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HOUSE BILL NO. 1162

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HOUSE BILL NO. 1162

AN ACT TO REENACT SECTIONS 73-71-1 THROUGH 73-71-51, MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI ACUPUNCTURE PRACTICE ACT; TO AMEND SECTION 73-71-19, MISSISSIPPI CODE OF 1972, TO REQUIRE CRIMINAL RECORD BACKGROUND CHECKS FOR APPLICANTS; TO AMEND SECTION 73-71-53, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE MISSISSIPPI ACUPUNCTURE PRACTICE ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 73-71-1, Mississippi Code of 1972, is reenacted as follows:

73-71-1. This chapter shall be known and may be cited as the "Acupuncture Practice Act." Whenever a reference is made to the Acupuncture Practice Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

SECTION 2. Section 73-71-3, Mississippi Code of 1972, is reenacted as follows:

73-71-3. (1) In its concern with the need to eliminate the fundamental causes of illness and with the need to treat the whole person, the Legislature intends to establish in this chapter a framework for the practice of the art and science of acupuncture.

(2) The purposes of this chapter are to encourage the effective utilization of the skills relative to practitioners of acupuncture by citizens desiring their services; to remove the existing legal constraints that unnecessarily hinder the effective provision of health care services; and to subject individuals practicing acupuncture to regulation and control as a primary and independent health care profession.

SECTION 3. Section 73-71-5, Mississippi Code of 1972, is reenacted as follows:

73-71-5. As used in this chapter, unless the context otherwise requires, the following terms shall have the following meanings:

(a) "Accredited college of acupuncture" means any college, school or division of a university or college that offers the degree of Master of Science in Oriental Medicine (MSOM) or its equivalent and that is accredited by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM).

(b) "Acupuncturist" means a person who has received a professional degree from a college of acupuncture and Oriental medicine.

(c) "Acupuncturist-patient relationship" means that the acupuncturist has assumed the responsibility for making clinical judgments regarding the health of the patient and the need for medical treatment, and the patient has agreed to follow the acupuncturist's instructions.

(d) "Acupuncture practitioner" means a practitioner licensed under this chapter to practice the techniques of acupuncture in this state and includes the term "acupuncturist."

(e) "Advisory council" means the Mississippi Council of Advisors in Acupuncture established in this chapter.

(f) "Board" means the State Board of Medical Licensure established in Section 73-43-1 et seq.

(g) "Complementary and integrative therapies" means a heterogeneous group of preventive, diagnostic and therapeutic philosophies and practices, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from western medicine routinely taught in accredited medical colleges, or both. These therapies include, but are not limited to, acupuncture, acutherapy and acupressure.

(h) "Impaired practitioner" means a practitioner who is unable to practice acupuncture with reasonable skill and safety because of a physical or mental disability as evidenced by a written determination from a competent authority or written consent based on clinical evidence, including deterioration of mental capacity, loss of motor skills, or abuse of drugs or alcohol of sufficient degree to diminish the person's ability to deliver competent patient care.

(i) "Informed consent" means the acupuncture practitioner has informed the patient, in a manner that would be

understood by a reasonable person, of the diagnostic and treatment options, risk assessment and prognosis and has provided the patient with an estimate of the charges for treatment to be rendered and the patient has consented to the recommended treatment.

(j) "NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

(k) "Physician" means a doctor of medicine or osteopathy who is legally authorized to practice medicine in the State of Mississippi.

(l) "Practice of acupuncture" means:

(i) To treat, correct, change, alleviate or prevent disease, illness, pain, deformity, defect, injury or other physical or mental conditions by the techniques of acupuncture, including:

1. The administering or applying of an apparatus or other therapeutic technique as defined in this chapter; or

2. The using of complementary and integrative therapies as defined in this chapter; or

3. The rendering of advice or recommendation by any means including telephonic and other electronic communications with regard to any of the above.

(ii) To represent, directly or indirectly, publicly or privately, an ability and willingness to do an act described in this paragraph.

(iii) To use any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act described in this paragraph.

(m) "Techniques of acupuncture" includes acupuncture, moxibustion or heating modalities, cupping, magnets, ion pumping cords, electroacupuncture including electrodermal assessment, application of cold packs, dietary, nutritional and lifestyle counseling, manual therapy (Tui Na), massage, breathing and exercise techniques, the administration of any herb and nutritional supplement and meridian therapy. The terms used in this paragraph are defined as follows:

(i) "Acupuncture" means the insertion and manipulation of needles to the body, and the use of Oriental medicine and other modalities and procedures at specific locations on the body, for the prevention or correction of any disease, illness, injury, pain or other condition.

(ii) "Cupping" means the heating of air or mechanical creation of suction in a cup, application to specific locations on the body to induce local vasodialation and mechanical expansion of underlying tissue.

(iii) "Ion pumping cords" means the application of wires containing diodes to acupuncture needles that have been placed on the body.

(iv) "Magnets" means the application of magnets to specific locations on the body.

(v) "Electroacupuncture including electrodermal assessment" means the use of electronic biofeedback, and electrostimulation instruments.

(vi) "Cold packs" means the application of cold packs and ice to specific locations on the body to reduce heat conditions or inflammation in surface tissues of the body.

(vii) "Dietary, nutritional and lifestyle counseling" means in depth patient interviews and counseling to determine whether poor dietary, lifestyle or nutritional practices are a factor in a patient's illness and to educate toward a healthier lifestyle.

(viii) "Manual therapy (Tui Na) and massage" means mobilization of skeletal and soft tissues.

(ix) "Breathing and exercise techniques" means the use of Qi Gong and other techniques of therapeutic breathing and exercise.

(x) "Administration of herbal and botanical substances" means the administration of herbs of animal, vegetable or mineral origin for health maintenance and the treatment of effects of disease.

(xi) "Vitamin, mineral or nutritional supplement" means a nutritional substance, including a concentrate or extract of such a substance.

(xii) "Devices for meridian therapy" means all assessment and/or treatment devices for use with acupuncture meridians.

SECTION 4. Section 73-71-7, Mississippi Code of 1972, is reenacted as follows:

73-71-7. All of the following shall apply to an acupuncture practitioner who is licensed to practice in Mississippi:

(a) The practitioner shall perform the technique of acupuncture for a patient only if the patient has received a written referral or prescription for acupuncture from a physician. As specified in the referral or prescription, the acupuncturist shall provide reports to the physician on the patient's condition or progress in treatment and comply with the conditions or restrictions on the acupuncturist's course of treatment.

(b) The practitioner shall perform the technique of acupuncture under the general supervision of the patient's referring or prescribing physician. General supervision does not require that the acupuncturist and physician practice in the same office.

(c) Before treating a patient, the practitioner shall advise the patient that acupuncture is not a substitute for

conventional medical diagnosis and treatment and shall obtain the informed consent of the patient.

(d) On initially meeting a patient in person, the practitioner shall provide in writing the practitioner's name, business address, and business telephone number, and information on acupuncture, including the techniques that are used.

(e) While treating a patient, the practitioner shall not make a diagnosis. If a patient's condition is not improving or a patient requires emergency medical treatment, the practitioner shall consult promptly with a physician.

SECTION 5. Section 73-71-9, Mississippi Code of 1972, is reenacted as follows:

73-71-9. All of the following shall apply to an acupuncture practitioner's supervising physician for a patient:

(a) Before making the referral or prescription for acupuncture, the physician shall perform a medical diagnostic examination of the patient or review the results of a medical diagnostic examination recently performed by another physician.

(b) The physician shall make the referral or prescription in writing and specify in the referral or prescription all of the following:

(i) The physician's diagnosis of the ailment or condition that is to be treated by acupuncture;

(ii) A time by which or the intervals at which the practitioner must provide reports to the physician regarding the patient's condition or progress in treatment; and

(iii) The conditions or restrictions placed on the practitioner's course of treatment.

(c) The physician shall be personally available for consultation with the practitioner. If the physician is not on the premises at which acupuncture is performed, the physician shall be readily available to the practitioner through some means of telecommunication and be in a location that under normal circumstances is not more than sixty (60) minutes travel time away from the location where the practitioner is practicing.

SECTION 6. Section 73-71-11, Mississippi Code of 1972, is reenacted as follows:

73-71-11. (1) There is hereby established the Mississippi Council of Advisors in Acupuncture to aid the State Board of Medical Licensure in administering the provisions of this chapter.

(2) The council shall consist of three (3) persons appointed by the Executive Director of the State Medical Licensure Board to be selected from a list of six (6) nominees of the Mississippi Oriental Medicine Association. Members of the council shall either be acupuncture practitioners who are not medical, osteopathic or chiropractic doctors or surgeons, or medical doctors who are registered to practice acupuncture or qualify as an acupuncture practitioner.

(3) The initial members of the council shall be appointed by the Governor for staggered terms as follows: one (1) member shall be appointed for a term ending on July 1, 2011, and two (2) members shall be appointed for terms ending on July 1, 2012. After the expiration of the initial terms, each successor member shall be appointed for a term of three (3) years. A vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Council members shall serve until their successors have been appointed and qualified.

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

(5) The Governor may remove any member from the council for neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulations, for conflict of interest, or for any reason that would justify the suspension or revocation of his or her license to practice acupuncture.

(6) A majority of the members of the council shall constitute a quorum to conduct business. It shall require an affirmative vote of a majority of those members present at a meeting to take any action or pass any motion. The council shall, not later than September 1, 2009, and annually thereafter in the

month of July, hold a meeting and elect from its membership a chairman and vice chairman. The council shall meet at any other times as it deems necessary or advisable by the chairman, a majority of its members, or the Governor. Reasonable notice of all meetings shall be given in the manner prescribed by the Open Meetings Law (Section 25-3-41 et seq.). Members of the council are not liable to civil action for any act performed in good faith in the execution of duties as a council member.

(7) Members of the council shall be reimbursed for expenses and mileage as provided in Section 25-3-41, but shall receive no other compensation, perquisite or allowance for service on the council.

(8) The council shall report annually to the Legislature statistics regarding the number of licensees, results of the licensing examinations, and violations investigated during the previous year.

SECTION 7. Section 73-71-13, Mississippi Code of 1972, is reenacted as follows:

73-71-13. (1) The State Board of Medical Licensure is hereby empowered, authorized and directed to adopt, amend, promulgate and enforce such rules, regulations and standards governing the practice of acupuncture as may be necessary to further the accomplishment of the purpose of this chapter, and in so doing shall utilize as the basis thereof the corresponding recommendations of the advisory council.

(2) The board's authority and responsibility include the following:

(a) Grant, deny, renew, restrict, suspend or revoke licenses to practice acupuncture in accordance with the provisions of this chapter or other applicable state law;

(b) Examine by established protocol the qualifications and fitness of applicants for a license to practice acupuncture in this state;

(c) Conduct investigations of suspected violations of this chapter to determine whether there are sufficient grounds to initiate disciplinary proceedings;

(d) Inspect premises and equipment, on a triennial basis and assess an inspection fee in the amount of One Hundred Dollars ($100.00) per inspection and an additional fee of Fifty Dollars ($50.00) for each licensed acupuncturist employed by the inspected establishment;

(e) Hold hearings on all matters properly brought before the board, to administer oaths, receive evidence, make necessary determinations and enter orders consistent with the findings. The board may require by subpoena the attendance and testimony of witnesses and the production of papers, records or other documentary evidence and commission depositions. The board may designate one or more of its members to serve as its hearing officer. The board shall adopt rules and regulations for hearings before the board and the rules shall afford any person appearing

before the board the safeguards of procedural due process. Formal rules of evidence shall not apply;

(f) Contract with independent consultants or other appropriate agencies to administer examinations for licensure, according to the provisions of this chapter, and establish a fee for such examination not to exceed Five Hundred Dollars ($500.00);

(g) Establish and publish a schedule of fees for annual licensing, certification and renewal not to exceed Four Hundred Dollars ($400.00) annually; and

(h) Keep and maintain accurate records of all board business in accordance with state law.

The powers enumerated in this section are granted for the purpose of enabling the board to supervise effectively the practice of acupuncture and are to be construed liberally to accomplish this objective.

SECTION 8. Section 73-71-15, Mississippi Code of 1972, is reenacted as follows:

73-71-15. Unless licensed as an acupuncture practitioner under this chapter, or exempt from licensure under the provisions of this chapter, no person shall practice or hold himself or herself out as practicing or engaging in the practice of acupuncture, either for compensation or gratuitously.

SECTION 9. Section 73-71-17, Mississippi Code of 1972, is reenacted as follows:

73-71-17. (1) An acupuncture practitioner license authorizes the holder to engage in the practice of acupuncture.

(2) This chapter shall not be construed to limit, interfere with, or prevent any other class of licensed health care professionals from practicing within the scope of their licenses as defined by each profession's state licensing statute.

(3) This chapter shall not be construed to make unlawful the activities of persons involved in research performed under the auspices of a federal or state regulated research institution.

(4) The practice and techniques of acupuncture shall not include the practice of physical therapy as defined in the Mississippi Physical Therapy Practice Law, Title 73, Chapter 23 of the Mississippi Code of 1972.

SECTION 10. Section 73-71-19, Mississippi Code of 1972, is amended as follows:

73-71-19. (1) No person shall be licensed to practice acupuncture unless he or she has passed an examination and/or has been found to have the necessary qualifications as prescribed in the regulations adopted by the board.

(2) Before any applicant is eligible for an examination or qualification, he or she shall furnish satisfactory proof that he or she:

(a) Is a citizen or permanent resident of the United States;

(b) Has demonstrated proficiency in the English language;

(c) Is at least twenty-one (21) years of age;

(d) Is of good moral character;

(e) Has completed a program of acupuncture and has received a certificate or diploma from an institute approved by the board, according to the provisions of this chapter;

(f) Has completed a clinical internship training as approved by the board; and

(g) Has received training in cardiopulmonary resuscitation (CPR).

(3) The board may hold an examination at least once a year, and all applicants shall be notified in writing of the date and time of all examinations. The board may use a NCCAOM examination if it deems that national examination to be sufficient to qualify a practitioner for licensure in this state. In no case shall the state's own examination be less rigorous than the nationally recognized examination.

(4) In addition to the written examination, if the nationally recognized examination does not provide a suitable practical examination comparable to board standards, the board shall examine each applicant in the practical application of Oriental medical diagnostic and treatment techniques in a manner and by methods that reveal the applicant's skill and knowledge.

(5) The board shall require all qualified applicants to be examined in the following subjects:

(a) Anatomy and physiology;

(b) Pathology;

(c) Diagnosis;

(d) Hygiene, sanitation and sterilization techniques;

(e) All major acupuncture principles, practices and techniques; and

(f) Clean Needle Technique Exam.

(6) To assist the board in conducting its licensure investigation, all applicants shall undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety (department) and the Federal Bureau of Investigation Identification Division for this purpose. Any and all state or national criminal history records information obtained by the board that is not already a matter of public record shall be deemed nonpublic and confidential information restricted to the exclusive use of the board, its members, officers, investigators, agents and attorneys in evaluating the applicant's eligibility or disqualification for licensure, and shall be exempt from the Mississippi Public Records Act of 1983. Except when introduced

into evidence in a hearing before the board to determine licensure, no such information or records related thereto shall, except with the written consent of the applicant or by order of a court of competent jurisdiction, be released or otherwise disclosed by the board to any other person or agency. The board shall provide to the department the fingerprints of the applicant, any additional information that may be required by the department, and a form signed by the applicant consenting to the check of the criminal records and to the use of the fingerprints and other identifying information required by the state or national repositories. The board shall charge and collect from the applicant, in addition to all other applicable fees and costs, such amount as may be incurred by the board in requesting and obtaining state and national criminal history records information on the applicant.

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

(a) Has passed the board's written examination and practical examination, with a score of not less than seventy percent (70%) on each examination; or

(b) Has achieved a passing score on a board approved nationally recognized examination, which examination includes a written and practical portion, as determined by the board; or

(c) Has received certification from a board approved national certification process; or

(d) Has achieved a passing score on a board approved nationally recognized written examination and has passed the board's practical examination with a score of not less than seventy percent (70%).

(* * *8) The board shall keep a record of all examinations held, together with the names and addresses of all persons taking examinations, and the examination results. Within forty-five (45) days after the examination, the board shall give written notice of the results of the examination to each applicant.

SECTION 11. Section 73-71-21, Mississippi Code of 1972, is reenacted as follows:

73-71-21. The board may, at its discretion, issue a license without examination to an acupuncture practitioner who has been licensed, certified or otherwise formally legally recognized as an acupuncturist or acupuncture practitioner in any state or territory if all three (3) of the following conditions are met to its satisfaction:

(a) The applicant meets the requirements of practice in the state or territory in which the applicant is licensed, certified, or registered as an acupuncturist or acupuncture practitioner;

(b) The requirements for practice in the state or territory in which the applicant is licensed, certified or

registered as an acupuncturist or acupuncture practitioner are at least as stringent as those of this state; and

(c) The state or territory in which the applicant is licensed, certified or legally recognized as an acupuncturist or acupuncture practitioner permits an acupuncture practitioner licensed in this state to practice acupuncture or acupuncture in that jurisdiction by credentials examination.

SECTION 12. Section 73-71-23, Mississippi Code of 1972, is reenacted as follows:

73-71-23. (1) The board shall establish, by regulation, mandatory continuing education requirements for acupuncture practitioners licensed in this state, including the following:

(a) Each person licensed under this chapter, whether or not residing within the state, shall complete thirty (30) hours of continuing education within each biennial renewal period, except during the initial biennial renewal period; and

(b) Each person not obtaining the required number of hours of continuing education may have his or her license renewed for just cause, as determined by the board, so long as the board requires that the deficient hours of continuing education, and all unpaid fees, are made up during the following renewal period in addition to the current continuing education requirements for the renewal period. If any acupuncture practitioner fails to make up the deficient hours and complete the later renewal period, or fails to make up any unpaid fees, then his or her license shall

not be renewed until all fees are paid and all of the required hours are completed and documented to the board.

(2) The board shall establish by regulation education standards and record keeping requirements for continuing education providers. A provider of continuing education courses shall apply to the board for approval to offer continuing education courses for credit toward this requirement on a form developed by the board, shall pay a fee covering the cost of approval and for monitoring of the provider by the board. Institutions, associations and individuals providing continuing education shall maintain records of attendance, including sign-in sheets, for a period of three (3) years.

SECTION 13. Section 73-71-25, Mississippi Code of 1972, is reenacted as follows:

73-71-25. (1) The board shall establish standards for approval of schools and colleges offering education and training in the practice of acupuncture.

(2) Before approval of an institute of acupuncture, the board shall determine that the institute meets standards of professional education. These standards shall provide that the institute:

(a) Require, as a prerequisite to graduation, a program of study of at least two thousand five hundred (2,500) hours;

(b) Meet the minimum requirements of a board approved national accrediting body;

(c) Require participation in a carefully supervised clinical or internship program; and

(d) Confer a certificate, diploma or degree in acupuncture only after personal attendance in classes and clinics.

SECTION 14. Section 73-71-27, Mississippi Code of 1972, is reenacted as follows:

73-71-27. (1) Any acupuncturist validly licensed, certified or registered under prior law of this state shall be deemed as licensed under the provisions of this chapter.

(2) All acupuncturists licensed under this section shall not accept or perform professional responsibilities that the licensee knows or has reason to know that the person is not qualified by training, experience or certification to perform. Violation of this section shall subject the licensee to the revocation or suspension of his or her license. The board shall make regulations on those requirements and shall grant previously licensed, certified or registered acupuncturists qualification on a case-by-case basis.

(3) The board shall require each licensee to obtain and maintain an adequate amount of professional liability insurance and provide proof of that insurance to the board.

SECTION 15. Section 73-71-29, Mississippi Code of 1972, is reenacted as follows:

73-71-29. (1) Persons licensed under this chapter shall be subject to the following reporting requirements:

(a) All morbidity, mortality, infectious disease, abuse and neglect reporting requirements of this state;

(b) Reporting completion of the required continuing education study to the board with his or her license renewal;

(c) Notification of the board in writing of any change of address within thirty (30) days of the change;

(d) Notification of the board in writing of termination or temporary closing of the licensee's practice if the cessation of business is expected to be over ninety (90) days, or otherwise limit access to patient records. The licensee shall notify the board upon resuming practice; and

(e) Posting his or her license in a conspicuous location in his or her place of practice at all times.

(2) Persons licensed under this chapter shall be subject to the following record keeping requirements:

(a) Maintenance of accurate records of each patient that he or she treats. The records shall include the name of the patient, medical history, subjective symptoms, objective findings and treatment rendered;

(b) Maintenance of patient records for a period of seven (7) years; and

(c) Maintenance of documents proving completion of required continuing education study for a period of three (3) years.

SECTION 16. Section 73-71-31, Mississippi Code of 1972, is reenacted as follows:

73-71-31. (1) Acupuncture practitioners shall comply with all applicable public health laws of this state.

(2) Sanitation practices shall include:

(a) Hands shall be washed with soap and water or other disinfectant between treatment of different patients;

(b) Skin in the area of penetration shall be swabbed with alcohol or other germicidal solution before inserting needles;

(c) Needles and other equipment used in the practice of acupuncture shall be sterilized before using;

(d) Needles and other hazardous waste shall be disposed of in a manner prescribed by law; and

(e) Other sanitation practices shall be observed to insure health and safety of patients, as prescribed by the board.

SECTION 17. Section 73-71-33, Mississippi Code of 1972, is reenacted as follows:

73-71-33. The following acts constitute grounds for which the board may initiate disciplinary actions:

(a) Attempting to obtain, or renewing a license to practice acupuncture by bribery or misinterpretation;

(b) Having a license to practice acupuncture revoked, suspended, or otherwise acted against, including the denial of

licensure by the licensing authority of another state or territory for reasons that would preclude licensure in this state;

(c) Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a felony, or a crime of moral turpitude, or a crime that directly relates to acupuncture. For the purposes of this paragraph, a plea of guilty or a plea of nolo contendere accepted by the court shall be considered as a conviction;

(d) Advertising, practicing, or attempting to practice under a name other than one's own;

(e) The use of advertising or solicitation that is false or misleading;

(f) Aiding, assisting, procuring, employing or advertising an unlicensed person to practice acupuncture contrary to this chapter or a rule of the board;

(g) Failing to perform any statutory or legal obligation placed upon an acupuncture practitioner;

(h) Making or filing a report that the licensee knows to be false, intentionally or negligently failing to file a report required by state or federal law, willfully impeding or obstructing that filing or inducing another person to do so. Those reports shall include only those that are signed in the capacity of an acupuncture practitioner;

(i) Exercising coercion, intimidation or undue influence in entering into sexual relations with a patient, or

continuing the patient-practitioner relationship with a patient with whom the licensee has sexual relations, if those sexual relations cause the licensee to perform services incompetently. This paragraph shall not apply to sexual relations between acupuncture practitioners and their spouses;

(j) Making deceptive, untrue or fraudulent misrepresentations in the practice of acupuncture;

(k) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation or undue influence, or a form of overreaching conduct;

(l) Failing to keep written medical records justifying the course of treatment of the patient;

(m) Exercising undue influence on the patient to exploit the patient for financial gain of the licensee or of a third party;

(n) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or intemperate use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

(o) Malpractice or the failure to practice acupuncture to that level of care, skill and treatment that is recognized by a reasonably prudent similar practitioner of acupuncture as being acceptable under similar conditions and circumstances;

(p) Practicing or offering to practice beyond the scope permitted by law or accepting or performing professional responsibilities that the licensee knows or has reason to know that he or she is not qualified by training, experience or certification to perform;

(q) Delegating professional responsibilities to a person when the licensee delegating those responsibilities knows, or has reason to know, that the person is not qualified by training, experience or licensure to perform them;

(r) Violating any provision of this chapter, a rule of the board, or a lawful order of the board previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the board;

(s) Conspiring with another to commit an act, or committing an act, that coerces, intimidates or precludes another licensee from lawfully advertising or providing his or her services;

(t) Fraud or deceit, or gross negligence, incompetence or misconduct in the operation of a course of study;

(u) Failing to comply with state, county or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious disease;

(v) Failing to comply with any rule of the board relating to health and safety, including, but not limited to,

sterilization of equipment and the disposal of potentially infectious materials;

(w) Incompetence, gross negligence or other malpractice in the practice of acupuncture;

(x) Aiding the unlawful practice of acupuncture;

(y) Fraud or dishonesty in the application or reporting of any test for disease;

(z) Failure to report, as required by law, or making false or misleading report of, any contagious or infectious disease;

(aa) Failure to keep accurate patient records; or

(bb) Failure to permit the board or its agents to enter and inspect acupuncture premises and equipment as set by rules promulgated by the board.

SECTION 18. Section 73-71-35, Mississippi Code of 1972, is reenacted as follows:

73-71-35. (1) Disciplinary proceedings under this chapter shall be conducted in the same manner as other disciplinary proceedings are conducted by the State Board of Medical Licensure.

(2) When the board finds any person guilty of any of the acts set forth in Section 73-71-33, it may then enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the board an application for licensure;

(b) Revocation or suspension of a license;

(c) Restriction of practice;

(d) Imposition of an administrative fine not to exceed One Thousand Dollars ($1,000.00) for each count or separate offense;

(e) Issuance of a reprimand;

(f) Placement of the acupuncture practitioner on probation for a period of time and subject to the conditions as the board may specify.

(3) In enforcing this chapter, upon finding of the board that probable cause exists to believe that the licensee is unable to serve as an acupuncture practitioner because of committing any of the acts set forth in Section 73-71-33 or any of the crimes set forth in Section 73-71-37, the board shall have to issue an order to compel the licensee to submit to a mental or physical examination by a physician designated by the board. If the licensee refuses to comply with the order, the board's order directing the examination may be enforced by filing a petition for enforcement in any court of competent jurisdiction. The licensee against whom the petition is filed shall not be named or identified by initials in any public court record or document, and the proceedings shall be closed to the public unless the licensee stipulates otherwise. The board shall be entitled to the summary procedure provided in applicable state law. An acupuncture practitioner affected under this subsection shall at reasonable intervals be afforded an opportunity to demonstrate that he or she

can resume the competent practice of acupuncture with reasonable skill and safety of the patients. In any proceeding under this subsection, neither the record of proceedings nor the orders entered by the board shall be used against the acupuncture practitioner in any other proceeding.

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

SECTION 19. Section 73-71-37, Mississippi Code of 1972, is reenacted as follows:

73-71-37. (1) It is unlawful for any person to:

(a) Hold himself or herself out as an acupuncture practitioner unless licensed as provided in this chapter;

(b) Practice acupuncture, or attempt to practice acupuncture, without an active license or as otherwise permitted by board rule established under the authority of this chapter;

(c) Obtain, or attempt to obtain, a license to practice acupuncture by fraud or misrepresentation; or

(d) Permit an employed person to engage in the practice of acupuncture unless the person holds an active license as a practitioner of acupuncture, except as provided by this chapter.

(2) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than six (6) months, or both.

SECTION 20. Section 73-71-39, Mississippi Code of 1972, is reenacted as follows:

73-71-39. (1) The board shall establish a program of care, counseling or treatment for impaired acupuncturists.

(2) The program of care, counseling or treatment shall include a written schedule of organized treatment, care, counseling, activities or education satisfactory to the board designed for the purposes of restoring an impaired person to a condition by which the impaired person can practice acupuncture with reasonable skill and safety of a sufficient degree to deliver competent patient care.

(3) All persons authorized to practice by the board shall report in good faith any acupuncturist they reasonably believe to be an impaired practitioner as defined in Section 73-71-5.

SECTION 21. Section 73-71-41, Mississippi Code of 1972, is reenacted as follows:

73-71-41. (1) No licensed acupuncturist shall disclose any information concerning the licensed acupuncturist's care of a patient except on written authorization or by waiver by the

licensed acupuncturist's patient or by court order, by subpoena, or as otherwise provided in this section.

(2) Any licensed acupuncturist releasing information under written authorization or other waiver by the patient or under court order, by subpoena, or as otherwise provided by this section shall not be liable to the patient or any other person.

(3) The privilege provided by this section shall be waived to the extent that the licensed acupuncturist's patient places the licensed acupuncturist's care and treatment of the patient or the nature and extent of injuries to the patient at issue in any civil criminal proceeding.

SECTION 22. Section 73-71-43, Mississippi Code of 1972, is reenacted as follows:

73-71-43. Each licensee shall be required to pay biennial license renewal fees and meet continuing education requirements as provided in this chapter.

SECTION 23. Section 73-71-45, Mississippi Code of 1972, is reenacted as follows:

73-71-45. (1) A license that has expired may be renewed at any time within ninety (90) days after its expiration upon filing of an application for renewal on a form provided by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within ninety (90) days after its expiration, the acupuncture practitioner, as a condition

precedent to renewal, shall pay the renewal fees plus a late fee to be set by the board.

(2) A person who fails to renew his or her license within four (4) years after its expiration may not renew that license, and it may not be restored, reissued or reinstated after that time; but that person may apply for and obtain a new license if he or she meets the following requirements:

(a) Takes and passes a suitable examination, or demonstrates continued practice and continuing education acceptable to the board; and

(b) Pays all fees that would be required if an initial application for licensure were being made.

SECTION 24. Section 73-71-47, Mississippi Code of 1972, is reenacted as follows:

73-71-47. At any time while a license is valid, or expired but not lapsed, the licensee may request that his or her license be placed on inactive status. While on inactive status, the licensee is not subject to fees or continuing education requirements. As a condition of reinstatement, the licensee must satisfy the following requirements:

(a) Demonstrate that he or she has not committed any acts or crimes constituting grounds for denial of licensure under any provisions of this chapter;

(b) Pay fees to reactivate status as designated by the board;

(c) Meet continuing education requirements equivalent to those that would have been met in the preceding two (2) years; and

(d) Establish to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncture practitioner.

SECTION 25. Section 73-71-49, Mississippi Code of 1972, is reenacted as follows:

73-71-49. (1) A suspended license is subject to expiration and shall be renewed as provided in this act, but while the license remains suspended, and until it is reinstated, the renewal does not entitle the practice of acupuncture, or any other activity or conduct in violation of the order of the board by which the license was suspended.

(2) A revoked license is subject to expiration as provided in this chapter but it may not be renewed. If it is reinstated after its expiration, the former licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal fee date, if any, accrued at the time of its expiration.

SECTION 26. Section 73-71-51, Mississippi Code of 1972, is reenacted as follows:

73-71-51. (1) The board may charge reasonable fees for the following:

(a) Initial application fee for licensing;

(b) Written and practical examination not including the cost of the nationally recognized examination;

(c) Biennial licensing renewal for acupuncture practitioners;

(d) Late renewal more than thirty (30) days, but not later than one (1) year, after expiration of a license, which late fee is in addition to any other fees;

(e) Reciprocal licensing fee;

(f) Annual continuing education provider registration fee; and

(g) Any and all fees to cover reasonable and necessary administrative expenses as established by the Council of Advisors in Acupuncture.

(2) All fees shall be set forth in regulations duly adopted by the board.

(3) All fees and other funds collected under this chapter shall be deposited into the special fund of the State Board of Medical Licensure.

SECTION 27. Section 73-71-53, Mississippi Code of 1972, is amended as follows:

73-71-53. Sections 73-71-1 through 73-71-51 shall stand repealed on July 1, * * * 2017.

SECTION 28. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 7, 2013

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2013

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

3/20/13
3:05 pm