under this section shall be as
9 provided in the Arkansas Administrative Procedure Act, as amended, § 25-15-201
10 et seq.

11

12 SECTION 23. Public health and sanitation.

13 (a) Acupuncturists shall use only presterilized, disposable, needles in
14 their administration of acupuncture treatments. The use of staples in the
15 practice of acupuncture is unlawful.

16 (b) Sanitation practices shall include:

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

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

22 (3) no person shall be allowed to practice acupuncture and
23 related techniques without first having passed a nationally recognized clean
24 needle technique course.

25

26 SECTION 24. All provisions of this Act of a general and permanent
27 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
28 Code Revision Commission shall incorporate the same in the Code.

29

30 SECTION 25. If any provision of this Act or the application thereof to
31 any person or circumstance is held invalid, such invalidity shall not affect
32 other provisions or applications of the Act which can be given effect without
33 the invalid provision or application, and to this end the provisions of this
34 Act are declared to be severable.

35

36 SECTION 26. All laws and parts of laws in conflict with this Act are

1 hereby repealed.

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/s/Rep. Stalnaker

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