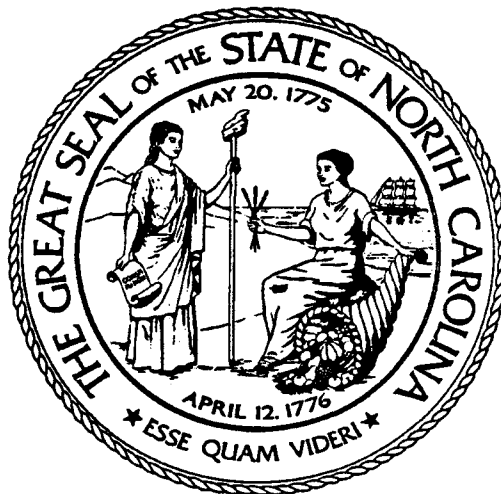


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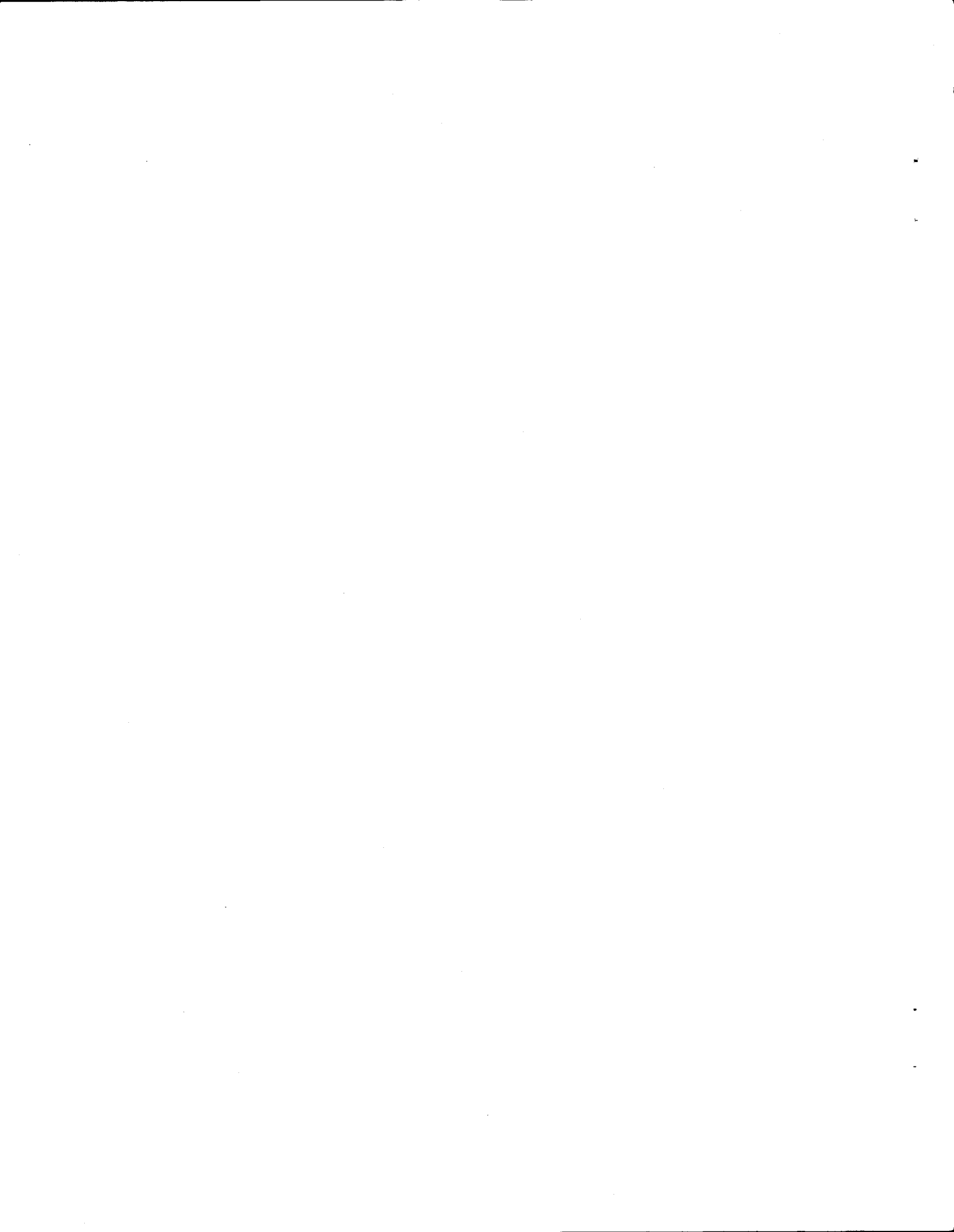
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

ACUPUNCTURE



ASSESSMENT REPORT
1993

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NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
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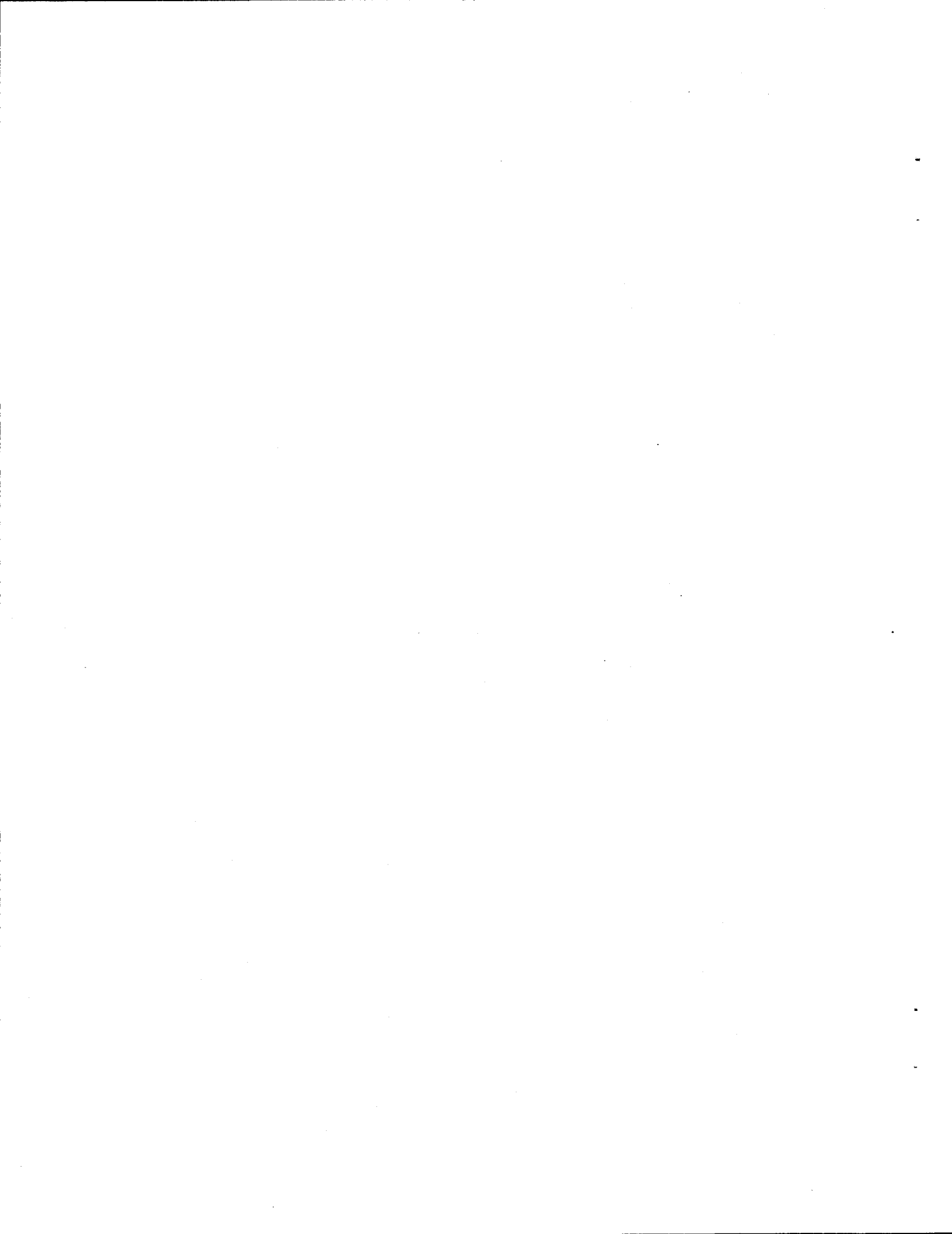
March 9, 1993

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Legislative Committee on New Licensing Boards is pleased to present its assessment report on the licensing of acupuncturists. This report serves as both the preliminary and final assessment reports.

Representative Mary Jarrell, Chair
Legislative Committee on New Licensing Boards

KFN 7726.5 .A251 A25 1993



PREFACE

The Legislative Committee on New Licensing Boards was created by the General Assembly in 1984 to screen bills creating new licensing boards. In 1987, the Committee's jurisdiction was broadened to include reviews of bills that would give existing boards licensing authority over previously unregulated professions or occupations.

The purpose of the review is to determine whether there is a justifiable need for licensure. The criteria under which these bills are evaluated by the Committee are set out in the statutes and include factors such as whether the occupation requires special skills, whether the public on its own can evaluate the competence of the practitioner, and whether the occupation can be effectively regulated by other means.

The Committee's findings and recommendations are released through a preliminary assessment report and a final assessment report. Until the final assessment report is released by the Committee, the bill cannot be debated in any other committee or on the floor of either house. The preliminary report gives the sponsor an opportunity to review and comment on an unfavorable recommendation before the Committee makes a final recommendation. The sponsor has up to 7 days to review the report but can waive this review period. When the preliminary assessment report is favorable, the review period is routinely waived so that the final report can be issued immediately.

The Committee has no jurisdiction over proposals to create voluntary certification boards -- i.e., those boards that require certification as a prerequisite to using a certain title but do not otherwise prohibit practice of the profession. The reason these proposals are not reviewed is that they do not prevent persons from practicing a profession; they merely provide a mechanism whereby members of the profession who want to distinguish themselves as "certified" can do so voluntarily.

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ACUPUNCTURE

Acupuncture is a form of health care developed from traditional and modern Chinese medical concepts that uses acupuncture needles and other techniques of oriental medicine in the diagnosis, prevention, and and treatment of disease. Included within the scope of practice, as defined in proposed G.S. §90-451(3), are adjunctive therapies involving the use of manual, mechanical, thermal, electrical, and electromagnetic treatment as well as the recommendation of herbs, dietary guidelines, and therapeutic exercise.

The practice of acupuncture constitutes, at least from the legal perspective, the "practice of medicine." Thus, with one exception, anyone other than a licensed medical doctor who practices acupuncture in North Carolina runs the risk of being prosecuted for the unlawful practice of medicine. The one exception is chiropractors, who are allowed under their practice act to perform any techniques that were taught as part of their curriculum (which includes acupuncture). Under the proposed legislation, neither medical doctors (MDs) nor chiropractors would come under the jurisdiction of the Acupuncture Licensing Board.

Approximately 30 states recognize the practice of acupuncture by trained practitioners who are not licensed medical doctors. Acupuncture training requires 3 years of post-graduate work in general science, anatomy, physiology, nutrition, acupuncture diagnostic techniques, acupressure, needle preparation, oriental herbology, and related courses.

The practice of acupuncture by an untrained person puts the patient at risk of being misdiagnosed and/or mistreated. The untrained acupuncturist may also not recognize a

patient's need for referral to another professional for treatment. In addition, the use of needles in the acupuncture practice poses a threat of puncture of organs and the transmission of AIDS, hepatitis, and other diseases. A qualified acupuncturist is trained in the diagnosis and treatment of patients through the use of Oriental medicine, and is competent to determine when a patient should be referred to another professional. With respect to the use of needles, acupuncturists receive not only training in acupuncture school, but must also complete (under the proposed legislation) a "Clean Needle Technique" course. The proposed legislation also requires 40 hours of continuing education every two years for renewal of an acupuncture license.

The Committee finds that the requirements of G.S. 120-149.1 have been met by the proposal to license acupuncturists and therefore recommends licensure of acupuncturists:

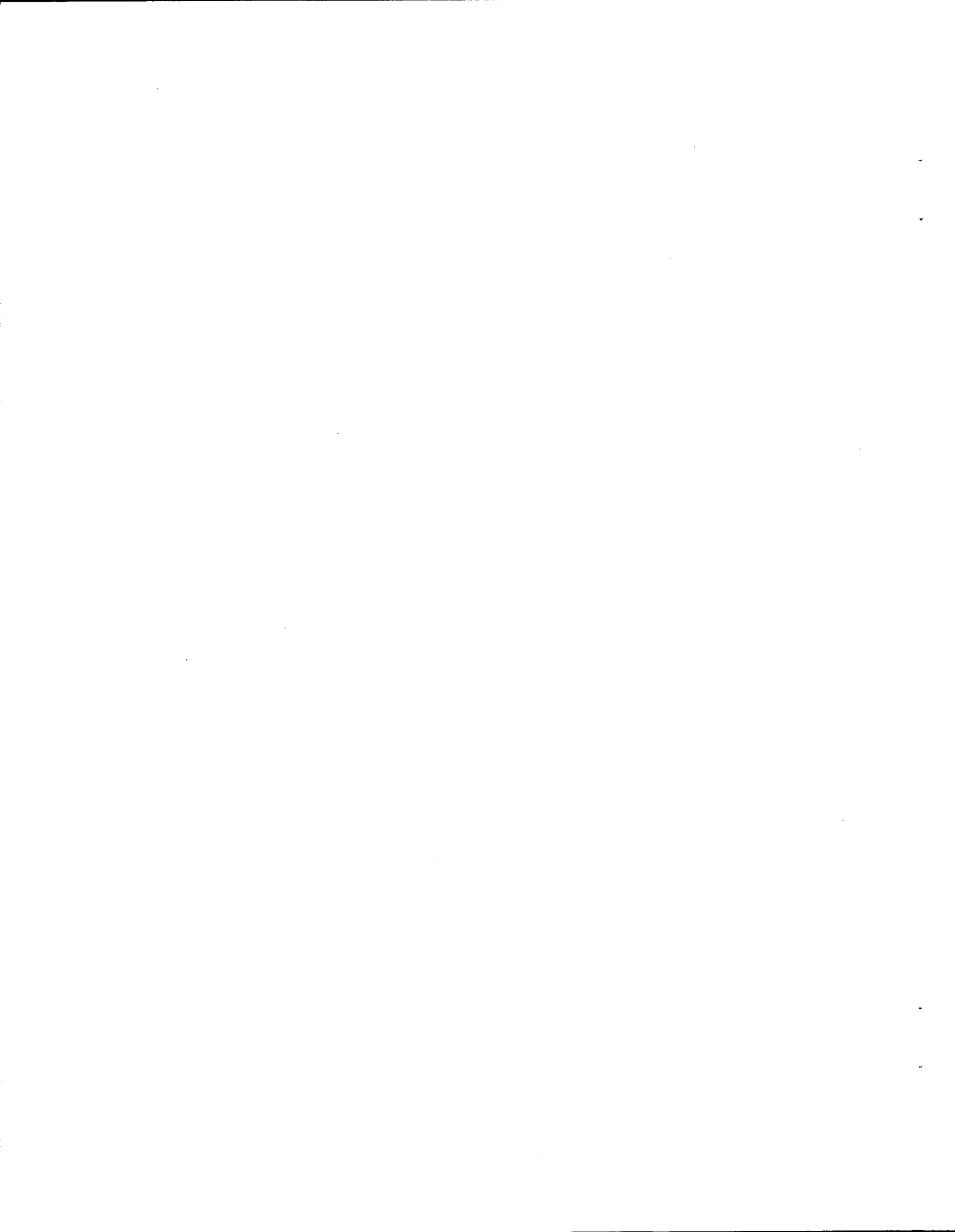
- (1) The unregulated practice of acupuncture can substantially harm or endanger the public health.
- (2) Acupuncture possesses qualities that distinguishes it from ordinary labor.
- (3) Acupuncture requires specialized skill or training.
- (4) A substantial majority of the public does not have the knowledge or experience to evaluate whether a person practicing as an acupuncturist is competent.
- (5) The public cannot be protected by means other than licensure.
- (6) Licensure of acupuncture would not appear to have a substantial adverse economic impact upon acupuncture patients.

*This report serves as both the preliminary and final assessment report on the licensing of acupuncturists. The report is based on information provided in the response

to the Committee's questionnaire, testimony received before the Committee at its March 9, 1993 meeting, and the proposed legislation before the Committee (House Bill 261, Senate Bill 422, and proposed amendments).

The response to the questionnaire is provided in this report. Additional materials filed by the sponsor with the Committee is on file with the Committee Counsel and will be available from the Legislative Library at the end of the session.

The Committee is unable to print in the report all materials submitted to it. Materials referenced in the questionnaire response that are not published in this report are generally available from the Committee Counsel.



REPORT TO LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

1993 NORTH CAROLINA GENERAL ASSEMBLY

ACUPUNCTURE LICENSE REQUIRED

Senate Bill
House Bill

Submitted by

Acupuncture Association of North Carolina and
American Association of Acupuncture and Oriental Medicine

REPORT TO THE GENERAL ASSEMBLY

I. A. *In what ways has the marketplace failed to regulate adequately the profession or occupation?*

The practice of acupuncture has an uncertain status under current North Carolina Law. Although it might be considered the practice of medicine, acupuncture is a system of health care unrelated to the western medicine practice which relies primarily on the use pharmaceutical medicine. The concepts behind acupuncture -- maintaining the proper flow of Ch'i (energy) through one's body and properly balancing that force -- are completely outside Western theories of medicine.

The Board of Medical Examiners has tried to prohibit the practice of a traditionally trained acupuncturist claiming the acupuncturist was practicing medicine.

Acupuncturists currently in the state operate without regulation and with uncertainty as to their legal status. The public has no state guarantee that the people who advertise as practicing acupuncturists in fact have the necessary training.

The few properly trained acupuncturists in the state already have waiting lists of patients. Clarification of their legal status will make a move to North Carolina by others to practice acupuncture more attractive. Therefore, some patients will not have to travel long distances to obtain acupuncture.

Few medical doctors have received even minimum training in acupuncture treatment. However, physicians in North Carolina are allowed to legally practice acupuncture without any training. However, there are over thirty properly trained acupuncturists, yet their legal standing is vague. Due to lack of the availability of trained acupuncturists, most patients do not have the benefit of easy access to this form of medical treatment.

B. *Have there been any complaints about the unregulated profession or occupation? Please give specific examples including complainant's names and addresses?*

It has been said that in 1988 an unsuccessful malpractice action was brought in Charlotte against someone who purported to be an acupuncturist. There is no information about the extent of training, if any, the person actually had. Apparently, the acupuncturist was last in a long line of different kinds of health care providers who attempted to treat a patient with a progressively worsening illness.

Without being able to cite specific instances, it is possible that there are unqualified individuals in the state representing themselves as acupuncturists. Apparently thus far, the only harm that has done to the patients is the failure to get results.

II. A. *In what ways has the public health, safety, or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation?*

A principal form of acupuncture treatment is the insertion of needles into the body, in most cases just below the skin surface. Generally, the needles are only a couple of inches in length, but on occasion longer needles may be used. Although completely safe in the hands of a trained acupuncturist, the needles could puncture organs and otherwise damage the body when applied by an unskilled person. Other dangers to health such as hepatitis and AIDs are obvious.

The more common danger to the public is fraud. With no regulation, anyone can claim to be an acupuncturist and take patients' money without providing any real benefit.

III. A. *Is there a potential for substantial harm or danger by the profession or occupation to the public health safety or welfare? How can this potential for substantial harm or danger be recognized?*

As stated above, an unskilled person inserting needles into the body certainly can inflict harm. Knowing whether and where to insert the needles requires a diagnosis based on questioning the patient, observing physical appearance, listening to the patient's breathing, and taking a number of pulses. It is important that the acupuncturist is trained and uses the Clean Needle Technique. The proper treatment also depends on the practitioner's knowledge of the meridians (pathways) along which Ch'i (energy) flows through the body as well as the points along those meridians at which the life energy communicates with the surface of the body. Whether or not the person possesses these skills can be determined by written examination and by questioning and observation by someone who is properly trained.

Acupuncturists receive training in the appropriateness of referrals to medical doctors or other health care professionals. However, an untrained person could delay appropriate treatment.

B. *Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and give the relevant statutory citations.*

Acupuncture has been practiced in the Orient for several thousand years. Interest in acupuncture in this country began only in the early 1970's, however, when President Nixon reestablished relations with mainland China and opened that

country to the American news media. Virtually unknown to Americans two decades ago, acupuncture now is taught in five medical schools - University of Arizona, Temple, Jefferson College of Medicine, University of Pennsylvania, University of California of Los Angeles, and the University of Maryland in Unconventional Medicine.

The right to choose acupuncture treatment has been litigated in federal court. When the Texas court invalidated a state board's requirement that only medical doctors practice acupuncture, the judge concluded:

Whatever the best explanation is for how acupuncture works, one thing is clear: it does work. All the evidence put before this Court indicates that, when administered by a skilled practitioner for certain types of pain and dysfunctions, acupuncture is both safe and effective. (Andrews v. Ballard, 498 F.Supp. 1038, 1044 (SD Tex. 1980)

Most state laws on licensing acupuncturists are very recent. States which now have separate licensing laws for acupuncturists include:

Alaska (Alaska Stat. Sec. 08.06.010 et seq.)
 Arizona (Ariz. Rev. Stat. Sec. 32-2910 et seq.)
 California (Calif. Bus. & Prof. Code Sec. 4925 et seq.)
 Colorado (Col. Rev. Stat. Sec. 12-29 et seq.)
 District of Columbia (D.C. Code Sec. 2-3301.2 et seq.)
 Florida (Fla. Stat. Sec. 457.101 et seq.)
 Hawaii (Hawaii Rev. Stat. Sec. 436E-1 et seq.)
 Maine (Maine Stat. Ch. 113, Sec. 12401 et seq.)
 Maryland (Ann. Code of Md. Sec. 14-605.)
 Massachusetts (Ann. Laws of Mass. Ch. 112, Sec. 148 et seq.)
 Montana (Mont. Stat. Sec. 37-13-101 et seq.)
 Nevada (Nev. Rev. Stat. Sec. 634A.010 et seq.)
 New Jersey (N.J. Rev. Stat. Sec. 45:2C-1 et seq.)
 New Mexico (N.M. Stat. Sec. 61-14A-1 et seq.)
 New York (N.Y. Uncon. Laws Sec. 2201 et seq.)
 Oregon (Ore. rev. Stat. Sec. 677.750 et seq.)
 Pennsylvania (63 P.S. Sec. 1801 et seq.)
 Rhode Island (Gen. Laws R.I. Sec. 5-37.2-1 et seq.)
 Texas (Tex. Stat. Ch. 113 Sec.12401 et seq.)
 Utah (Utah Stat. Sec. 58-12-57 et seq.)
 Virginia (Vir. Ch. 29 Sec. 54-12900 et seq.)
 Washington (Wash. Rev. Code Sec. 18.06.010 et seq.)
 Wisconsin (Wis. Stat. Sec. 451 et seq.)

In addition, several other jurisdictions recognize the practice of acupuncture without having a separate licensing board. Vermont, for example, simply requires registration with the Secretary of State (Vt. Stat. T.26, Sec. 3251 et seq.):

Delaware	Missouri
Louisiana	South Carolina
Michigan	Vermont
Minnesota	

Montana and New Mexico prohibits all health care professionals including medical doctors from practicing acupuncture unless they meet the educational requirements of licensed acupuncturists.

IV. A. *What will be the economic advantage of licensing to the public?*

The public will benefit from having more acupuncturists in North Carolina once their legal status is clarified. For patients who choose this form of treatment, the costs will be lower than for medical doctors who practice acupuncture.

There is also evidence that many conditions can be treated with acupuncture with lower cost and more successfully than some western medical treatments.

The National Institute of Health has a newly established division to examine complementary therapies, including acupuncture research. The impetus behind establishing the division is to explore the indications that complementary therapies may be more cost effective.

More insurance companies will reimburse subscribers for acupuncture when there is a method to verify the practitioner's training.

B. *What will be the economic disadvantages of licensing to the public?*

None.

C. *What will be the economic advantages of licensing to the practitioners?*

Clarification of their legal status will allow these professionals to be more secure in planning their personal lives - buying homes and other property with the knowledge they will not be uprooted.

D. *What will be the economic disadvantages of licensing to the practitioners?*

The economic disadvantages to the current properly trained practitioners only will be the additional costs of the license and any continuing education requirements

which might be imposed. However, those who represent themselves as acupuncturists but are not properly trained will no longer be able to engage in that business.

To estimate the cost to the state, the Midwifery Board, which has a similar number of practitioners (52 licensees), can be used for comparison. The Midwifery Board budget is \$4,000 for staff and \$1,700 other expenses. There are over 30 trained acupuncturists practicing in North Carolina, so less than \$200 per acupuncturist per year could sustain the cost of the Licensing Board. Licensed acupuncturists would find this annual fee, covering the cost of the Board, to be extremely fair in exchange for peace of mind and a way to avoid legal fees. The Board of Medical Examiners charged one acupuncturist with practicing medicine without a license. Although the allegations were not pursued, the legal fees were over \$35,000.

E. *How do the other potential benefits of licensing outweigh the potential harmful effects of licensure such as a decrease in the availability of practitioners and higher cost to the public.*

Rather than decrease the number of practitioners, the intention and expectation of this legislation is to increase the number. A clear advantage to the public is a greater availability of practitioners offering another health care alternative. This is particularly important for many of the oriental business people who have recently moved into North Carolina for whom acupuncture is the traditional first choice of treatment. Often acupuncture successfully treats conditions that do not respond to western medicine.

Drug addiction is becoming an increasingly serious problem in North Carolina. Clinics in Florida, New York, Washington and other locations find that acupuncture is a very effective treatment that is also relatively low cost.

V. A. *Please detail the specific specialized skills or training that distinguishes the occupation or profession from ordinary labor. How is each justified?*

Formal training in acupuncture generally consists of two to three years of post graduate schooling, with approximately 2,700 or more hours of course work. The courses usually required include general science, anatomy, physiology and nutrition, in addition to acupuncture diagnostic methods, treatment techniques, acupressure, traditional oriental herbology, needle preparation, and sterilization. Generally about a third of the instructional hours are in clinical training.

B. *What are other qualities of the profession or occupation that distinguish it from ordinary labor?*

The practice of acupuncture differs from ordinary labor in the same way the practice of Western medicine does; what is different from Western medicine is the method of treatment.

VI. A. *Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners of the profession or occupation will be exempt, what is the rationale for the exemption?*

The generally accepted standard of competency in the practice of acupuncture in this country is certification by the National Commission for the Certification of Acupuncturists. This legislation provides for a North Carolina license to be issued to anyone who has such certification or who has five years clinical experience and a license from another jurisdiction with comparable provisions. As stated earlier, there may be some individuals who currently hold themselves out as acupuncturists who do not meet these standards. There is no knowledge of anyone in the state, however, who has completed training in a formal acupuncture school or who is licensed elsewhere who would not be eligible for a North Carolina license under this legislation.

B. *What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?*

Currently, there are about twenty-five individuals in the state known to possess the qualifications for an acupuncture license, a 400% increase since 1989. It is assumed that this number will grow appreciably once the legal status of acupuncture is clarified. Each of the present practitioners has a full slate of patients; most have waiting lists.

VII. *What kind of knowledge or experience does the public need to have to be able to evaluate the services offered by the occupation or profession?*

As with other health care providers, the public generally will not have the knowledge to evaluate the services of acupuncturists. A patient will know whether he or she feels better or worse after treatment, and will have a general impression of whether the acupuncturist is competent, but will not be able to evaluate the techniques used by the practitioner. Establishing a licensing requirement will assure

the public of a minimum competency. Creation of a licensing board will provide a means for the public to pursue complaints and for the evaluation of the acupuncturist's work to be evaluated by other trained practitioners.

VIII. ***Does the occupational or professional group have an established code of ethics, a voluntary certification program or other measures to ensure a minimum quality of service? Please document.***

The generally recognized certification program in the United States is that of the National Commission for the Certification of Acupuncturists (NCCA), 1424 16th St N.W., Suite 105, Washington, D.C. 20036. Among the states which currently accept NCCA certification as a basis for issuing a state license are: Florida, Hawaii, Maine, Maryland, Massachusetts, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island and Utah. Certification by NCCA requires acceptance of a Code of Ethics. The Association of Acupuncture in North Carolina has adopted a stricter Code of Ethics. (Appendix C)

EXECUTIVE SUMMARY

1. Acupuncture was defined in a Texas federal court decision that upheld the right of patients to choose acupuncture as a form of health treatment as "One branch of traditional Chinese medicine,[that] has been practiced for 2,000 to 5,000 years. It consists of the insertion and manipulation of very fine needles at specific points on or near the surface of the skin. The needles, solid in construction, are usually one to three inches in length, although needles ranging from one-third of an inch to eight inches may be used. They are generally made of stainless steel, although other metals are often employed, and are sterilized before insertion. They may be used to affect the perception of pain (acupuncture analgesia) or to treat certain diseases or dysfunctions (acupuncture therapy)." Andrews v. Ballard, 498 F. Supp.1038, 1043-44 (S.D. Tex. 1980)
2. The system of acupuncture and its effect on a person's health is unfamiliar to western medical community. Acupuncture treats what the Chinese call Ch'i or Qi, which we translate as energy. Acupuncture works by stimulating the energy flow in order to return proper balance to the body. Acupuncture stimulates the body to heal itself.
3. "Western doctors have advanced a variety of alternative theories as to how acupuncture works. None of them, however, adequately explain all of acupuncture's manifestations. According to Dr. Richard Kroening, Medical Director of the Pain Management Clinic at the UCLA School of Medicine and Chair of the Acupuncture Advisory Committee of the California Board of Medical Quality Assurance, who is intimately familiar with both the theory and practice of acupuncture, the explanation most widely accepted by the Western medical community is that acupuncture triggers the production by the pituitary gland of the body's own natural pain-killing substances, endorphins and enkephalins, through so-called 'morphine receptors' in the mid-brain. But even '[t]he endorphine system, although possibly explaining many of the mechanisms of acupuncture, does not account for the specificity of acupuncture since a neurohumoral response might be expected to produce a generalized effect.' Whatever the best explanation is for how acupuncture works, one thing is clear: it does work. All of the evidence put before the Court indicates that, when administered by a skilled practitioner for certain types of pain and dysfunctions, acupuncture is both safe and effective." Andrews v. Ballard, 498 F. Supp. 1038, 1043-44 (S.D. Tex. 1980)
4. Since 1989, the number of acupuncturists in North Carolina increased 400% to over 30 practitioners who are licensed in other states.

5. Acupuncture is practiced in all 50 states, twenty-five states license, certify, register, or have legalized acupuncturists.
6. Many insurance companies recognize the benefits of acupuncture for their clients and cover treatment.
7. Congress has just authorized a \$2 million grant to the National Institute of Health to research the cost effectiveness of complementary medicine, acupuncture being one of the main therapies.

Acupuncture Association of N.C.

ACUPUNCTURE FACT PAPER

Acupuncture is an alternative to western medicine and works on a totally different premise. Acupuncture involves the use of needles inserted just beneath the skin as well as the utilization of techniques of oriental medicine, both traditional and modern, for the diagnosis, prevention, or correction of disease or pain. This is done by controlling and regulating the flow and balance of energy in the body so as to restore the body to its proper functioning and state of health.

Patients should have the right to choose their health care provider. If one approach to health care is found to be ineffective, there instead should be access to complementary health care providers.

Acupuncture is recognized by legitimate organizations as a beneficial treatment. The World Health Organization recommends acupuncture for 47 different disorders. After twenty years of opposition from the AMA, Congress has given the National Institutes of Health \$2 million to study acupuncture along with other complementary medical practices.

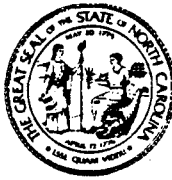
Acupuncturists follow the same antiseptic procedures in the office setting as do medical doctors. Pre-sterilized disposable needles are used. Furthermore, these needles do not penetrate the blood stream.

Acupuncture is a health care specialty which requires unique training not commonly found in medical schools. Only five out of over a hundred medical schools offer any acupuncture training. However, twenty-four acupuncture colleges have been established in the United States. Numerous colleges in the orient and Europe offer training, many in conjunction with western medicine.

Thirty states recognize acupuncturists as complementary health care providers and most of them license, certify, or register acupuncturists. Neighboring states are South Carolina and Virginia. Others include: Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, and Wisconsin.

Two states, New Mexico and Montana, limit the practice of acupuncture to those who qualify for licensing. Medical doctors can not practice acupuncture by virtue of their license without fulfilling the educational requirements of the acupuncture licensing law.

Insurance companies recognize the benefits of acupuncture for their clients. Seventeen insurance companies pay for treatment by acupuncturists in North Carolina. Another ten insurance companies pay for treatment in states with licensure. The companies which cover treatment performed by acupuncturists in North Carolina include: Durham Life, Mutual, John Hancock, Metropolitan, Aetna, Blue Cross/Blue Shield of South Carolina and Maryland, Hartford Worker's, Washington National, Educators Mutual Life, New York Life, Hartford Insurance, Coop American, N.O.W Med, Provident Insurance, Cigna, and North Carolina Comprehensive Health Benefit Plan. Ten other insurance companies pay for treatment in states that require licensure.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 422

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)
Page 1 of _____

93-ARN-10

Date _____, 1993

Comm. Sub.
Amends Title
First Edition

Senator _____

- 1 moves to amend the bill on page 2, line 11, by deleting the phrase
- 2 "Article I" and inserting the phrase "Article 1";
- 3
- 4 and further moves to amend the bill on page 3, line 21 by deleting
- 5 the phrase "G.S. 90-347" and inserting the phrase "G.S. 90-452";
- 6
- 7 and further moves to amend the bill on page 3, line 41 by inserting
- 8 immediately after the word "who" the phrase "had established
- 9 residency in North Carolina as of January 1, 1993, and";
- 10
- 11 and further moves to amend the bill on page 7, line 29, by rewriting
- 12 said line to read:
- 13
- 14 "Sec. 3. If any portion of this act shall be declared invalid or
- 15 unconstitutional, such declaration shall not affect the validity and
- 16 constitutionality of the remaining portions.
- 17 Sec. 4. This act is effective upon ratification."
- 18
- 19
- 20

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____