

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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- The NCCA certificate represents professional recognition. It does not authorize or license you to practice acupuncture. Licensure and registration are state regulatory functions, which vary from state to state.
- You will be listed in a directory of nationally certified acupuncturists.
- NCCA certification is helping establish a national identity for our profession, strengthening the role of the profession by establishing its own standards of excellence.

In addition, other important benefits are now possible:

- It is expected that NCCA certification will serve as a basis for the licensure of acupuncturists in an increasing number of states. NCCA is working toward the acceptance of NCCA certification as a national standard.
- In the future, NCCA certification may be a criterion for insurance company reimbursement of acupuncture treatments; and
- Reciprocal agreements may be developed among states that include national certification as a criterion for licensure.

IV. THE EXAMINATION

How It was Developed

NCCA has from its inception been committed to the development of a fair, valid and reliable examination. In order to accomplish this it has chosen to work under the guidelines of the National Commission for Health Certifying Agencies (NCHCA), which establishes national standards for professional certification. Consistent with NCHCA guidelines, "fair," "valid" and "reliable" are key words. Analysis of the results of each of the examinations by Professional Examination Service (PES) confirm our achievement of these goals.

Fair

A "fair" examination is one that is not biased for or against competent practitioners because of training in any particular school of thought or national tradition. An effort was made to include representation of all major traditions in the NCCA process.

Valid

A "valid" examination tests only the knowledge and skills actually needed for the safe and effective practice of the profession.

The first step in establishing validity was to survey practitioners and educators to delineate the knowledge and skills needed for competent acupuncture practice.

The next step was to convene a panel of acknowledged leaders in our profession to draft a "Blueprint" which described the clinical responsibilities of a competent acupuncturist and the knowledge needed to perform the necessary tasks. The panel worked from the original survey results and from their own experience as expert practitioners.

The panel's work was then evaluated by more than a hundred acupuncturists who live and work in different regions of the country, and whose practices reflect many different national traditions of acupuncture.

Reliable

A "reliable" examination is consistent in its measurement of knowledge. Different candidates with a similar level of knowledge and skill should have similar scores on a reliable examination. Such an examination would provide similar results each time it is administered year after year. This is accomplished by careful examination construction and evaluation by experts in testing and statistics. For help in this and all other technical aspects of the work, the NCCA relies on the skills of the Professional Examination Service (PES), one of the most highly respected testing agencies in the field of professional certification. The PES participation began with the expert panel meeting, and continued through validation, writing and administration of the examination. Some of the other professions for which PES has provided this service are physical therapists, psychologists and social workers. They have worked with states and local governments.

What is Included in the Examination?

The national certification examination is a comprehensive, competency based, multiple choice test which focuses on acupuncture theory and practice. Knowledge of Oriental herbs is not tested. Candidates will be notified well before the examination what knowledge and skills will be tested, and will be supplied with a helpful bibliography and Preparation Guide.

Candidates will also be required to qualify in clinical procedure demonstrating competence by having successfully completed the NCCA Clean Needle Technique Course. A CNT Manual will be provided for study in advance of the CNT Course.

Translations

The Commission will, at its discretion, provide the examination in foreign languages at the candidates' expense. If there is a sufficient number of candidates requesting the exam in a given language, the Commission

may waive the translation fee.

Time and Place

Examination sites will be in San Francisco, CA and Newark, NJ. The timing of the examination will be simultaneous (e.g., 12 noon in New York and 9 a.m. in San Francisco) to ensure security. Administration and scoring of the examination will be conducted by the Professional Examination Service. Other special test administrations may be requested by individual states during the year and may require additional fees.

V. FEES

The cost of certification is \$425.00.

Refunds and credits are as follows:

- Candidates who are found ineligible at the time of application will be entitled to a \$200 refund out of a total cost of \$425.00.
- Candidates who have passed a state licensing examination provided under contract by NCCA will receive a \$100.00 credit toward the cost of certification.
- The cost to re-take the NCCA examination is \$200.00
- The cost of the Clean Needle Technique Course for non-certification candidates is \$100.00.
- Applicants who defer examination to a later date will be subject to any increase in exam fees.

NOTE: There may be additional charges for examination translation or for unusual credential verification procedures that require exceptional expense.

NCCA is a non-profit organization. Fees are established to cover the expenses of the certification process and may be subject to change. Fees will not be changed without notice, and can be assumed to be fixed for this examination cycle.

VI. ELIGIBILITY CRITERIA FOR EXAMINATION

The following criteria determine a candidate's eligibility:

Age: Candidates must be at least 18 years old;

Licensure: An acupuncturist licensed by any state in the U.S. is eligible to take the NCCA exam.

Practice: Four years of acupuncture practice with a minimum of 500 patient visits per year establishes a candidate's eligibility;

Education: A minimum of two years' full time acupuncture schooling or four (4) years of apprenticeship establishes eligibility. Satisfactory completion of the school's program is required, whether it is a two-year school or a three-year school. Third-

year students may be admitted to the exam, but those who pass will not receive their certification until they demonstrate satisfactory completion of their school's program.

The point system described in Section VII was developed to facilitate establishing eligibility by a combination of qualifications. Be sure to read "Definitions" carefully in order to evaluate your qualifications.

NOTE: Persons who were ruled eligible for a previous examination, but who chose to delay taking it, will be considered eligible for the September 1987 Examination. Reapplication is not required, but applicants will be subject to the increase in exam fees and the NCCA office should be notified of intent to take the Examination by 6/15/87.

VII. THE POINT SYSTEM

Forty points (40) in any combination of the categories below qualifies an applicant to take the comprehensive examination:

Practice — 10 points per year _____

Education — (Maximum 20 points per year)

Formal full time school (20 points/year if program has been completed or for 3rd year students) _____

Uncompleted formal schooling (10 points/year) _____

Correspondence school (to be evaluated individually) (Maximum 20 points) _____

Self-directed study — 10 points for study equivalent to one year of full-time school. (Maximum 20 points) _____

Apprenticeship — 10 points per year (Maximum 40 points) _____

State licensure — 40 points _____

Your total _____
(Total required: 40 points)

Fractions of years may be claimed in 6 month units. Any length of time between 6 months and one year will be credited as the appropriate number of points for half a year. No smaller subdivisions will be accepted.

NOTE: Before calculating your points, be sure to read the "Definitions." section VIII.

VIII. DEFINITIONS

Education

Full educational credit is earned by satisfactory completion of an organized program or graduation from a school or college that can document a comprehensive curriculum providing approximately 1000 hours of entry level training which includes at least 300 clinical hours.

Those who have received credit for successfully completing a portion of a formal educational program but do not complete the full program shall be granted 10 points for each full year of school (500 hours) for a maximum of 20 points. This education can count as part of a self-directed study program (see below).

Education credit is evaluated as follows: each year of education is equal to 500 hours; because of the structure of different curricula, variations will be evaluated individually. Some credit will be allowed for comprehensive, well-organized correspondence programs and seminars that can demonstrate sufficient quality and interaction to provide a cohesive educational experience.

Seminars, classes and other learning experiences that have not been planned around a well-documented comprehensive entry-level curriculum do not qualify for education credit.

Self-directed study

In order to qualify for self-directed study, it must be demonstrated to be equivalent in time, content and scope to formal schooling. It must include all areas of the core curriculum of a formal school, with a minimum of 500 hours of supervised clinical training.

Apprenticeship

Apprenticeship is defined as on-going work with a tutor or preceptor who assumes responsibility for the theoretical and practical education and training of the apprentice. There may be a maximum of two apprentices under a single preceptor at any one time. "One year" is defined as a minimum of 1000 contact hours. ("Contact hours" is time the apprentice spends under the direct supervision of the preceptor. Off-site supervision is not included.)

The preceptor's practice must include a minimum of 500 patient visits per year during the apprentice's program. Patient visits must be in general health care practice. Specialized limited practice such as smoking withdrawal, alcoholism or facelifts may be included in the practice, but must be in addition to the basic 500 visits of general practice per year.

After the first year it must be demonstrated that the apprentice has been given increasing responsibilities in

patient contact up to and including the final state of complete diagnosis and treatment under the preceptor's supervision.

To qualify as a preceptor, an acupuncturist must either be a state-approved instructor or preceptor, or must be able to demonstrate five years' experience with a minimum of 500 patient visits per year.

Practice

"Practice" or "experience" is defined as diagnosis and treatment of a minimum of 100 patients per year, with

a total of at least 500 patient visits. Of the 500 patient visits, at least 70% must be in general health care with 30% permissible in the treatment of specialized problems such as smoking withdrawal, alcoholism, or weight control.

Time

"One year" is a calendar year with no less than 500 patient visits. One thousand patient visits within one calendar year is not considered the equivalent of two years' practice.

IX. DOCUMENTING THE APPLICATION

ACCURACY OF INFORMATION CONTAINED IN THE APPLICATION IS ESSENTIAL. FALSIFICATION OF APPLICATION IS GROUNDS FOR DENIAL OR REVOCATION OF CERTIFICATION.

Since acupuncturists come from a wide variety of educational and practice settings, documentation may at times be difficult. Generally, the more documentation that can be provided, the easier it will be to evaluate an application. NCCA reserves the right to request additional documentation if needed.

All documents must be in English or in the original language plus an authenticated full translation. Documents will not be returned to the applicant, so *do not send originals* of certificates, diplomas or other irreplaceable documents. In such cases, send certified photocopies.

Please reduce copies of oversize documents to 8½" x 11" to facilitate storage and ease of examination.

Education Documents

1. School diplomas or certificates: Send notarized photocopies.
2. School transcripts: Official transcripts are required and should be sent directly from the school to NCCA.
3. School curricula: If your school is not on file with NCCA, include school catalogues where available and course descriptions including content and number of hours for each course. (See list of schools on file on page 11.) Note that this list is not a list of accredited or approved schools. It merely specifies which catalogues are already on file at the NCCA office.

Apprenticeship Documents

1. Certificate from preceptor or tutor. Send notarized photocopy.

2. Notarized letter from preceptor or tutor including the following:

- a. Description of the apprenticeship, including dates of start and finish, total number of hours, amount of time spent in theoretical instruction, and level of involvement of apprentice with patient treatments.
- b. Description of preceptor's practice, including number of patient visits per year and type of practice.

3. Notarized copy of application for apprenticeship from the state regulatory agency and/or a notarized copy of application for licensure signed by your preceptor.

State Licensure Documents

A notarized copy of license or registration or a letter from the issuing agency which verified your licensure within their jurisdiction.

Practice Documents

Dates and location of practice, number of patient visits, number of patients per year, and type of practice (for example: 80% general practice; specialization in sports injuries; 30% smoking withdrawal; etc.) must be supplied. Documentation may be provided in a variety of ways, including the following:

1. Original letters from employers specifying dates and hours worked and nature of practice and number of visits.
2. Notarized copies of treatment records.
3. Notarized copies of appointment calendars and tax returns, journal sheets, leases, business permits, etc. Do not send four years of appointment books. Instead

photocopy representative pages and have a notary attest that they are indeed representative and the total number of patients treated is at least 500 per year.

4. Affidavits from a minimum of 20 patients. Affidavits from other health care professionals, state acupuncture associations, acupuncture schools and colleges, etc., with convincing testimony to the volume and scope of practice.

In all cases, NCCA reserves the right to request further documentation in cases of doubt, or to investigate the authenticity of documentation of practice.

Methods of Documentation

"CERTIFIED COPY" means that the authentication is made by the issuing agency. For example, a school must certify that the copy of its diploma is authentic.

"NOTARIZED" means that the person responsible for preparing information swears in the presence of a notary public that the information is truthful. A notarized photocopy means that the notary public has examined the original and the photocopy and testifies that they are the same.

"AUTHENTICATED TRANSLATION" must be prepared by a translation bureau or a language instructor in a university, or have its accuracy verified by a consulate official.

"AFFIDAVIT" is a sworn statement in writing affirming specific information. Affidavits must be notarized.

NOTE: In such cases where it is impossible to have documents certified by the issuing agency of the country of origin, certification may be provided by the consulate or embassy of that country.

X. EXPIRATION OF CERTIFICATION

NCCA certification will remain valid for two (2) years. Criteria for recertification are:

1. Continued mental and physical competence;
2. Freedom from chemical dependency;

3. Continued practice of the profession.

4. The Diplomate must, in addition, be free of violation of NCCA standards of competent and ethical behavior, and must not at the time of application, be under disciplinary action at state or NCCA level.

XI. DECERTIFICATION

Important:

NCCA reserves the right to take disciplinary action against its certificate holders. Disciplinary action may be remediation, formal criticism or censure, suspension of certification or full decertification.

The NCCA certificate technically remains the property of NCCA and must be returned if the certification is withdrawn for cause.

Reasons for decertification include but may not be limited to the following:

- Falsification of application;
- Examination fraud;
- Untreated chemical dependency or physical or mental incapacity that is deemed to be hazardous to the safety of patients;
- Gross incompetence;
- Commission of a felony relating to health care practice.

XII. APPEALS

NCCA has an appeals committee to review questions including but not limited to:

- Rulings on eligibility of a candidate:

- Validity and reliability of the examination;
- Grading of the examination;
- Decertification for cause.

XIII.
POLICY STATEMENT ON DISCRIMINATION

NCAA does not discriminate against people for reasons of race, color, age, sex, sexual orientation,

political or religious beliefs, handicap, marital status or national origins.

XIV.
POLICY STATEMENT ON CONFIDENTIALITY

NCAA respects the privacy of all applicants, candidates and diplomates. All materials submitted in conjunction with applications and all test scores will be held in con-

fidence. Test scores will be released only at the written request of the candidate.

THIS IS YOUR COPY.
PLEASE BE SURE TO SIGN AND NOTARIZE THE "CODE OF ETHICS" IN THE APPLICATION.

XV.
CODE OF ETHICS

THE NATIONAL COMMISSION FOR THE
CERTIFICATION OF ACUPUNCTURISTS

★ CODE OF ETHICS ★

NAME _____

ADDRESS _____
Street and No. City State Zip

As an acupuncturist certified by the National Commission for the Certification of Acupuncturists, I commit myself to the responsible and ethical practice of acupuncture at the highest level of my competence; to the growth of my profession's role in the broad spectrum of American health care; and to my own professional growth. I subscribe to each of the commitments stated below.

Signature

Commitment to the Patient

1. To respect the rights, dignity and person of each patient.
2. To render to each patient the highest quality of care and to make timely referrals to other acupuncturists or other health care professionals as may be appropriate.
3. To avoid treating patients when one's judgment or competence is impaired by untreated chemical dependency, or physical or mental incapacity deemed to be hazardous to the safety of the patient.
4. To conduct a practice that is non-discriminatory.
5. To keep accurate records of history and treatment, and to respect the confidentiality of those records and of any other personal information imparted by the patient.
6. To keep the patient informed by explaining treatment and expectations of results; to avoid making promises or creating inappropriate expectations.
7. To protect the welfare and dignity of patients participating in research, to obtain informed consents, and to employ humane treatment in experimenting with animals.

Commitment to the Profession

1. To contribute toward raising the standards of the profession.
2. To use appropriate professional or personal channels to correct behavior detrimental to the public.
3. To maintain personal behavior consistent with the best interests of the patient and reflecting well on the profession.

Commitment to the Public

1. To provide accurate information regarding the individual practitioner's education, training and experience, professional affiliations and certification.
2. To make public statements regarding the effectiveness of acupuncture that are within the generally accepted experience of the profession as a whole or within the individual practitioner's experience.
3. To respect the integrity of other forms of health care and to make efforts to build bridges and develop collaborative relationships to achieve the best possible care for individual patients.
4. To make an effort to keep fees within the reach of the general public, and to have provision for flexibility in fees for low-income patients.
5. Not to represent that NCCA certification is a license or certification to practice unless so designated by the law or one's state; and to use only the designation "Diplomate in Acupuncture (NCCA)," the abbreviation "Dipl. Ac. (NCCA)," or "National Board Certified (NCCA)."

XVI. SCHOOLS ON FILE WITH NCCA

NOTE: This list indicates schools that have submitted catalogues to NCCA indicating that they offer a comprehensive program of at least 1000 hours including at least 300 hours of clinical training. Candidates who attended schools not on this list should submit a copy of their school's curriculum. This listing does not imply any judgment or approval or special recognition of schools.

Academy of Chinese Culture & Health Sciences
420 14th Street
Oakland, CA 94612

AmerAsian Institute of Chinese Medicine
175 Market Street
P.O. Box 478
Wailuku, Maui, HI 96793

Asian American Acupuncture University
2043 El Cajon Boulevard
San Diego, CA 92104

California Acupuncture College
1922 Westwood Boulevard
Los Angeles, CA 90025

Emperor's College of Traditional Oriental Medicine
2515 Wilshire Boulevard
Santa Monica, CA 90403

Five Branches Institute College of Traditional
Chinese Medicine
200 7th Avenue
Santa Cruz, CA 95062

International Institute of Chinese Medicine
P.O. Box 4991
Santa Fe, NM 87502

Los Angeles University
6862 Vanscoy Avenue
North Hollywood, CA 91605

Midwest Center for the Study of Oriental Medicine
4334 North Hazel, Suite 206
Chicago, IL 60613

New England School of Acupuncture
319 Arlington Street
Watertown, MA 02172

Northwest Institute of Acupuncture
and Oriental Medicine
1141 N.W. Market Street
Seattle, WA 98107

Oregon College of Oriental Medicine
614 S.W. 11th, Suite 102
Portland, OR 97205

Oriental Medical Institute of Hawaii
1270 Queen Emma Street
Suite 801
Honolulu, HI 96813

Royal University of America (The College of
Oriental Medicine & Acupuncture)
4017 Ingraham Street
Los Angeles, CA 90005

SAMRA University of Healing Arts
615 South Westlake Avenue
Los Angeles, CA 90057

San Francisco College of Acupuncture
2409-19th Avenue
San Francisco, CA 94116

South Baylo University
12012 S. Magnolia Avenue
Garden Grove, CA 92641

Southwest Acupuncture College
133-A Romero Street
Santa Fe, NM 87501

The American College of Traditional Chinese Medicine
2400 Geary Boulevard
San Francisco, CA 94115

Traditional Acupuncture Institute
American City Building, Suite 108
Columbia, MD 21044

Tri-State Institute of Traditional Chinese Acupuncture
P.O. Box 974 Cathedral Station
New York, NY 10025

Yuln University School of Oriental
Medicine and Acupuncture
14409 E. Romona Boulevard
Baldwin Park, CA 91706

A Critical Overview of U.S. Acupuncture Regulation

Ginger McRae

Abstract. The ancient Oriental art and science of acupuncture, known in the U.S. for a decade, still is practiced here only to a limited extent and does not seem likely to spread. The primary reason, this article hypothesizes, is the stifling effect of acupuncture regulation, which typically prohibits trained nonphysician acupuncturists, mostly Orientals, from performing the therapy. Although all states permit licensed physicians to practice acupuncture with little or no training, few physicians have shown any interest in learning acupuncture and adding it to their practice. The result is that acupuncture services are scarce or unavailable in most states, and the public's newly recognized right to acupuncture treatment is therefore burdened or effectively denied.

Current statutory and medical board regulation of acupuncture is described and evaluated from the standpoint of whether it encourages the practice of acupuncture by persons trained in the therapy. The article finds that both physician-limitation and supervised-practice regulations inhibit or eliminate acupuncture services, while acupuncture licensing laws foster availability of the therapy. The article recommends that states establish autonomous boards of acupuncture to license practitioners, and concludes that a coordinated national effort by acupuncturists and their lay and medical supporters will be necessary to achieve widespread adoption of licensing laws.

Introduction

Acupuncture, the empirically-derived Oriental method of treating disease and relieving pain by means of needles,¹ is not widely practiced in the United States. Despite its initial appeal and a decade of use in this country, it remains an uncommon and poorly understood therapy. To many people, it is still synonymous with "quackupuncture"; at best, it is considered "fringe medicine," an outré treatment to which a patient might justifiably turn only as a last resort.

Even at the peak of its popularity between 1972 and 1974, the therapy was practiced only to a limited extent. If acupuncture seemed rampant and ubiquitous, it was because of extravagant media attention and the tendency of the medical profession to exaggerate the dimensions of acupunc-

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ture practice. But while it is true that thousands of Americans obtained acupuncture in the early 1970s, the vast majority of the population simply had no access to the therapy.

It is all but impossible to compare the past and present extent of acupuncture practice, since the data that would allow one to do so are incomplete.² Yet, given the scarcity of acupuncture services, it may be reasonable to suppose that the therapy (at least in its authentic, Oriental form) is no more prevalent now than it was a decade ago. Acupuncture is practiced on a small scale in some states, and in others it is exuberant; but nationwide it has not become a standard therapeutic or analgesic technique.

There are many interrelated reasons for acupuncture's failure to flourish within the health care system. These include a residue of public suspicion owing to past abuses by quacks and opportunists, opposition by organized medicine, misrepresentation of acupuncture by the media, refusal of most insurance companies to reimburse patients for the cost of acupuncture treatments, and the failure of the medical profession to carry out adequate acupuncture research.

This article hypothesizes that another major reason for acupuncture's failure to flourish is its disadvantageous legal status. Most state laws, regulations, and policies, while ostensibly permitting the practice of acupuncture, in effect strongly inhibit the therapy or make it unavailable. It is only in the few states where the laws encourage or at least do not strongly discourage acupuncture that the therapy is relatively available, and only there practitioners have begun to counteract conditions militating against the spread of the therapy.

Few studies of acupuncture law have ever appeared in the literature,³ and the author is aware of none since 1975. Current acupuncture regulation is nowhere adequately described, and many acupuncturists, attorneys, health care administrators, and legislators are uncertain about the content of state laws governing the therapy. There is a need, which it is the purpose of this article to fill, for a clarification and comparison of state and federal acupuncture laws, regulations, and policies. This article will therefore be largely descriptive (details on state laws are found in the footnotes), but it will also attempt to assess the influence of state regulation on acupuncture's availability and acceptance.

The acupuncturists on whom this article focuses are nonphysicians, particularly Orientals,⁴ who practice no other health care profession except acupuncture. It will also be necessary to discuss how acupuncture laws and regulations affect physicians and physician's assistants. But this article will not attempt to comment, except in passing, on conflicting state positions with respect to whether osteopaths, dentists, podiatrists, chiropractors, naturopaths, or even veterinarians may practice acupuncture.

Certain assumptions⁵ about acupuncture are essential to the article's critical perspective, although considerations of space preclude a y discussion of the therapy. These assumptions, already shared by thoi sands of patients and a growing number of physicians and clinical scientists, are (1) that acupuncture is a discrete healing art, and not simply a new area of Western medicine;⁶ (2) that it is both safe and effective⁷ when performed by qualified practitioners; (3) that it should be a primary recourse for patients suffering from certain painful disorders, and should be readily available; (4) that the safe and effective practice of acupuncture requires practitioners with extensive training and experience *in acupuncture*; and (5) that such practitioners, at least at present, are predominantly (but not exclusively) Orientals, or persons who have trained under them. Assessment of state acupuncture regulation is made throughout this article with reference to the congruity between such regulation and these assumptions.

If these assumptions are accepted, then it follows that the practice of acupuncture by qualified persons should be legalized where it is now forbidden, and encouraged where it is now restricted. This is not to imply that acupuncture should be left unregulated. The potential for harm from the unskilled performance of acupuncture necessitates state regulation of the practice.⁸ A later section of this article argues that licensing is the most appropriate form of regulation.

State regulation of acupuncture practice

In the early 1970s, tensions created by strong public demand for acupuncture, perceived abuses by clinics offering acupuncture services, and the medical profession's misgivings about the therapy and its practitioners, combined to oblige the states to take regulatory action. Not surprisingly, acupuncture was perceived at the time as "a matter of legislative and regulatory concern" whose status "appear[ed] to be extremely fluid as changes in state laws [were] being sought to take into account the new fascination with this ancient art."⁹ The new regulations that were sought, however, were largely those controls favored by official medical groups. In many states, therefore, narrow laws, rules, or policies were proposed or adopted to allow acupuncture only in the context of scientific research programs.

Some physicians and legislators, whose caution was tempered with genuine interest in the promising technique, proposed appointing acupuncture study and advisory commissions to examine not only the therapy, but also the credentials of both its physician and nonphysician practitioners. Laws to license nonphysician acupuncturists or to permit nonphysician practice under medical supervision were proposed in some

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states, and in a few cases they were passed by state legislatures over considerable opposition from organized medicine.

The impetus for regulation of acupuncture, then, was interest in the technique on the one hand, and fear of it on the other; but when interest subsided, and iron controls over acupuncture led in most states to the virtual disappearance of the therapy, much of the regulatory zeal evaporated. If acupuncture's legal status had been fluid prior to 1975, after that date it was largely fixed. Only recently have signs of renewed pressure for change begun to appear.

Only seventeen states¹⁰ have enacted laws relating to the practice of acupuncture, and three of those states—Florida, New Mexico, and Rhode Island—have enacted acupuncture laws only since 1979. Approximately half the state laws continue to place severe restrictions on who may practice acupuncture. Most delimit the practice of nonphysician acupuncturists, many of whom have been trained in the Orient.

In the great majority of states, acupuncture is not regulated by statute; indeed, it is hardly regulated at all except insofar as its practice by nonphysicians is simply proscribed. In these states, stale medical board rules or policy statements, most adopted years ago at the height of medical debate—and ignorance—about acupuncture, or equally stale opinions rendered by the state's attorney general, represent the only official position on acupuncture. Most of these positions are now as much as eight or nine years old, and have never been reviewed or updated. They tend to reflect profound medical skepticism about acupuncture, but reveal no evidence that the skepticism is based on scientific evaluation. Rather, these positions betray their authors' conservative bias against unfamiliar forms of treatment and their resistance to involvement in health care by nonphysicians, especially those trained outside the U.S.¹¹ Since these positions do not have the force of law, they do not define acupuncture's legal status.

In other states, the medical board has issued rules or regulations regarding acupuncture that do have legal force because they implement the state's medical practice act. These rules are open to challenge, however, on grounds that the medical board, while purporting merely to implement the medical practice act, has exceeded its delegated authority and violated the legislative intent.¹²

Physician training requirements. Although every state now permits physicians (and usually other medical practice act licensees) to practice acupuncture,¹³ only five states with laws relating to acupuncture—Louisiana, Montana, Nevada, New York, and Virginia—require any degree of physician training in the technique. And only three state medical boards¹⁴ explicitly require training in acupuncture of the physicians and other

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medical licensees to whom it arrogates the practice by policy or rule. Most training requirements are grossly inadequate: typically, a medical licensee may perform acupuncture after a mere 100 hours of training. (It is ironic that many physician training seminars have been taught by nonphysician Orientals who are legally forbidden to practice acupuncture.)

Medical boards, in failing to impose physician training requirements, by implication reject this article's assumptions that acupuncture is a discrete healing art, and that training and experience in acupuncture is necessary to its safe and effective practice. The effect of allowing untrained or minimally trained persons to dabble in acupuncture, whether they are physicians, dentists, chiropractors, or other medical licensees, is to subject patients not only to the risk of possible injury, but also the very substantial probability that treatments will be only minimally effective, effective by accident rather than design, or consistently ineffective.¹³ The disappointing results from acupuncture treatment achieved by medical practitioners who are poorly trained and inexperienced in acupuncture have done nothing to improve the therapy's standing in the health care system.

The refusal of state medical boards to protect the public from licensees untrained in acupuncture may rest less on negligence than on an illogical, unproved, and even arrogant assumption that Western medical training is adequate preparation for acupuncture practice. This assumption would contradict, however, the common medical judgment that acupuncture is not comprehensible to the Western physician, or even to the Western mind. The practical effect of this assumption—in states permitting nonphysicians to practice acupuncture upon satisfying training requirements, but exempting medical licensees from these requirements—is discrimination in favor of untrained practitioners and against trained practitioners, since only the latter must demonstrate the ability to perform acupuncture. The constitutionality of such discrimination is currently being tested in a suit against Florida's new acupuncture law, discussed below.

Limitation to physicians. State regulation limiting the practice of acupuncture to physicians exhibits excessive deference to orthodox medicine, and reflects nearly total rejection of this article's assumptions. There is no evidence that such regulation has ever been necessary to protect the public health, and in view of its deleterious effects on acupuncture's growth and availability, it should be overturned.

As Table I demonstrates, most medical boards effect a limitation to physicians by defining acupuncture as "the practice of medicine," a phrase which may be construed to embrace virtually any act involving prevention, diagnosis, treatment, cure, or palliation of any human physical or mental condition. Anyone wishing to practice acupuncture under

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Table 1. Non-Statutory Regulation of Acupuncture

Acupuncture is viewed as practice of medicine; state medical board rule or policy prohibits nonphysician practice: *

Alabama (1)	Iowa (3-4)	Nebraska	South Dakota
Arkansas	Kansas	New Hampshire	Texas ¹¹
Colorado	Kentucky	New Jersey	Utah
Delaware ^a	Maine	North Carolina	Vermont
Georgia (10) ^a	Michigan	North Dakota	West Virginia
Idaho	Minnesota ^c	Ohio	Wisconsin (6)
Illinois (342) ^{a, b}	Mississippi	Oklahoma	Wyoming
Indiana	Missouri	Pennsylvania	

* Where medical board can supply number of medical practice act licensees performing acupuncture, that number is given in parentheses.

Medical board policy or rule permits nonphysicians to practice under medical supervision:

Arizona ^d	Connecticut	District of Columbia	Massachusetts
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- a. Acupuncture training required as prerequisite for its performance
- b. See note 14
- c. Nonphysician practice tolerated
- d. Rules declared unconstitutional
- e. Physician's assistants only

such a limitation must therefore meet all state requirements set for physicians; unless a specific exception is provided whereby certain persons not licensed as physicians may practice some areas of medicine under medical supervision, the nonphysician acupuncturist is excluded from practice.

Limitation to physicians only aggravates the monopolistic and anti-competitive tendencies inherent in a health care system dominated by organized medicine. There is no reason to exclude persons competent to perform acupuncture merely on the basis they do not qualify as physicians, particularly when most physicians do not avail themselves of their exclusive right to practice acupuncture.

Alaska,¹⁴ Tennessee,¹⁷ and Virginia¹⁸ limit the practice of acupuncture to physicians by statute (see Table 2), while 30 states so limit it by medical board rule, regulation, or policy. The most egregious effect of the limitation is the near elimination of acupuncture. Alaska's medical board is unaware of any physicians practicing acupuncture in the state; Tennessee's board believes that only a handful of its physicians practice the therapy; and only six physicians are registered to perform acupuncture in Virginia; Table 1 provides medical board estimates (where available) of

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Acupuncture

medical board rule or policy

- South Dakota
- Hampshire Texas^d
- Utah
- North Carolina Vermont
- South Dakota West Virginia
- Wisconsin (6)
- Wyoming

medical practice act licensees

practice under medical supervision

- Columbia Massachusetts

reference

requirements set for physicians whereby certain persons who are not qualified as physicians are excluded from

regulatory and anti-trust system dominated by persons competent to practice and qualify as physicians and themselves of their

practice of acupuncture is limited by medical board of the limited medical board in the state; physicians practice acupuncture (where available) of

Table 2. Statutory Regulation of Acupuncture

Column A: Acupuncture board or advisory committee created by statute
 B: Licensed or certified nonphysicians permitted to practice under supervision
 C: No licensing or certification provisions—unlicensed nonphysician may practice under medical supervision
 D: Examination required for licensing or certification of nonphysicians
 E: Physician acupuncturist must have training in acupuncture
 F: Regulations implement the statute
 G: Statute considers acupuncture the practice of (Western) medicine
 H: Practice of acupuncture restricted to licensed physicians
 I: Independent practice of acupuncture by licensed or certified nonphysicians permitted

	A	B	C	D	E	F	G	H	I
Alaska Stat. §08.64.170 (1974)							X	X	
Cal. Bus. & Prof. Code §2150 (West) (1979)	X			X		X			X
Fla. Stat. Ann. §486.323 (1980 Supp.) as amended (1981) (West)				X					X
Hawaii Rev. Stat. Chap. 436D (1974)	X			X		X			X
La. Rev. Stat. Ann. §1356 (West) (1975)		X			X		X		
Md. Ann. Code art. 43, §122 (1974) Recodified as §14-302(4) (1981)			X				X		
Mont. Rev. Codes Ann. §37-13-101 (1974)				X	X	X			X
Nev. Rev. Stat. §634A.010 (1975)	X	c.		X	X	X			X
1981 N.M. Laws, 35th Legis., 1st Session Chap. 62, Senate Bill 165, as amended	X			X		X			X
N.Y. Educ. Law §6523 (McKinney Supp.) (1975)		c.			X	X	X		X
Or. Rev. Stat. Chap. 677 (1975)		X		X		X	X		
R.I. Gen. Laws Chap. 37.2, as amended (1979)	X	c.		X		X			X
S.C. Code §40-47-70 (1976) as amended (1981)			X						
Tenn. Code Ann. §63-102 (1975)			d.				a.	X	
Va. Code §54-274.1 (1975)					X	X	a.	b.	
Wash. Rev. Code §18.71A.080 (1977)		X		e.		X	X		

a. "Healing art"
 b. So restricted only by regulations
 c. If nonphysician does not meet all requirements for independent licensing
 d. Permitted only by reference to Physician's Assistant provisions
 e. Equivalency examination only

numbers of physicians and certain other medical practice act licensees who practice acupuncture where state medical board rules or policies exclude nonphysicians.¹⁹ Even in states where physicians are known to be practicing acupuncture, these figures show, so few do so that most state residents have little or no access to acupuncture treatment.²⁰

The total number of physicians practicing acupuncture full- or part-time in the U.S. is unknown, since most medical boards do not require registration by physicians who practice acupuncture or any other specialty. The American Medical Association has not surveyed such practitioners. One estimate is that about 2,000 U.S. physicians are now "involved with" acupuncture.²¹ If this estimate is correct, the number is certainly very small.

In the early 1970s, it may have been a reasonable hope and expectation that American physicians would embrace the study of acupuncture in all its theoretical and practical aspects. Instead, relatively few physicians have even troubled to study it, and even fewer have learned it thoroughly enough to perform acupuncture instead of a simulacrum. As the scientific basis of acupuncture becomes clearer to the American medical community, and as proof of its efficacy is finally accepted, no doubt more physicians will begin to learn and practice the technique.²² In the meantime, the overwhelming majority of physicians remain largely ignorant of acupuncture.²³

Andrews v. Ballard. If physicians who can perform acupuncture properly either do not exist, or are substantially anonymous (because state medical boards keep no records on trained acupuncturists), residents of states prohibiting practice by qualified nonphysicians are effectively deprived of acupuncture treatments. According to a recent landmark case in Texas, such a deprivation is unconstitutional.

Texas acupuncture regulations,²⁴ issued as a policy statement in 1974 and reissued as a set of formal rules having the force of law in early 1976, stated that acupuncture was the practice of medicine and could be performed only by licensed physicians; that it was "an experimental procedure" whose safety and effectiveness had not been established; that acupuncture practice by physicians should not be absolutely prohibited, but that safeguards were necessary to protect the public; that the practice of acupuncture by anyone who was not a licensed physician would constitute the unlicensed practice of medicine; and that a licensed physician could not delegate the authority to practice acupuncture.

*Andrews v. Ballard*²⁵ was a suit brought by 46 persons who either had obtained or wanted to obtain acupuncture treatment. The plaintiffs sought to overturn both the medical board rules and the Texas Medical Practice Act insofar as it applied to acupuncture.²⁶ The federal district court held

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that the right to decide to obtain acupuncture treatment, as part of the broader right to decide to obtain or reject medical treatment, is important and personal enough to be encompassed by the fundamental right of privacy. Noting that the state had failed to provide names of any Texas physicians practicing or qualified to practice acupuncture, the court concluded that the act and the rules, in rendering acupuncture treatment unavailable in Texas, burdened and significantly interfered with the right to decide to obtain acupuncture treatment. Neither the act nor the rules, the court said, were narrowly drawn to further the state's compelling interest in protecting public health, and both were, therefore, unconstitutional. The court acknowledged that the state was free to regulate acupuncture in a constitutional manner, but declined to say what form regulation should take, leaving to the legislature the decision how or even whether to regulate the practice.²⁷

Andrews establishes valuable federal precedent for nonphysician acupuncturists seeking the right to practice in states where they are now prohibited from doing so.²⁸ Since the case does not, however, stand for the proposition that the nonphysician acupuncturist has an absolute right to practice, but merely grants the prospective patient a right to treatment by qualified practitioners, a core of acupuncture patients to serve as plaintiffs is crucial to bringing similar cases in other states. Nonphysician acupuncturists, it seems clear, would not have the necessary standing to bring cases on the basis of *Andrews*, since it is not these practitioners, but rather patients, whose right to decide to obtain acupuncture treatment is unconstitutionally burdened by Texas-style regulations.

Not addressed by the *Andrews* court was the quest on whether the rules would have passed constitutional muster if Texas had been able to show that substantial numbers of physicians, properly trained in acupuncture, were offering acupuncture services within the state. In saying that patients are entitled to obtain acupuncture treatment, but that they "are *not* entitled to obtain acupuncture treatment wherever they want, whenever they want, *from whomever they want*,"²⁹ the court may have left open the possibility that a limitation to physicians would be permissible where it did not deprive patients of acupuncture treatment.³⁰

Supervised practice. In other states, nonphysicians may practice acupuncture only under severely circumscribed conditions. They are regarded as a form of physician's assistant (PA), and are allowed to treat patients only under the supervision of a physician.³¹ This form of regulation is at least as restrictive as PA regulation in general,³² and may impose other burdens as well. Some supervised-practice regulation does not explicitly analogize the acupuncturist to the PA, but is significantly restrictive in requiring medical supervision.

Supervised-practice regulation entails the same monopolistic and anti-competitive effects as regulation limiting acupuncture practice to physicians.³¹ Moreover, it rejects the assumptions of this article to nearly the same degree: it, too, views acupuncturists in a Western medical context, mistrusts the safety and effectiveness of acupuncture, greatly restricts its availability, may fail to insist that practitioners have adequate training and experience, and frequently discourages highly qualified persons—especially Orientals—from practicing.

Given the relatively low numbers of professional, full-time acupuncturists in states requiring supervised practice, it is reasonable to infer that supervision requirements do not promote acupuncture's availability, nor provide congenial conditions for its growth. States with statutes adopting the PA approach to supervised practice are Louisiana,³⁴ with one physician and one nonphysician acupuncturist, both Orientals; Oregon,³⁵ with only about a dozen of the 50 persons (both Oriental and non-Oriental) certified to practice in the state currently doing so; and Washington,³⁶ with three registered acupuncturists. States requiring supervision by statute, but not explicitly adopting a PA approach, are Maryland,³⁷ with a few physicians and about a dozen nonphysicians, half Orientals, practicing acupuncture; and South Carolina,³⁸ with one non-Oriental and one Oriental acupuncturist.

Medical board rules or policies in a few states allow nonphysicians to perform acupuncture under medical supervision, with the same inhibitory effect produced in states with supervisory statutes: Arizona, with two nonphysicians practicing acupuncture;³⁹ Connecticut, with a few Oriental physician acupuncturists, and a small but unknown number of nonphysician practitioners;⁴⁰ Massachusetts, with over a dozen clinics staffed by both Orientals and non-Orientals;⁴¹ and the District of Columbia, with three Oriental nonphysician acupuncturists.⁴²

The physician's assistant approach to regulation seems to be an expedient to control a class of practitioners disdained and mistrusted by the medical profession. The approach is anomalous, however, as applied to acupuncture. Its rationale, that the supervising physician is able to perform acupuncture, but chooses to "delegate" its performance, is fallacious, since American physicians are very rarely, or only minimally, trained in acupuncture. The acupuncturist clearly is not "assisting" the physician, but instead is doing work the physician essentially is unable to do. Moreover, the primary care tasks physician's assistants are trained to perform are irrelevant to the practice of acupuncture.⁴³

On a practical level, medical supervision requirements may subject the acupuncturist to the risk of financial exploitation. The risk is especially acute for Orientals who have little or no bargaining power, inadequate

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command of English, immigration difficulties, or incomplete understanding of acupuncture's legal status. Forbidding the acupuncturist to associate independently with the physician, and enforcing practice only as a physician's employee, may conduce to exploitation.

Because of its inherent possibilities of abuse, the supervisory approach inhibits practice by highly trained acupuncturists who fear exploitation. Equally, the approach often offends the professional dignity of Oriental practitioners who may have enjoyed a high status in their own countries and may also hold doctor's degrees in traditional Oriental medicine: for this reason, they may refuse to practice under supervision. As a consequence, patients' access to highly trained practitioners may be unreasonably limited in states with acupuncture laws, regulations, or policies requiring some form of medical supervision.

Fortunately, at present supervisory relationships seem free of abuse. In the best relationships, which frequently are far less strict than the state requires, the physician does not "supervise, control and manage" the acupuncturist, but works cooperatively for the best interests of the patient, frequently by providing a Western medical diagnosis. This cooperative approach suggests a possible alternative to the rigid supervised-practice approach contemplated in state regulation. The vast majority of supervising physicians are courageous and innovative individuals who are eminently fair in all their dealings with acupuncturists, who are personally committed to the growth of acupuncture, and who take a constructive approach to their supervisory role. Without them, acupuncture would be nonexistent in states with supervisory requirements. Moreover, these physicians may help bridge some of the differences between the mutually antagonistic forces of acupuncture and organized medicine.

The great difficulty with supervised-practice regulation is simply that few physicians are willing to act as supervisors, at least on terms the acupuncturist is able to meet. Most physicians refuse to act as supervisors chiefly because they remain frankly ignorant about acupuncture's value and do not wish to associate themselves with the therapy in any way. Equally, peer pressure strongly militates against physician involvement with acupuncture.⁴⁴ Moreover, it is the physician who would have primary liability in the event of a malpractice suit, regardless of whether the acupuncturist carries malpractice insurance.⁴⁵ As a result, few acupuncturists are able to offer their services legally under supervised-practice regulation, and the practice of acupuncture tends to remain small or even to wither away by attrition. Supervisory physicians themselves acknowledge that the supervisory requirement is the single greatest obstacle to the spread of acupuncture in their states. Many of them openly disagree with the requirement.

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The justification often advanced for medical supervision is the need to protect the public from certain risks the medical profession believes to be associated with acupuncture. Among the most frequently cited risks, thought less likely to occur under medical supervision or to be handled properly if they do occur, are emergencies, such as broken needles or fainting spells, and transmission of infection through unsterilized needles. These and other more serious risks are indeed present whenever acupuncture is performed by an unskilled practitioner. The way to minimize or eliminate these risks is to ensure that the acupuncturist is rigorously trained and adequately experienced in acupuncture. A qualified acupuncturist learns not only to avoid complications, but also to handle them properly if they should occur. Responsibility for safe and effective treatment should lie with the acupuncturist, not with the medical supervisor. If the acupuncturist is qualified, medical supervision is superfluous.

A more cogent reason advanced for medical supervision is that it may prevent patients from receiving acupuncture for conditions whose underlying cause, such as cancer, requires exclusively Western medical therapy.⁴⁶ Since there is no compelling evidence of inappropriate treatment by acupuncturists occurring in states where unsupervised practice is permitted, fear of its occurring is no doubt exaggerated.

There is no obvious solution to the pressing problem of the proper relationship between Western medical doctors and nonphysician acupuncturists. But even assuming reason for concern about misdiagnosis, it is difficult to justify supervised-practice regulation. As a less intrusive measure, the state might mandate some form of cooperation between Eastern and Western medicine. For example, it might require the patient to obtain a licensed physician's diagnosis before taking acupuncture treatment. But a law compelling a citizen to consult one class of medical practitioners before having the right to consult another could raise questions about government interference with fundamental rights.⁴⁷ It is not difficult to anticipate other barriers to this form of cooperation: patients who have already consulted a Western physician prior to seeking acupuncture treatment might resist having to arrange for transmission of that diagnosis to an acupuncturist; many patients are embarrassed to inform their regular physician when they decide to go elsewhere for help; and patients might well be intimidated were the physician to express negative opinions about acupuncture.⁴⁸ A more serious barrier is that the physician may simply refuse to provide a diagnosis to the acupuncturist.⁴⁹

Licensing laws. It is only by licensing that a state accepts to some degree the assumptions of this article: that acupuncture is a discrete modality; that it is both safe and effective when performed by qualified practitioners;

that only qualified persons should practice acupuncture; and that the public should have access to high-quality acupuncture services.

Several considerations suggest acupuncture's need for the strong legal framework provided by licensing:

- (1) Acupuncturists are not an established group of health care providers who already have the state's sanction to practice independently and merely seek the status licensing may provide. On the contrary, acupuncture's ultimate survival in the U.S. is at stake, and other forms of regulation do not seem adequate to ensure its survival.
- (2) Without licensing, it is difficult for consumers to choose practitioners on any basis other than word of mouth, especially since there are as yet no accepted nongovernmental acupuncture certification programs to which consumers might refer. Licensing gives consumers some means to distinguish fraudulent from at least minimally qualified practitioners.
- (3) Enhancing professional status, usually a self-serving reason for licensing, seems to be a justifiable goal for acupuncture. The profession has been plagued with charlatans, opportunists, and incompetents—or at least the public perceives this to be so. Licensing, by removing questionable elements from the ranks of practitioners, may build public and medical confidence in acupuncturists and will protect the profession's integrity.
- (4) Acupuncture licensing seems largely free of the monopolistic effects usually associated with this form of regulation, since it does not give acupuncturists the exclusive right to offer services at the expense of other health care professionals. Physicians, dentists, and other medical licensees are able to perform acupuncture even where the state requires nonphysicians to be licensed.

If the benefits of acupuncture licensing are to be realized, the need for a licensing board is clearly implied.³⁰ Responsibility for licensing the nonphysician acupuncturist ideally should lie not with the state medical board, which is likely to be uninformed about acupuncture and inherently hostile to unorthodox therapies,³¹ but with an autonomous Board of Acupuncture composed solely or predominantly of acupuncturists. This board should have the power to review qualifications of applicants, set standards of training and experience, give examinations, investigate complaints, discipline practitioners, and promulgate rules and standards of conduct.

Eight states—California, Florida,³² Hawaii, Montana, Nevada, New Mexico, New York, and Rhode Island—now license acupuncturists for independent practice.³³ While the availability of acupuncture in these

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states is greater than in states with other regulatory schemes, still it is smaller than one might expect. Perhaps at least part of the reason is that in most of the states licensing acupuncturists, the regulatory regime departs to some extent from that posited as ideal.

In four states acupuncturists are licensed for independent, unsupervised practice by a Board of Acupuncture: Hawaii⁵⁴ has licensed 71 practitioners, mostly Orientals, but only 40 now practice in the state; Nevada⁵⁵ has licensed 30 Orientals in acupuncture or traditional Oriental medicine, but only about 15 currently practice; New Mexico,⁵⁶ which has just passed a licensing law, expects about 35 persons, mostly non-Orientals, to sit for its first examination in early 1982; and Rhode Island,⁵⁷ which recently held its first licensing examination, has licensed one Oriental Doctor of Acupuncture under a grandfather clause, and two acupuncture assistants.

California,⁵⁸ with 1,200 certified acupuncturists, has the most liberal acupuncture law in the nation. The medical board carries out certification with the advice of an Acupuncture Advisory Committee, but will turn over its duties to a quasi-autonomous Acupuncture Examining Committee in 1982.

Data on operation of these licensing boards, many of them new, are scarce, and a thorough study remains to be made. So far, in these states there seems to be none of the usual grounds for objection to such boards.⁵⁹ Preliminary study reveals no evidence that they are slow to discipline practitioners, for example, or that they intensify the anticompetitive effect of licensing, enact rules with a view to economic self-aggrandizement, artificially restrict the supply of practitioners, or raise costs of services.

If this is so, it may be in part because all five licensing bodies include one or more public members, thus preventing acupuncturists from monopolizing the licensing process. Moreover, the potential for conflict-of-interest seems small, since acupuncturists are a minority on most of these boards (or are altogether absent). This may be desirable in the sense that a board composed entirely of acupuncturists might be troubled with philosophical divergence, given the number of schools of thought to which acupuncturists subscribe.⁶⁰ Public members or other nonacupuncturists can therefore act as a neutralizing influence.

On the other hand, full-time professional acupuncturists arguably should not be under the authority of other health care professionals, such as physicians, osteopaths, or chiropractors, who may practice acupuncture only part-time as an adjunctive therapy, or who may have lesser qualifications in acupuncture than the practitioners they regulate. Where a board includes no practicing acupuncturists, it should have at the least a statutorily mandated responsibility to consult with acupuncture groups.⁶¹

In the remaining states that license acupuncturists, authority to regulate acupuncture is vested entirely in the medical board or other agency. In Florida,⁶² where an undetermined number of acupuncturists (perhaps 50-100) are practicing under its old law, more than 200 applications have been received for the first licensing examination in 1982. The new law's failure to provide for a Board of Acupuncture is currently being challenged by a group of Florida acupuncturists. Montana,⁶¹ with one non-Oriental and two Oriental nonphysician acupuncturists, has licensed several Nevada practitioners by reciprocity. Several physicians have also met the board's qualifications for acupuncture. New York⁶⁴ has approved more than 350 physicians to practice acupuncture; and 40 nonphysicians, mostly Koreans, also currently hold licenses for independent practice.

Low numbers of practitioners in some of the eight states licensing acupuncturists may result from the high standards of training and experience required of applicants. (In some cases, discriminatory policies of licensing authorities, where there is no autonomous acupuncture board, may also account for the low numbers; citizenship or residency requirements exclude practitioners as well.)⁶⁵ Nevada, New York, and Rhode Island require three years' training and six to ten years' experience; like Nevada and Rhode Island, Montana also requires an examination, but its standards are vague, and it is not clear if the small number of practitioners is to be expected, given the small population of the state, or whether the medical board unreasonably withholds its approval of even qualified applicants. The standards in these states may be exclusionary and anticompetitive to the extent that most non-Orientials and many Orientals cannot meet them at the present time.⁶⁶ But the exclusionary effect may be ameliorated in Nevada, Rhode Island, and New York, where the laws allow persons with lesser training and experience to practice as acupuncture assistants under supervision.

In New York, nonphysicians may be licensed to perform acupuncture provided they submit satisfactory evidence both of having practiced acupuncture for at least ten years, and of possessing a license to practice as a doctor of acupuncture, herb physician, or doctor of traditional Oriental medicine issued by any state or foreign country and acceptable to the medical board.⁶⁷ In addition, the applicant must show evidence of having completed an acceptable academic program in acupuncture or traditional Oriental medicine. The State Boards for Medicine and Dentistry have promulgated involved and prolix regulations⁶⁸ setting forth a bewildering array of requirements for physicians, dentists, and nonphysicians performing acupuncture within and outside institutional settings. New York's large Chinese community opposes the current law on grounds of abuse in its administration.

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It appears that the New York licensing authorities invidiously discriminate against applicants from mainland China, Taiwan, and Hong Kong. Since 1975, the state has licensed only about a dozen Chinese acupuncturists for independent practice. The Medical and Dental Boards have allowed months, and in some cases even years, to pass before finally rejecting, without explanation, qualified Chinese applicants who objectively meet all requirements set by the New York law. The boards are continuing to hold numerous applications from Chinese acupuncturists who are unable to obtain a decision one way or the other. Arbitrary and capricious administrative action not only has discriminated against Chinese applicants, but also has limited the Chinese community's legal access to its own practitioners. The community is attempting to change the New York acupuncture law so that responsibility for its administration will rest with an autonomous Board of Acupuncture.⁶⁹

The exclusive nature of regulation in states with high standards arguably accords a measure of dignity to the traditional Oriental medical practitioner. Because both the public and the medical profession can be confident that the acupuncturist is qualified, these rigorous standards, if widely adopted, might contribute significantly to the ultimate acceptance of Oriental medicine in the United States. Exclusion of persons with lesser qualifications may be justified; but what the proponents of high standards⁷⁰ must demonstrate is the degree to which such standards are necessary to protect public health. If the standards are unreasonably high, many skillful acupuncturists may be unfairly disqualified from practice. On the other hand, in states with somewhat lower standards—California, Florida, Hawaii, and New Mexico—close scrutiny of the applicants' credentials, as well as rigorous examination, are necessary to ensure that all licensees meet at least minimum standards.

Constructing examinations to test competency in what is an art as much as a science is undeniably difficult. Certain areas of acupuncture, however, may be tested somewhat objectively. For example, in order to measure an applicant's competency to *perform* acupuncture, examinations should stress clinical ability rather than theory. Knowledge of Western medicine should be tested only in those areas that are clearly relevant to acupuncture, such as anatomy and physiology. To the degree possible, examinations should be standardized to minimize problems arising from the fact that practitioners have had disparate training in many countries and many schools. To eliminate the possibility of prejudice to applicants who have learned acupuncture in East Asia, the state should allow at least the written portion of the examination to be given in Oriental languages, with the applicant paying costs of translation. Without some standardization⁷¹ of the examination system, public and medical acceptance of acupuncture may remain low. A governmental or private effort should

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be made at the national level to design a fair, comprehensive, and intellectually demanding acupuncture examination.

The AMA model bill

In 1974, the American Medical Association (AMA) urged its constituent state associations to work for legislation, rules, and regulations to confine the performance of acupuncture to research settings. Subsequently, it drafted a model bill⁷² defining acupuncture as an "experimental medical procedure" to be performed only (1) within the context of a statewide research effort; (2) by physicians or persons registered with the state and acting under the direct supervision of a licensed physician; (3) to informed, consenting patients; and (4) with the therapy subject to review by recognized medical authorities.

Criticism of the AMA's position on acupuncture is beyond the scope of this article. It should be noted, however, that the AMA model bill, in calling for supervised-practice, would meet none of the objectives of licensing legislation: it would retard, rather than further, the recognition of acupuncture as a discrete healing art; it would not set standards for practitioners; and it would not widen public access to rigorously certified professionals functioning under the governance of a Board of Acupuncture. Moreover, conditioning the performance of acupuncture on the existence of statewide research efforts, which have yet to materialize, would make acupuncture virtually unavailable.

New York continues to regard acupuncture as experimental, and its law incorporates the language of the model bill in its legislative findings; the law goes beyond the bill, however, in allowing independent practice by certain nonphysicians. No other state laws are based on the model bill, but regulations or positions of state medical boards in Alabama,⁷³ Delaware, Georgia,⁷⁴ and South Dakota incorporate most or all of the model bill's points. The regulations of the Texas state medical board also resembled the model bill, but were declared unconstitutional in *Andrews v. Ballard*, discussed above.

Federal acupuncture regulation

The federal government has little involvement with acupuncture.⁷⁵ In 1973, the Food and Drug Administration (FDA) issued guidelines⁷⁶ for labeling of acupuncture needles and electro-acupuncture machines, which it defined as medical devices under its jurisdiction. The guidelines, which are still in effect, state that the agency will regard acupuncture devices as misbranded if the labeling makes any claims of diagnostic or therapeutic effectiveness, or if it fails to state that the device is experimental. Moreover, the devices must be limited to investigational use by or under the

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direct supervision of licensed physicians or dentists, with informed consent of patients, under an approved scientific protocol, where conditions for such use are in accordance with state law. The guidelines thus are substantially similar to the AMA's model bill.

In 1978, perhaps aware that its guidelines conflicted with state controls over acupuncture, the FDA announced it would not object to the sale of acupuncture devices to persons licensed as acupuncturists by individual states, as long as the devices were labeled in accordance with the 1973 guidelines.⁷⁷ The FDA did not acknowledge, however, the contradiction between its labeling requirements and state licensing laws, which do not regard acupuncture as experimental (except in New York) or restrict its use to investigation by physicians, dentists, or nonphysicians working under their supervision.

It is possible to evaluate the safety and effectiveness of acupuncture as a medical treatment, but not of an acupuncture needle, or "device";⁷⁸ thus, the agency's position—that the safety and effectiveness of acupuncture *devices* has not been established—is illogical. The agency actually seems to mean that the safety and effectiveness of *acupuncture* have not been established in its opinion.⁷⁹ Therefore, although purporting to state a position only with respect to the labeling of acupuncture devices, the FDA guidelines in effect state a position on acupuncture. The agency's jurisdiction extends, however, only to drugs and medical devices sold in interstate commerce. It has no authority to recommend specific legal controls on acupuncture as a therapeutic or anesthetic modality, and its guidelines which do so thus arguably exceed its jurisdiction.⁸⁰

The FDA guidelines were adopted on the basis of a consensus reached at a one-day invitational conference held at the Department of Health, Education and Welfare in September 1972. Represented were professional medical organizations such as the American Medical Association, American Society of Anesthesiologists, Federation of State Medical Boards, and National Institutes of Health, as well as the Medical Devices Advisory Committee of the FDA. The meeting was therefore heavily weighted with members of the medical establishment whose expertise in acupuncture was nonexistent or derived only from a brief visit to China. The conference was not equipped to carry out a thorough study of acupuncture, nor did it purport to carry out such a study. The FDA's labeling requirements therefore seem to be based on a judgment about acupuncture that was reached without the benefit of expertise and lies outside the agency's jurisdiction.

Medical board positions or regulations in Alabama, Georgia, Ohio, Oklahoma, and South Dakota explicitly require or recommend some degree of compliance with the FDA guidelines.

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Conclusion

One legal commentator, writing in 1975, predicted that future acupunc-
 ture regulation would depend on "the acceptance by the medical and legal
 professions and the general public of the entire concept of acupunc-
 ture."⁸¹ Seven years later, widespread medical acceptance of acupuncture
 still does not seem imminent. As for legal acceptance, it may be expected
 to develop only in the context of challenge to acupuncture laws.

Public acceptance of acupuncture may be the key to liberalization of
 acupuncture laws, but that acceptance will not develop if acupuncture is
 largely unavailable, as in most states, or is available only to a limited
 extent. The solution is circular: liberalization of acupuncture laws de-
 pends on public acceptance of acupuncture, which in turn depends on
 liberalization of acupuncture laws.

In 1972, in an article analyzing limited medical practices, James Hen-
 drick perceptively pointed out:⁸²

In the absence of a specific exemption, no new form of limited prac-
 tice may develop; but, until it develops, its practitioners will not have
 sufficient lobbying strength and public acceptance to obtain a legisla-
 tive exemption. Therefore, limited practitioners will develop, if at all,
 in violation of the medical practice acts.

It is difficult to assess the degree to which acupuncture is practiced in
 violation of state regulation. Yet certainly "underground" practice does
 go on. It is reasonable to suppose that the proscriptive Texas acupuncture
 regulations finally were challenged in *Andrews v. Ballard* only because
 prolonged underground practice had nourished strong public acceptance
 of acupuncture within the state.

Laws favoring the nonphysician acupuncturist generally are the fruit of
 activity by persistent and vocal state lobbies comprising nonphysician
 acupuncturists, patients who have benefited from acupuncture treatment,⁸³
 and Western physicians well-disposed toward acupuncture. Only such
 lobbies can counter the inertia of the state medical boards and legislatures;
 in matters of medicine, the latter tend to rely on advice of the former.

The respective influences⁸⁴ of acupuncture lobbies and medical boards
 (or other official medical bodies) on the drafting of acupuncture laws are
 political, and since the degree of political pressure an acupuncture lobby
 can exert might be expected to differ considerably from state to state, it
 is not surprising to find that state laws correspondingly differ in the degree
 to which they grant autonomy to the nonphysician acupuncturist, if indeed
 they grant it at all.⁸⁵ Acupuncturists and their lay and medical supporters
 are fragmented, responding episodically and solitarily to state regulatory

activity; their lack of cohesion has no doubt retarded the achievement of a favorable legal status for acupuncture. Oriental practitioners have been unable to overcome their ethnic and linguistic fragmentation in order to work together, and Oriental and non-Oriental practitioners often display mutual distrust. The circumstances that are divisive on the state level must be magnified on the national level and thus strongly militate against the success of a national group. Yet, without a coordinated national effort, change in acupuncture's legal status will be haphazard.

Despite the difficulties, a national organization of the most responsible, highly trained and experienced practitioners—among whom Orientals would be conspicuous—together with their lay and medical supporters, is badly needed. Such an organization might formulate standards for education and training of acupuncturists, write a code of ethics and practice standards, coordinate a unified approach to lobbying on the state level for stringent licensing legislation, establish a nongovernmental certification program, and elucidate acupuncture for the medical community and the public. Without such an organization, change in acupuncture's legal status may come too late to preserve the therapy in its authentic and rigorous form.

Notes

1. Cf. "'Acupuncture' means treatment by means of mechanical, thermal or electrical stimulation effected by the insertion of needles at a point or combination of points on the surface of the body predetermined on the basis of the theory of the physiological interrelationship of body organs with an associated point or combination of points, or the application of heat or electrical stimulation to such point or points, for the purpose of inducing anesthesia, relieving pain, or healing diseases, disorders and dysfunctions of the body, or achieving a therapeutic or prophylactic effect with respect thereto." *La. Rev. Stat. Ann.* Section 1356 (West, 1975). For purposes of this article, so-called "needle-less" forms of acupuncture are not deemed to be authentic Oriental acupuncture.
2. If one takes the approximate total of available estimates from each state, it would seem that the number of acupuncturists practicing full- or part-time is possibly no more than 1,600, of whom 1,200 are in California. The potential pool of acupuncturists is vastly larger. In Maryland, for example, dozens of Orientals (many of them recent immigrants from mainland China) as well as several non-Orientals wish to practice acupuncture, but are unable to find medical supervisors. Until the states establish some sort of data collection system, all statistics on acupuncturists must remain speculative.
3. For a survey of state medical board positions and state laws on acupuncture as of 1975, see Paul A. Dorf, "State Laws Regulating the Practice of Acupuncture," *Journal of Legal Medicine* 3 (March 1975): 39-45; for an earlier survey of medical board positions, see William H. L. Dornette, "Acupuncture and the Law," *Journal of Legal Medicine* 2 (March/April 1974): 31-38.
4. The term "nonphysician" is not strictly correct as applied to persons who hold foreign degrees as physicians of traditional Oriental medicine. To avoid confusion, however, the term "nonphysician" will be applied to all those who are not licensed as medical doctors in the U.S.

The emphasis on Orientals seems necessary, since virtually no Americans began to

study acupuncture until the early 1970s. Even today there are only about a dozen schools in the U.S. offering some kind of program in acupuncture. American medical schools still do not teach formal courses in acupuncture.

- 5. A few of the very many books, monographs, and articles supporting these assumptions are: Lu Gwei-Djen and Joseph Needham, *Celestial Lancets: A History and Rationale of Acupuncture and Moxa* (Cambridge: Cambridge University Press, 1980)—contains a 34-page bibliography of works on acupuncture in Western languages; Anon., *Essentials of Chinese Acupuncture* (Beijing, China: Foreign Languages Press, 1980)—the second edition of Academy of Traditional Chinese Medicine, *An Outline of Chinese Acupuncture* (Beijing, China: Foreign Languages Press, 1975, distributed by Pergamon Press); Felix Mann, *Acupuncture: the Ancient Chinese Art of Healing* (Revised Second Edition, London: Heinemann, 1973, repr. 1974).

Also see *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. Tex. 1980); and Benedict, Pirro, and Pisani, "Acupuncture: The Practice of Medicine?" *Albany Law Review* 38 (1974): 633-690.

For an article rejecting these assumptions, see William H. Sweet, "Some Current Problems in Pain Research and Therapy (Including Needle Puncture, 'Acupuncture')." *Pain* 10 (June 1981): 297-309.

- 6. For treatment of the question whether acupuncture is the practice of medicine under the law, see: *People v. Amber*, 76 Misc. 2d. 267, 349 N.Y.S. 2d. 604 (Sup. Ct. Queens County 1973)—acupuncture constitutes the practice of medicine within the meaning of the New York Statute; *Case of 4th Judicial District of the State of Idaho (Ada County) March 10, 1975 Memorandum Opinion 5C-12923*—acupuncture is a separate healing art and not the practice of medicine under Idaho law; *State v. Won*, 528 P2d 594, 72 / .R3d 1253 (Ct. App. 1974)—use of acupuncture by chiropractor was illegal practice of medicine in Oregon unless done under a physician's supervision; *La. St. Bd. Med. Exam. v. Moran*, 290 So.2d. 383 (Ct. App. 1974)—on way to deciding procedural question on which case turned, court agreed with finding of trial court that defendant acupuncturist, not a licensed physician, was illegally practicing medicine; Benedict, Pirro, and Pisani, "Acupuncture: The Practice of Medicine?" pp. 655-660; Annot., "Acupuncture as Illegal Practice of Medicine," 72 ALR 3d 1257 (1976).

- 7. Like most therapies, acupuncture is not effective for all disorders, and it is more effective for some disorders than for others. Moreover, it is not effective for all individuals having a disorder generally responsive to acupuncture. Responsible practitioners have never claimed that acupuncture is a "panacea" or a "miracle cure." Evidence bearing on acupuncture's effectiveness is too extensive to be cited at length; thousands of journal articles reporting favorably on acupuncture may be located in *Index Medicus*. A few recent works are: Ralph M. Coan, et al., "Acupuncture Treatment of Low Back Pain: A Randomized Controlled Study," *American Journal of Chinese Medicine* 8 (Spring/Summer 1980): 181-189; *Advances in Acupuncture and Acupuncture Anaesthesia* (Beijing, China: People's Medical Publishing House, 1980)—abstracts of papers presented at the National Symposium on Acupuncture, Moxibustion, and Acupuncture Anaesthesia, Beijing, June 1979; Fredenck F. Kao and John J. Kao, eds., *Recent Advances in Acupuncture Research* (New York: Institute for Advanced Research in Asian Science and Medicine, 1979); Chang Hsiang-tung, "Acupuncture Analgesia Today," *Chinese Medical Journal* 92 (1979): 7-16; R.H. Bannerman, "Acupuncture: the WHO View," *World Health*, December 1979, pp. 24-29.

The terms "safety" and "effectiveness" are usually linked in any discussion of acupuncture, but it is useful to separate them in a regulatory analysis. While the state may be justified in banning a practice that is unequivocally dangerous, therapies that are not unequivocally dangerous require a statute "narrowly drawn" to effectuate the state's interest in protecting the public health. The medical profession does not allege that acupuncture is unequivocally dangerous; therefore it cannot be banned on that ground.

The state is not justified in banning, either explicitly or in effect, a therapy such as acupuncture that is merely of unproven effectiveness in the view of the medical profession, if the right to avail oneself of the therapy is encompassed by the right of privacy. *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. Tex. 1980). See also "State Interference with

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8. Needles inserted at an incorrect depth or angle may puncture or otherwise injure body organs; many areas of the body must never be punctured; acupuncture is contraindicated for certain disorders, such as tumors or fractures; and improperly sterilized needles can transmit infections. Although there is always the possibility that even the best acupuncturist, like the best surgeon, may inadvertently cause a complication, state insistence on rigorous standards of training for all acupuncturists will dramatically minimize the potential for harm to the public from acupuncture.
9. Dorf, "State Laws Regulating the Practice of Acupuncture," p. 45.
10. The laws of 15 states are currently in effect. New Jersey's law has expired, and implementation of Florida's new law has been delayed pending resolution of a legal challenge to its constitutionality. See note 62.
11. See testimony of Drs. M.T. Jenkins and John J. Bonica; but cf. testimony of Drs. Victor Sidel, Ralph Coan, and Alvin Gaary, *United States-China Science Cooperation: Hearings Before the Subcommittee on Science, Research and Technology of the Committee on Science and Technology*, 96th Cong., 1st Sess., pp. 144-251. See also William H.L. Dornette, "Acupuncture and the Law," p. 31.
12. For a suggestion that this was the case in New York, see Benedict, Pirro, and Pisani, "Acupuncture: The Practice of Medicine?" p. 680.
13. Indiana and Kansas previously forbid even licensed physicians to perform acupuncture. Kansas now permits all licensees under its medical practice act (M.D.s, D.O.s, and chiropractors) to perform acupuncture without training. In Indiana, the medical board postponed its acquiescence to physician practice until receiving a research report from Indiana University. The primary researcher, K.C. Kim, M.D., reported favorably on results obtained by the acupuncture research clinic and recommended that physicians trained in acupuncture be allowed to practice it. The clinic has closed, however, and no physicians are known to be practicing in the state. Nonphysician practice is still proscribed.
14. Rules implementing the medical practice act in Illinois (*Ill. Rules and Regs. for the Administration of the Med. Prac. Act*, Rule X) permit physicians, osteopaths, and chiropractors to perform acupuncture upon completing 100 hours of didactic and clinical instruction in acupuncture and submitting verification of study from an approved institution. In 1980, 342 registrants were certified to perform acupuncture in Illinois. Instruction is commonly obtained at a college of chiropractic in Illinois, and approximately 95 percent of the registrants are chiropractors. Oriental and other nonphysician acupuncturists are excluded from practice.

In Delaware, a 1973 Medical Council memorandum, still in effect, requires physicians wishing to perform acupuncture to submit evidence of training in acupuncture. The kind and amount of training is not specified. The physician is also required to submit to the council, for transmission to a research and human rights committee, a detailed acupuncture research protocol and a copy of a patient release form. No physicians are known to be practicing acupuncture in Delaware.

Georgia medical board rules and application procedures require physicians to submit to the board documentation of 100 hours of acupuncture training, a copy of a patient consent form, and an outline of a "plan concerning the use of acupuncture." The board has approved ten physicians to practice in Georgia.

The Ohio state medical board takes the position that physicians should study acupuncture in an "appropriate training program," but does not explicitly require training as a prerequisite to practice. Since the board does not know whether any physicians practice acupuncture in Ohio, it evidently does not monitor physician practitioners of acupuncture and their training.

15. Most Oriental practitioners believe that a physician needs a minimum of one year's formal training in acupuncture, and several years' experience, to achieve consistently good clinical results. A nonphysician, most believe, needs a minimum of two to three years' formal training and several years' experience. (Disagreement about appropriate standards of training and experience to be applied to physicians and nonphysicians has

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impeded the ability of acupuncturists to work cohesively toward a favorable status for acupuncture.) Orientals maintain that acupuncture is an art which cannot be learned or practiced mechanically, and which requires long study and experience, including some period of apprenticeship under an acknowledged master. They therefore take a medieval guild approach to its practice, which is not congenial to the U.S. system of objective standards.

- 16. Alaska's law provides that every applicant to practice acupuncture must qualify as a physician, but it does not require the physician to be trained in the technique. The section of the law allowing physician's assistants to treat patients under the supervision of a licensed physician (*Alaska Stat.*, Sec. 08.64.170 (a) (1) 1974) is not applied to acupuncture, so that nonphysician acupuncturists are excluded from practicing in Alaska.
- 17. The law of Tennessee explicitly places acupuncture within the healing arts, and gives the State Licensing Board for the Healing Arts the power to adopt regulations on acupuncture. Since the board has never adopted such regulations, and does not issue licenses to acupuncturists, the law, if interpreted literally, would unambiguously permit the practice of acupuncture only to licensed physicians. Whether other licensees under the healing arts board might be permitted to practice acupuncture has never been clarified.

Until very recently, acupuncture was practiced in Tennessee by Oriental nonphysicians. The medical board condoned this practice in view of a provision in Tennessee law allowing a physician to use "trained assistants" (*Tenn. Code Ann.*, Sec. 63-608 [1976]).

In 1980, however, Tennessee enacted a physician's assistant statute (*Ibid.*, Sec. 63-608 [1980]) according to which no one is a "physician's trained assistant" unless a graduate of an American Medical Association-accredited physician's assistant training program or certified by an examination given by the National Commission on Certification of Physician's Trained Assistants. If the Oriental acupuncturists who had been practicing in Tennessee under medical supervision do not meet those requirements, they would be barred from further practice in the state unless and until they qualify as physician's assistants.

The Tennessee law arguably discriminates in favor of Americans trained as physician's assistants, and against Orientals and others who may be highly qualified to practice acupuncture but who have not had training as physician's assistants. Moreover, barring qualified acupuncturists from practice on the ground that they do not qualify as physician's assistants is unduly harsh, not demonstrably necessary to protect public health, and may simply be an expedient to eliminate nonphysician acupuncturists. The Tennessee law therefore would seem vulnerable to legal challenge.

- 18. Taken together with its implementing regulations, (*Va. St. Bd. of Med. Rules and Regs.*, 1.1) Virginia's law is excessively cautionary. The statute defines acupuncture as a "modality used in the practice of the healing arts" and considers it to be "experimental." The statute does not explicitly restrict acupuncture practice to licensed physicians, but instructs the state medical board to recognize in formulating regulations that the practice of this modality requires professional judgment.

The rules adopted by the board state that only licensed medical doctors and osteopaths shall be allowed to perform acupuncture in Virginia, but only if registered with the board. The requirement for registration is 100 hours of postgraduate training in a school approved by the board. Since nothing in the statute itself would seem absolutely to preclude the practice of acupuncture by qualified nonphysicians, it may be asked whether the medical board has not too narrowly interpreted the statute in restricting the practice of acupuncture to medical doctors and osteopaths.

- 19. In some of these states, acupuncture is practiced by nonphysicians either "underground," or more or less openly with state toleration. The extent of such practice is unascertainable. Since there is no regulation, but merely official proscription of such practice, persons who do not meet minimum standards of training may be offering acupuncture services. The potential for public harm from such a situation is clear.
- 20. As a result, acupuncture clinics in states permitting nonphysician practice routinely treat large numbers of patients who have travelled with great difficulty and expense from states where acupuncture is unavailable. This burden on patients is unjustified.

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29. *Andrews v. Ballard*, 498 F.Supp.1038 (S.D.Tex.1980), at 1056—italics added.
 30. For the sour medical view of *Andrews*, see W.J. Curran, "Acupuncture, the Practice of Medicine, and the Right to Demand Medical Services," *The New England Journal of Medicine* 305 (20 August 1981): 439-440.
For a balanced analysis, see Robert Schwartz, "Acupuncture and Expertise: A Challenge to Physician Control," *The Hastings Center Report* 11 (April 1981): 5-7.
 31. The basic principle applied to the relationship between the supervising physician and the PA is delegation. In order to reduce medical costs and make the most efficient use of health care resources, particularly in medically underserved areas, the physician is permitted to delegate to an assistant certain aspects of the practice of medicine which the physician is able to perform and has traditionally performed. The principle of delegation enables the physician, at least in theory, to devote time to tasks requiring maximum training and skill while supervising the performance of other duties that may safely be entrusted to others.
 32. State PA statutes and regulations set forth extremely restrictive guidelines on the activities in which the PA may engage. Working in a dependent relationship under the "supervision, control and management" of the physician, the PA's initiative is strongly curtailed, and every medical service performed must be authorized. The PA must take pains not to mislead the public, generally by wearing appropriate PA identification. The PA and the PA's physician-supervisor must document their supervisory relationship to the satisfaction of the appropriate licensing body, usually the state medical board, and must report promptly any changes in the PA's employment status.
For a description of interference of supervisory requirements with the practice of nurse practitioners and physician's assistants, equally applicable to acupuncturists, see Dorothy Robyn and Jack Hadley, "National Health Insurance and the New Health Occupations: Nurse Practitioners and Physician's Assistants," *Journal of Health Politics, Policy and Law* 5 (Fall 1980): 453.
 33. For a description of these effects on dental hygienists, applicable to acupuncturists, see Jonathan Rose, "Occupational Licensing: A Framework for Analysis," *Arizona State Law Journal* 1 (1979): 197.
 34. Louisiana's law regards the physician with six months' training in acupuncture as the "acupuncturist." The law regards the nonphysician acupuncturist with three years' training in acupuncture or Oriental medicine as the "acupuncturist's assistant," who need not be formally trained and examined as a PA. The only "acupuncturist's assistant" in Louisiana is, however, with medical board acquiescence, working with a physician untrained in acupuncture. Nonphysicians are required to practice only as employees of the supervisor.
 35. Oregon law regards the acupuncturist as a form of physician's assistant who may practice only under the indirect supervision of one or more physicians. The acupuncturist must be a graduate of a medical board-approved acupuncture school, receive a minimum of twelve months' clinical training, and pass a comprehensive examination. Initially, the medical board required the acupuncturist to work with one physician. Soon after the law was passed, however, it decided to regard any referring physician as the acupuncturist's "supervisor." The board then unilaterally adopted the interpretation, where implied in the statute or even in the board's own acupuncture regulations (*Ore. Admn. Rules 847-70-005*), that "supervision" was synonymous with "referral." Patients were therefore required to obtain a referral from a physician practicing in the state as a condition to receiving acupuncture treatment. Experience proved, however, that they were unable to obtain referrals, or could obtain them only at great expense and inconvenience by consulting one of the few physicians known to be willing to refer patients to acupuncturists. In 1981, after considerable work by the Oregon Acupuncture Association, the legislature passed Senate Bill 562, requiring the patient to obtain either a physician's

referral, or a diagnosis and medical history voluntarily released to the acupuncturist by a practitioner of any healing art, including dentistry, chiropractic, or naturopathy. The effect of the new law, to require a patient unable to obtain a physician's referral or diagnosis to seek, in turn, a diagnosis from a chiropractor, dentist, or naturopath, seems medically unjustified. Whether the change will liberalize acupuncture or simply create new hurdles for prospective acupuncture patients remains to be seen. Insofar as the Oregon law interferes with the right of patients to decide to obtain acupuncture treatment, it is arguably unconstitutional under *Andrews v. Bullard*, 498 F. Supp. 1038 (S.D. Tex. 1980).

36. Washington's acupuncturists are called "physician's acupuncture assistants" or "osteopath's acupuncture assistants." A nonphysician, who must have three years' training and at least one year's experience in acupuncture, may practice only in a licensed physician's office under direct supervision, and the physician may supervise only one acupuncturist. In order to ensure that the supervising physician has "sufficient understanding" of the "application, contraindications and hazards" of acupuncture as required by implementing regulations (*Wash. Admin. Code* 308-52-500-580; 308-138-100-180), the medical board's policy is to ask the supervisor to document some sort of training in acupuncture.

In any state, however, there will be only a handful of physicians with any training at all in acupuncture, and those with training equivalent to that of well-trained acupuncturists will be fewer still. The number of physicians trained in acupuncture who would want to spend their time supervising a nonphysician is certainly very small. Requiring physician training is superfluous, especially in a state such as Washington, which requires extensive training of nonphysician acupuncturists. The effect of Washington's training policy certainly has been to reduce drastically the number of physicians willing to serve as supervisors. Moreover, the policy is indefensible considering that the medical board requires no training in acupuncture of physicians who wish to perform it. Maryland's medical board is attempting to impose the same training requirement. See note 37.

37. Maryland's 1974 law provides only that a nonlicensed person, that is, an acupuncturist not licensed to practice medicine, may perform acupuncture under the supervision of a licensed physician. The law gives the medical board authority to adopt regulations, but the board made no attempt to do so until 1980, when it proposed regulations requiring supervising physicians to be trained in acupuncture. The state's acupuncturists, who so far have successfully opposed these regulations, are working for a new law to license acupuncturists under a Board of Acupuncture. The number of practitioners in Maryland is larger than one might expect, primarily because the medical board has not yet been able to implement the law's very general supervised-practice requirement with its restrictive proposed regulations.

38. Until recently, South Carolina's statute merely provided that acupuncture would be permitted under the direct supervision of a licensed medical doctor or dentist in facilities approved by the Department of Health and Environmental Control. The law has recently been amended to remove the requirement that supervision be direct, and to add a requirement for physician referral of acupuncture patients. The acupuncturist must also obtain approval from the medical board as a condition of practice. The Department of Health has never announced guidelines for facilities, and it never promulgated regulations under the 1976 statute; and the medical board has not yet issued guidelines under which it will approve acupuncturists to practice in the state.

Direct supervision requires the medical supervisor to be present or at least on the premises while acupuncture is performed. It imposes a heavy burden on acupuncture services, since it requires the acupuncturist to cancel all appointments whenever the physician must be absent. Benefits from the law's new *indirect* supervision requirement are likely to be cancelled, however, by the new referral requirement. As experience in Oregon has shown (see note 35), most physicians will not refer patients to an acupuncturist. Prospective acupuncture patients in South Carolina are already finding it impossible to obtain the necessary referrals from intransigent physicians. Because they interfere with a patient's right to decide to obtain acupuncture treatment, referral

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requirements are probably unconstitutional under *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. Tex. 1980).

39. Arizona medical board rules (*Ariz. St. Bd. of Med. Exam. Reg.* 4-16-11) permit the practice of acupuncture only to licensed physicians, or physician's assistants who have passed the examination given by the National Commission on the Certification of Physician's Assistants, and have also passed a special acupuncture examination given by the medical board. A nonphysician acupuncturist, even one holding a degree of doctor of Oriental medicine, is forbidden to practice acupuncture unless he or she meets the above requirements. Arizona's regulation of acupuncture is thus similar to Tennessee's.

Neither of the nonphysicians practicing in Arizona is trained as a PA. One, an Oriental, had been practicing under medical supervision since 1973; he was allowed to continue under grandfather provisions of the 1977 PA statute. The other, a non-Oriental, defeated medical board efforts to obstruct his practice in *Jaffrey v. Ariz. Bd. Med. Exam.*, No. CIV 75-95 PHX-WEC (D. Ariz., filed 15 March 1979). The board has approved no PAs to practice acupuncture since Arizona passed its PA statute—*Ariz. Rev. Stat. Sec. 32-2501-2509* (1977).

40. Connecticut regards acupuncture as the practice of medicine, and permits its practice only by licensed physicians or physician's assistants working under direct supervision. Its policy is unique in requiring even podiatrists to perform acupuncture only under direct medical supervision. Unlike Arizona, however, Connecticut does not have a physician's assistant statute, and like Louisiana, Oregon, and Washington, interprets "physician's assistant" broadly to include "trained acupuncturists" who may not be trained in any field except acupuncture. The activities of physician's assistants have been under discussion for some time within the state, and it is possible that a PA statute will be adopted affecting nonphysician acupuncturists adversely, as in Tennessee and Arizona.

41. S.B. 2182 before the Massachusetts legislature would set up an Allied Health Board to license practitioners of various disciplines, including acupuncture. The state's acupuncture association is lobbying for independent practice under a Board of Acupuncture. As in Maryland, the number of practitioners is unusually large because the state's vague supervised-practice policy has not yet been implemented by restrictive regulations.

42. Refer to note 28.

43. E.g., *Calif. Admin. Code, Title 16, Prof. and Vocational Regs.* Chap. 13.7, Sec. 1399.523, which permits the physician's assistant to take a medical history and perform a physical examination, and in addition to do routine laboratory and screening procedures, such as drawing blood, catheterization, gastric lavage, stool examinations, tonometry, and taking EKG tracings. The PA may also perform therapeutic procedures, such as injections, care of wounds and burns, removal of sutures, and application of traction. Almost none of these duties is relevant to acupuncture. A Board of Acupuncture or medical board may, of course, require an acupuncturist to be trained in specific areas of medical care that are clearly relevant to the ability to perform acupuncture safely.

44. Physician association with acupuncturists may become more acceptable in light of the American Medical Association's 1981 emendation of its Principles of Medical Ethics, which now state that physicians are "free to choose whom to serve, with whom to associate, and the environment in which to provide medical services."

45. For a discussion of tort law as it may define primary and secondary liability for nurse practitioners and physician's assistants, possibly applicable to acupuncturists, see Matthew Chapman and Jane Record, "Defensibility of New Health Professionals at Law: A Speculative Paper," *Journal of Health Politics, Policy and Law* 4 (Spring 1979): 30.

46. This argument assumes that patients will never have seen a Western physician for their condition, whereas the contrary is generally true. The overwhelming majority of patients in acupuncture clinics are there as a last resort, having received innumerable, often contradictory, Western diagnoses, and expensive, prolonged, and unavailing Western medical treatment. Master acupuncturist Dr. Yee-kung Lok, one of the nation's most eminent practitioners, testified in *Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. Tex.

1980), at 1047, that over 90 percent of his patients have previously been treated unsuccessfully by Western doctors.

47. The court in *Andrews v. Ballard*, 498 F.Supp. 1038 (S.D. Tex. 1980), at 1054, says that the state may require the patient to obtain a Western medical diagnosis. It would seem, however, that such a requirement might conflict with the patient's right of privacy, which the case defines and protects.
48. The author is personally aware of statements made by licensed physicians to patients showing interest in acupuncture that are so willfully and maliciously irresponsible as possibly to be actionable.
49. This has already happened in Rhode Island, which forbids acupuncture without a Western medical diagnosis. See discussion in note 57.
50. For arguments in favor of licensing acupuncturists for independent practice under the authority of a Board of Acupuncture, see Benedict, Pirro, and Pisani, "Acupuncture: The Practice of Medicine?" pp. 670-72; 679-83. See also a physician's spirited if idiosyncratic espousal of independence for acupuncturists, Letter from D.M. Jedniny, *American Journal of Acupuncture* 8 (January-March 1980): 82.
51. "Finally, it should be noted that certain health fields, such as dental hygienists, are licensed by boards with either a predominant or exclusive membership of some other professional group (in this case, the dental boards). The potential here for paternalism and conflict-of-interest is obvious, particularly since the regulated discipline is viewed as a possible source of 'substitutes' for dentists." Harris S. Cohen, "On Professional Power and Conflict of Interest: State Licensing Boards on Trial," *Journal of Health Politics, Policy and Law* (Summer 1980): 301. The remark is equally applicable to medical board regulation of acupuncturists.
52. See note 10.
53. New Jersey's statute (*N.J. Stat. Ann. Sec. 45:98-1* [1975] West) on acupuncture has expired. In 1975 the legislature authorized the state medical board to establish and administer acupuncture research programs and to license research participants until the end of 1978, at which time the board was to report its evaluation of the programs and make recommendations for future acupuncture practice in the state. The statute also mandated the creation of an Acupuncture Advisory Committee. The board neither established the research programs nor created an advisory committee.

By letter of 22 December 1978, the New Jersey Board of Medical Examiners informed the Speaker of the New Jersey House that: "Contacts made by the Board of Medical Examiners with the College of Medicine and Dentistry resulted in the College reporting that funds were not available for establishing acupuncture research programs . . . The College . . . reported . . . that although interest had been expressed concerning former acupuncture research programs, funds did not materialize. . . . It was the opinion of the Board of Medical Examiners that the great interest in acupuncture that existed some six years ago has waned (*sic*) since that time, and there does not appear to be a need for research programs to be established. . . ."

In the absence of current legislation, the board's position that acupuncture is the practice of medicine, and may be performed only by a licensed physician, represents the only state policy on acupuncture. Whether any physicians practice acupuncture in New Jersey is not known.
54. Hawaii's acupuncture law is administered by a Board of Acupuncture composed of three nonphysician practitioners and two public members. The law licenses for independent practice nonphysicians who can document a minimum of two years of formal training in acupuncture, or a longer period of study of Oriental medicine, and pass an examination. The board's implementing regulations (*Hawaii Rules and Regs.*, Title VII, Chap. 35, 1.109.3), specify that the applicant must have completed a minimum of 1,056 hours of work, to consist of 576 hours of academic study of acupuncture or traditional Oriental medicine, and 480 hours of supervised clinical practice. In certain cases, training by apprenticeship may be accepted in lieu of formal training. All applicants must prove that they are legal residents of Hawaii. Physicians are exempt from acupuncture training and licensing requirements.
55. Nevada's law illustrates a rigorous and arguably exclusive approach to acupuncture

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licensing. In 1973, after vigorous lobbying by patients and a month-long "demonstration" of acupuncture by the well-known master Dr. Yee-kung Lok on hundreds of people, including Nevada legislators, the state passed a comprehensive acupuncture law, which regards Oriental medicine as separate from Western medicine and sets up special administrative machinery to govern its practice. (For the history of acupuncture in Nevada, see William M. Edwards, "Acupuncture in Nevada," *Western Journal of Medicine* 120 (June 1974): 507-517, and "Acupuncture in Nevada, Second Report," *Western Journal of Medicine* 124 (February 1976): 167-168). The law is unique in allowing the practice of herbal medicine, like acupuncture a branch of traditional Oriental medicine, and in prescribing penalties for the unauthorized practice of acupuncture by medical doctors.

According to the law's implementing regulations, medical doctors and doctors of osteopathy are not automatically qualified to practice acupuncture in Nevada. They may add it to their methods of treatment without additional licensing; but any MDs or DOs wishing to hold themselves out as acupuncture specialists must obtain licensing as a doctor of acupuncture from the State Board of Oriental Medicine.

A five-member Board of Oriental Medicine administers the law, licensing and examining applicants, and prescribing courses of study pursuant to explicit regulations. (*Nevada St. Bd. of Oriental Med. Rules and Regs.*, Arts. I-XVIII.) An Oriental Medicine Advisory Committee was formed in 1973 to advise the Board, but it is less active now than formerly.

Licenses to practice traditional Oriental medicine as Doctor of Herbal Medicine, or acupuncture as Doctor of Acupuncture, are given to those who have studied the former for 48 months or the latter for 36 months, have practiced for six years, and have passed an examination. (The Board of Oriental Medicine formerly required ten years' experience, but lowered it with legislative approval in 1981 in order to attract more acupuncturists to the state.) The law thus has a clear bias in favor of Oriental practitioners, who are the only persons likely to have the requisite training and experience at this time. (See note 66.) Applicants must consent to and pay for a background investigation into their professional training and experience. Their fingerprints are submitted to law enforcement agencies, and investigations are conducted overseas, at the Immigration and Naturalization Service, Internal Revenue Service, consumer fraud departments of cities and states, and state and foreign medical associations.

The law also licenses acupuncture assistants—persons who have studied for 36 months and have not less than three years' experience. The assistant, somewhat analogous to the physician's assistant, may practice only under the direct supervision of a licensed acupuncturist.

56. In 1981, New Mexico, whose medical board policy formerly permitted acupuncturists to practice only under direct medical supervision, passed an Acupuncture Practice Act providing for independent practice by nonphysicians. The act creates a seven-member Acupuncture Board consisting of two medical doctors, four nonphysician acupuncturists, and one public member. The board is empowered to promulgate rules, examine all applicants, grant or deny licenses, and set standards for supervision of students and apprentices by licensed practitioners. (The first board, recently appointed by the governor, does not fulfill statutory requirements, insofar as its nonphysician membership comprises persons whose primary practice is in health care professions other than acupuncture.) Applicants for examination as acupuncturists must be New Mexico residents who have completed a board-approved course or tutorship in acupuncture of at least two years.

57. After hearing compelling testimony from persons who had benefited from acupuncture treatment in other states, the Rhode Island legislature recently passed a new acupuncture law based on the Nevada model. Insofar as the law was passed as a result of a considered decision to make high-quality acupuncture care available to the state's residents, rather than as a result of pressure from an acupuncture lobby within the state, the reasons underlying the law's passage may be somewhat unusual.

The law licenses as Doctors of Acupuncture applicants with three years' training and ten years' experience in acupuncture who pass an examination; it also licenses acupunc-

ture assistants. Unlike Nevada, Rhode Island does not recognize the practice of herbal medicine. A five-member Board of Acupuncture administers the law, guided by detailed regulations similar to Nevada's (*R.I. Rules and Regs. for the Licensing of Doctors of Acup. and Acup. Assis.*, Arts. I-XVIII). The new law's original provision for an Acupuncture Advisory Committee was removed, and the board now has no statutorily mandated authority to seek advice from the acupuncture profession.

The law states that a licensed acupuncturist may not perform acupuncture in Rhode Island unless the patient has had a diagnostic examination by a licensed physician within twelve months of seeking acupuncture treatment; the acupuncturist must be familiar with the results of the examination. The Board of Acupuncture has already received several informal complaints about physicians who refused to turn over signed diagnoses, and it should monitor the practical operation of this provision to ensure that it does not have a chilling effect on the practice of acupuncture within the state. The board must also ensure that the provision does not interfere with the patient's constitutionally protected right to obtain acupuncture treatment (*Andrews v. Ballard*, 498 F. Supp. 1038 [S.D. Tex. 1980]).

The law exempts from its provisions physicians or medically supervised "acupuncture technicians" who wish to practice acupuncture as authorized by a 1974 state law (*R.I. Gen. Laws*, Sec. 5-37-20 [1974]). This law defines an acupuncture technician as a person trained and certified by a recognized institution of acupuncture who has a minimum of two years' college training and five years' experience in acupuncture. Presumably, under the new law applicants who do not have the years of training and experience required for licensing as an independent practitioner may practice either as an acupuncture assistant or as an "acupuncture technician" under supervision.

58. The state's first acupuncture law, passed in 1972 and now repealed, permitted nonphysicians to practice acupuncture in an approved medical school for scientific research, under the supervision of a licensed physician (*Cal. Bus. & Prof. Code*, Sec. 21451.1 [West, 1974]—now repealed). This law was amended in 1974 to permit nonphysicians to practice under supervision under a medical school's jurisdiction. In 1975, after a hard fight by acupuncture proponents, the state passed a law allowing the unsupervised practice of acupuncture by nonphysicians. (*Ibid.*, Sec. 2150-2160 [West 1979].) Further lobbying efforts aimed at winning full independence for acupuncturists brought about repeal, in 1979, of the law's provision prohibiting the performance of acupuncture without prior diagnosis or referral from a licensed physician, dentist, podiatrist, or chiropractor. (*Ibid.*, Sec. 2155—repealed by 1979 Cal. Stats., Ch. 488.) Last year, continued lobbying persuaded Governor Brown to sign a bill revising the law's administration (1980 Cal. Stats., Ch. 357 [AB 3040].) The law also adopts a new, holistic tone, presumably reflecting the philosophical bent of the lobbyists who worked for it. For example, the opening section of the new law, to be codified as Sec. 2150, states in part: ". . . The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health . . ."

Under the current version, an eleven-member Acupuncture Advisory Committee of nonphysician acupuncturists, physician acupuncturists, and members of the public advises the Division of Allied Health Professions of the Board of Medical Quality Assurance on implementing the law. The revised law replaces this committee with an eleven-member Acupuncture Examining Committee as the law's administrator. This new arrangement, to be effective in late 1982, will remove from the division the functions it now performs in regard to acupuncture. The new committee will remain, however, within the jurisdiction of the division, and any regulations that it drafts will be subject to the division's review and approval.

Applicants to perform acupuncture must have completed a course in acupuncture satisfactory to the division (in the current law), or the Acupuncture Examining Committee (in revised law), or must prove three years' experience in performing acupuncture, and must further pass an examination, practical in part. Course requirements may be satisfied by completion of an approved tutorial or apprenticeship. Oriental applicants

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 ... patient's constitutionally protected
 ... 498 F. Supp. 1039 (S.D. Tex.)

... medically supervised "acupuncture
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 ... acupuncture technician as a person
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 ... for scientific research,
 ... *Prof. Code, Sec. 21451.1*
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 ... In 1975, after a hard
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may take the examination in their native language, but must pay for the services of a translator.

Two provisions from the detailed regulations (*Calif. Admin. Code, Title 16, Prof. and Vocational Regs. Chap. 13.6, Sec. B99.400-481*) implementing the current law seem especially well-designed to protect both the public and the acupuncturist with respect to the way an acupuncturist holds the practice out to the public. One provision defines "improper advertising" as that which is known by the acupuncturist to be untrue or misleading, which represents that the acupuncturist can cure any disease, condition, or symptom, or which advertises a technique not within the scope of practice of acupuncture. (*Ibid.*, Sec. 1399.455).

The second provision assists the public in distinguishing levels of training among acupuncturists in a state where doing so is probably a perplexing task, given the variety of backgrounds of certified practitioners. It classes as unprofessional conduct the use of the title "doctor" in connection with acupuncture practice unless the acupuncturist has a license or certificate which authorizes such use, or possesses an earned doctorate from an approved or accredited educational institution. (*Ibid.*, Sec. 1399.456). The Board of Medical Quality Assurance and the Acupuncture Advisory Committee are currently studying whether to allow all certified acupuncturists to use the term "doctor." If approved, this change could obscure the real differences in training among acupuncturists.

Special training and registration of physicians and other medical practice act licensees who wish to perform acupuncture are not required in California. AB538, recently passed by the legislature, requires dentists and podiatrists to complete a course in acupuncture approved by their respective licensing boards as a prerequisite to performing the therapy. It also requires the medical board to consider including a course in acupuncture in its continuing education requirements for physicians and surgeons whose practices may require knowledge of acupuncture.

- 59. For a discussion of the harmful effects of licensing boards and ways a state may avoid these effects, see Harris S. Cohen, "On Professional Power and Conflict of Interest: State Licensing Boards on Trial," pp. 291-308.
- 60. See note 85.
- 61. Harris S. Cohen, in "On Professional Power and Conflict of Interest: State Licensing Boards on Trial," p. 304, recommends that licensing boards with no members of the regulated profession should be statutorily obliged to seek technical advice from professional groups.
- 62. For several years the Florida state medical board has allowed nonphysician acupuncturists to practice under medical supervision pursuant to a state law whereby "trained assistants" may render services under the direct supervision and control of a licensed physician. (*Fla. Stat. Sec. 458.303(2)* [1979].) This section makes clear that Florida's 1979 Physician's Assistant statute, Sec. 458.347, is not intended to apply to nonphysician acupuncturists: "Nothing in . . . s.458.347 [the 1979 PA statute] shall be construed to prohibit any service rendered by a physician's trained assistant . . . if such service is rendered under the direct supervision and control of a licensed physician . . ."

In 1980, the Florida legislature passed a law, which it amended in 1981, to certify for independent practice nonphysician acupuncturists who can satisfactorily document two years of formal acupuncture education or apprenticeship, and pass an examination. The law fails to create a Board of Acupuncture or even an Acupuncture Advisory Committee, and instead grants to the Department of Professional Regulation the authority to adopt rules establishing certification procedures, determine proper courses of study, prepare examinations, and decide all matters of policy and practice. The law is unique in prohibiting the performance of acupuncture without the informed written consent of the patient; the department's proposed acupuncture rules fail to define such consent. Specifically exempted from the law are chiropractors and naturopaths, as well as other medical practice licensees.

Legal disputes have delayed the law's enforcement. In *Brockmann v. Fla. Dept. of Prof. Reg.*, Case No. 80-8324 Civ-JAG (U.S.D.C. for the Southern Dist. of Fla.), a group



of acupuncturists, their patients, and medical supporters challenged the new law on grounds, *inter alia*, that it improperly delegates rule-making authority to the department, and that its exemptions violate equal protection in singling out for examination those who are most likely to be skilled in acupuncture, while permitting its practice by persons whose training in acupuncture may be minimal or nonexistent. The case was dismissed for lack of standing, but a similar case is now pending in a state court (*Pan Jau Chi v. Fla. Dept. of Prof. Reg.*, Case No. 81-2259 [Cir. Ct., Second Judicial Circuit, Leon County Fla.]). A preliminary injunction against the law's enforcement has been granted, and the state's appeal dismissed. Pending resolution of the case, acupuncture practice continues under medical supervision.

63. Montana's acupuncture law was modeled after Nevada's but is a substantially attenuated version. It does not license persons for the practice of herbal medicine, and it seems seriously deficient in failing to provide for a Board of Acupuncture or even an Acupuncture Advisory Committee. Instead, the law is administered by the medical board.

The applicant for a Montana license must be a graduate of an approved school of acupuncture, or have completed an approved course, and unless licensed by reciprocity, must pass an examination. Standards are vague, and undue discretion to grant or deny applications is therefore vested in the medical board. It is the board's policy now to grant reciprocity only to Nevada licensees. Physicians wishing to practice acupuncture are not exempt from licensing and examination requirements. All applicants must give evidence of U.S. citizenship or file a declaration of intent to become a citizen. The constitutionality of this provision is questionable. *In Re Griffiths*, 413 U.S. 717 (1973); *Examining Board v. Flores de Otero*, 426 U.S. 572 (1976).

Implementing regulations (*Montana Admin. Rules* 40.26.501-.506) require applicants to have a basic science certificate or to have completed a medical curriculum. The regulations formerly required a physician's "prescription" for acupuncture, but this provision has been removed.

64. New York's law limits the practice of acupuncture to physicians who have taken 100 hours' approved training in acupuncture, and to domestic or foreign-licensed Oriental practitioners who can document to the satisfaction of the State Medical and Dental Boards three years' training and ten years' practice in their home countries.

In 1972, the New York State Board of Medicine took the position that acupuncture fell within the practice of medicine, was experimental, and could be performed only by or under the direct supervision of a licensed physician in an institution appropriate for human research. Persons performing acupuncture privately were deemed to be violating the law, and a number of clinics staffed by Orientals closed after warnings by the state's Attorney General that they were engaged in the illegal practice of medicine.

In 1973, acupuncture proponents lobbied for legislation that would have permitted practice by qualified nonphysicians, but no bills passed during that year. In 1974, a State Commission on Acupuncture published a report concluding that acupuncture fell within the practice of Western medicine, and could best be regulated by the medical profession rather than by licensing legislation. The commission recommended draft legislation, which became law in June 1974, requiring the State Boards of Medicine and Dentistry to promulgate standards for acupuncture practice by licensed practitioners, and authorizing the creation of districts to collect acupuncture research data. (For a detailed early history of acupuncture in New York, see Benedict, Pirro, and Pisani, "Acupuncture: The Practice of Medicine?" pp. 676-679.

65. Residence requirements in New Mexico and Hawaii, and the citizenship requirement in Montana, bear no relationship to the safe and effective practice of acupuncture and are blatantly exclusionary.
66. In *Walker v. Gulatz*, Civ. No. LV-75-169 BRT (D.Nev., 12 February 1976) plaintiff alleged that Nevada's acupuncture law discriminated against non-Oriental applicants. Under local rules, the court treated plaintiff's failure to oppose defendant's Motion for Summary Judgment as consent to its being granted. Since the case was decided on technical grounds, it may have little value as precedent.
67. *N.Y. Educ. Law*, Sec. 6523 (McKinney Supp.) (1975).

supporters challenged the new law on the making authority to the department. in singling out for examination those while permitting its practice by persons nonexistent. The case was dismissed in a state court (*Pan Jau Chii v. Ct.*, Second Judicial Circuit, Leon the law's enforcement has been granted. of the case, acupuncture practice

Nevada's but is a substantially atten- the practice of herbal medicine, and it a Board of Acupuncture or even an is administered by the medical

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January 1976) plaintiff al- (mental) applicants. the defendant's Motion for on the case was decided on

68. *Official Compilation of Codes, Rules and Regulations of the State of New York* 60.10. The regulations require 100 hours' approved training in acupuncture for physicians and dentists who wish to perform acupuncture; they require also that physicians, dentists, and licensed nonphysicians wishing to administer acupuncture within an institutional setting file an approved research protocol with the State Education Department. The physician or dentist wishing to administer acupuncture outside such a setting must provide evidence of 100 hours' training, and the nonphysician must meet the requirements of three years' training, ten years' experience and licensing by a foreign or domestic jurisdiction. Nonphysicians with lesser qualifications may practice only in "approved institutional settings" and only under the supervision of a licensed physician or dentist certified to perform acupuncture.
69. A bill (S.4507-A1-A.5946-A) now before the New York legislature would establish a nine-member Board of Acupuncture, to be composed of two physicians or dentists trained in acupuncture, five nonphysician acupuncturists, and two public members. The Board would determine qualifications of applicants, administer a licensing examination, issue licenses, and exercise all other powers relating to acupuncture now vested in the Boards of Medicine and Dentistry.
70. Refer to note 15.
71. Examinations in California in the past were much too simple, but are now much more rigorous. It is indicative of the lack of systemization of U.S. acupuncture standards that in Oregon, where only supervised practice is allowed, and in Nevada and Rhode Island, with their exacting training and experience requirements, examinations are more difficult than they were in California.
72. Reprinted in *United States-China Science Cooperation: Hearings Before the Subcommittee on Science, Research and Technology of the Committee on Science and Technology* 96th Cong., 1st Sess., pp. 141-43 (1979).
73. *Ala. St. Bd. of Med. Exam. Rules* .001.
74. *Composite St. Bd. of Med. Exam. (Ga.) Rules* Chap. 360-6.01. Amended.
75. As a result of fresh interest in Chinese medicine generated by the 31 January 1979 signing of the United States-China Agreement on Cooperation in Science and Technology, the U.S. Congress held a hearing on acupuncture on 22 June 1979, *United States-China Science Cooperation*, 96th Cong., 1st Sess., pp. 144-251. Although acupuncture was not one of the subjects specifically covered by the agreement, federally-sponsored acupuncture exchange and research programs eventually may follow from renewed U.S. contacts with Chinese scientists.
76. *38 Federal Register* 6419 (9 March 1973).
77. FDA Compliance Policy Guide 7124.17, Transmittal No. 78-10 (22 March 1978).
78. Whether an acupuncture needle is safe and effective depends primarily on the training, experience, and skill of the person who wields it, as well as on the individual response of the patient, and the nature of the disorder being treated. The physical characteristics of the needle—its length, thickness, material, and so forth—are relevant to its safety only insofar as they may affect its breakability. The FDA discussed none of these considerations. It would be possible to evaluate the safety of an electro-acupuncture machine, which transmits a low voltage of current through acupuncture needles, but the guidelines made no distinction between needles and machines.
The agency's tortuous efforts to maintain the fiction that it is concerned only with devices and not with therapy were illustrated by the Compliance Policy Guide, *ibid.*, which stated in part: "Since publication of the 1973 notice, several states have enacted laws which enable certain qualified persons to become licensed in order to apply acupuncture techniques However, it is possible that some of these licensed acupuncture 'practitioners' (*sic*) are not engaged in research or investigation of a device." (Emphasis added.) It is indeed unlikely that any of those persons the agency refers to as acupuncture "practitioners" are investigating devices. Rather, they are performing therapy, as the agency must certainly have been aware.
79. In its guidelines, the agency overtly judged acupuncture in a paragraph of superficial evaluation, referring vaguely to "scientific opinion which questions the safety and effectiveness of acupuncture in many of the uses for which it is now being applied." The

- paragraph baldly concludes, "Until evidence is obtained demonstrating that acupuncture is a safe and effective medical technique, acupuncture devices must be limited to investigational or research use." 38 *Federal Register* 6419 (9 March 1973).
80. *Contra*, William H. L. Dornette, "Acupuncture and the Law," pp. 31-32.
 81. Paul Dorf, "State Laws Regulating the Practice of Acupuncture," p. 45.
 82. James T. Hendrick, "Forms of Limited Practice under the Medical Practice Act," *Univ. Miami Law Review* 26 (1972): 806.
 83. Patients excel at presenting the kind of "testimonial and anecdotal" evidence on behalf of acupuncture that is persistently belittled by the medical profession, but is persuasive to legislators.
 84. For a discussion of some of the conflicting positions legislators must consider in drafting acupuncture laws, see W. Stuart Dornette, "The Licensing of the Acupuncture Practitioner—A Legislative Perspective," *Journal of Legal Medicine* 2 (March/April 1974): 39-40.
 85. It is not easy for legislators who are targets of lobbying to evaluate claims of acupuncturists for recognition and legitimacy, since acupuncturists in any given state may comprise disparate philosophical schools and political groups. Oriental practitioners of traditional acupuncture—Chinese, Korean, Japanese, Southeast Asian—often have eclectic training and take a pragmatic approach to technique. They are often unable to communicate effectively in English or even among themselves. Most non-Oriental practitioners view acupuncture as holistic medicine, and many strictly follow the methodology laid down in classical Oriental texts. Other health care professionals may also take varied approaches: many medical doctors favor bizarre European permutations of acupuncture, and chiropractors and naturopaths seem disposed to view acupuncture as a natural adjunct to their own therapies. The current perception that all acupuncturists regard themselves as holistic practitioners, or that acupuncture by definition is holistic medicine in the Western sense, is not accurate. For an article regarding acupuncture as a holistic therapy, see J. Warren Salmon and Howard S. Berliner, "Health Policy Implications of the Holistic Health Movement," *Journal of Health Politics, Policy and Law* 5 (Fall 1980): 535-553.

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Joan H. Gaumer
Vice President

15700 Dayton Avenue North/P.O. Box 327
Seattle, Washington 98111
206/361-3408

April 8, 1988

A large, handwritten signature in black ink that reads "Kelly". The signature is written in a cursive style with long, sweeping lines.

APR 11 1988

Senator Paul Fischer
Chairman
Health, Education & Social
Services Committee
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Fischer:

During testimony Wednesday on SB 405, Dr. Ralph Coan took exception with my statement that acupuncturists were certified or registered in Washington. Dr. Coan insisted that, since an exam was administered, the acupuncturists were licensed.

I have attached a copy of the law in Washington which certifies acupuncturists. You may find that some of the provisions of the Washington law could provide you or your staff with some ideas for modifications for SB 405.

Sincerely,

A handwritten signature in black ink that reads "Joan Gaumer". The signature is written in a cursive style with a large, prominent "J" and "G".

Joan H. Gaumer
Vice President
Government Relations

JHG:pf

Attachment

cc Bill Miles
Members of the HESS Committee

ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by him or her. [1986 c 295 § 18; 1983 c 234 § 21; 1949 c 226 § 38; Rem. Supp. 1949 § 8269-45.]

18.04.405 Confidential information—Disclosure, when—Subpoenas. (1) A certified public accountant, a partnership or corporation of certified public accountants, or any of their employees shall not disclose any confidential information obtained in the course of a professional transaction except with the consent of the client or former client or as disclosure may be required by law, legal process, the standards of the profession, or as disclosure of confidential information is permitted by RCW 18.04.350 (3) and (4) in connection with peer reviews and investigations.

(2) This section shall not be construed as limiting the authority of this state or of the United States or an agency of this state or of the United States to subpoena and use such information in connection with any investigation, public hearing, or other proceeding, nor shall this section be construed as prohibiting a certified public accountant whose professional competence has been challenged in a court of law or before an administrative agency from disclosing confidential information as a part of a defense to the court action or administrative proceeding. [1986 c 295 § 19; 1983 c 234 § 23.]

18.04.901 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1986 c 295 § 20; 1983 c 234 § 34.]

18.04.910 Effective date—1983 c 234. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. [1983 c 234 § 35.]

18.04.911 Effective date—1986 c 295. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1986, except as provided in this section. *Section 5 of this act shall not become effective if sections 90(1) and 4 of Engrossed Substitute House Bill No. 1758 become law. [1986 c 295 § 24.]

*Reviser's note: Section 5 of this act was vetoed by the governor.

18.04.920 Short title. This chapter may be cited as the public accountancy act. [1986 c 295 § 22; 1983 c 234 § 1.]

Chapter 18.06

ACUPUNCTURE

Sections	Definitions.
18.06.010	Practice without certification unlawful.
18.06.020	Authority to practice irrespective of other licensing laws—Exemptions for educational purposes.
18.06.030	Exemptions from certification.
18.06.040	Applications for examination—Qualifications.
18.06.050	Approval of educational programs.
18.06.060	Approval of applications—Examination fee.
18.06.070	Authority of director—Examination—Contents.
18.06.080	Fluency in English required.
18.06.090	Investigation of applicant's background.
18.06.100	Application of uniform disciplinary act.
18.06.110	Annual registration—Renewal—Fee—Lapse.
18.06.120	Patient information form.
18.06.130	Consultation and referral to other health care practitioners.
18.06.140	Violations of RCW 18.06.130 or 18.06.140—Penalty.
18.06.150	Adoption of rules.
18.06.160	Acupuncture advisory committee.
18.06.170	Application of chapter to previously registered acupuncture assistants.
18.06.180	Reciprocal licenses.
18.06.190	Health care insurance benefits not mandatory.
18.06.200	Prescription of drugs and practice of medicine not authorized.
18.06.210	Termination—Sunset Act application.
18.06.900	Repealer.

Performance of acupuncture by physicians' assistants and osteopathic physicians' assistants: RCW 18.57A.070 and 18.71A.080.

18.06.010 Definitions. The following terms in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Acupuncture" means a health care service based on a traditional Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes but is not necessarily limited to the following techniques:

(a) Use of acupuncture needles to stimulate acupuncture points and meridians;

(b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;

(c) Moxibustion;

(d) Acupressure;

(e) Cupping;

(f) Dermal friction technique (gwa hsa);

(g) Infra-red;

(h) Sonopuncture;

(i) Laserpuncture;

(j) Dietary advice based on traditional Chinese medical theory; and

(k) Point injection therapy (aquapuncture).

(2) "Acupuncturist" means a person certified under this chapter.

(3) "Department" means the department of licensing.

(4) "Director" means the director of licensing or the director's designee. [1985 c 326 § 1.]

18.06.020 Practice without certification unlawful. (1) No one may hold themselves out to the public as an acupuncturist or certified acupuncturist or any derivative thereof which is intended to or is likely to lead the public to believe such a person is an acupuncturist or certified acupuncturist unless certified as provided for in this chapter.

(2) No one may use any configuration of letters after their name (including Ac.) which indicates a degree or formal training in acupuncture unless certified as provided for in this chapter.

(3) The director may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter. [1985 c 326 § 2.]

18.06.030 Authority to practice irrespective of other licensing laws—Exemptions for educational purposes. Any person certified as provided for in this chapter may practice acupuncture irrespective of any other occupational licensing law. This authorization also extends to:

(1) The practice of acupuncture by a person who is a regular student in a school of acupuncture approved by the director: *Provided, however,* That the performance of such services be pursuant only to a regular course of instruction or assignments from his instructor and that such services are performed only under the direct supervision and control of a person certified pursuant to this chapter or licensed under any other healing art whose scope of practice includes acupuncture; and

(2) The practice of acupuncture by any person licensed or certified to perform acupuncture in any other jurisdiction where such person is doing so in the course of regular instruction of a school of acupuncture approved by the director or in an educational seminar sponsored by a professional organization of acupuncture: *Provided,* That in the latter case, the practice is supervised directly by a person certified pursuant to this chapter or licensed under any other healing art whose scope of practice includes acupuncture. [1985 c 326 § 3.]

18.06.040 Exemptions from certification. The prescriptions contained in RCW 18.06.020 (1) and (2) do not extend to:

(1) Those holding valid licenses under chapter 18.71, 18.57, 18.22, or 18.32 RCW operating within their lawful scopes of practice or valid registration authorizing the performance of acupuncture procedures pursuant to chapter 18.71A or 18.57A RCW;

(2) Those practicing acupuncture in the state under the authority of any instrumentality of the United States; and

(3) Those performing acupuncture procedures under RCW 18.06.030 (1) and (2).

Provided, That such persons shall not hold themselves out as being certified acupuncturists under this chapter. [1985 c 326 § 4.]

18.06.050 Applications for examination—Qualifications. Any person seeking to be examined shall present to the director at least forty-five days before the commencement of the examination:

(1) A written application on a form or forms provided by the director setting forth under affidavit such information as the director may require; and

(2) Proof that the candidate has:

(a) Successfully completed a course, approved by the director, of didactic training in basic sciences and acupuncture over a minimum period of two academic years. The training shall include such subjects as anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and a survey of western clinical sciences. The basic science classes must be equivalent to those offered at the collegiate level. However, if the applicant is a licensed chiropractor under chapter 18.25 RCW or a naturopath licensed under chapter 18.36A RCW, the requirements of this subsection relating to basic sciences may be reduced by up to one year depending upon the extent of the candidate's qualifications as determined under rules adopted by the director;

(b) Successfully completed a course, approved by the director, of clinical training in acupuncture over a minimum period of one academic year. The training shall include a minimum of: (i) Twenty-nine quarter credits of supervised practice, consisting of at least four hundred separate patient treatments involving a minimum of one hundred different patients, and (ii) one hundred hours or nine quarter credits of observation which shall include case presentation and discussion. [1987 c 447 § 15; 1985 c 326 § 5.]

*Severability—*1987 c 447: See RCW 18.36A.901.

18.06.060 Approval of educational programs. The department shall consider for approval any school, program, apprenticeship, or tutorial which meets the requirements outlined in this chapter and provides the training required under RCW 18.06.050. Clinical and didactic training may be approved as separate programs or as a joint program. The process for approval shall be established by the director by rule. [1985 c 326 § 6.]

18.06.070 Approval of applications—Examination fee. No applicant may be permitted to take an examination under this chapter until the director has approved his or her application and the applicant has paid an examination fee as prescribed under RCW 43.24.086. The examination fee shall accompany the application. [1985 c 326 § 7.]

18.06.080 Authority of director—Examination—Contents. (1) The director of licensing is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the director may select. The examination shall be a written examination in English and may include a practical examination.

(2) The director shall develop or approve a licensure examination in the subjects that the director determines

are within the scope of and commensurate with the work performed by certified acupuncturists and shall include but not necessarily be limited to anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the director and there retained for a [at] least one year, when they may be destroyed.

(3) If the examination is successfully passed, the director shall confer on such candidate the title of Certified Acupuncturist. [1985 c 326 § 8.]

18.06.090 Fluency in English required. Before certification, each applicant shall demonstrate sufficient fluency in reading, speaking, and understanding the English language to enable the applicant to communicate with other health care providers and patients concerning health care problems and treatment. [1985 c 326 § 9.]

18.06.100 Investigation of applicant's background. Each applicant shall, as part of his or her application, furnish written consent to an investigation of his or her personal background, professional training, and experience by the department or any person acting on its behalf. [1985 c 326 § 10.]

18.06.110 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this chapter. The director shall be the disciplining authority under this chapter. [1987 c 150 § 9; 1985 c 326 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

18.06.120 Annual registration—Renewal—Fee—Lapse. (1) Every person certified in acupuncture shall register with the director annually and pay an annual renewal registration fee determined by the director as provided in RCW 43.24.086 on or before the certificate holder's birth anniversary date. The certificate of the person shall be renewed for a period of one year or longer in the discretion of the director.

(2) Any failure to register and pay the annual renewal registration fee shall render the certificate invalid. The certificate shall be reinstated upon: (a) Written application to the director; (b) payment to the state of a penalty fee determined by the director as provided in RCW 43.24.086; and (c) payment to the state of all delinquent annual certificate renewal fees.

(3) Any person who fails to renew his or her certification for a period of three years shall not be entitled to renew such certification under this section. Such person, in order to obtain a certification in acupuncture in this state, shall file a new application under this chapter, along with the required fee, and shall meet examination or continuing education requirements as the director, by rule, provides.

(4) All fees collected under this section and RCW 18.06.060 shall be credited to the health professions account as required under RCW 43.24.072. [1985 c 326 § 12.]

18.06.130 Patient information form. The director shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All certificate holders shall bring the form to the attention of the patients in whatever manner the director, by rule, provides. [1985 c 326 § 13.]

18.06.140 Consultation and referral to other health care practitioners. Every certified acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for certification as well as annually thereafter with the certificate renewal fee to the department. The department may withhold certification or renewal of certification if the plan fails to meet the standards contained in rules promulgated by the director.

When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued. [1985 c 326 § 14.]

18.06.150 Violations of RCW 18.06.130 or 18.06.140—Penalty. Any person violating the provisions of RCW 18.06.130 or 18.06.140 shall be guilty of a misdemeanor and shall be punished as provided in RCW 9.92.030. [1985 c 326 § 15.]

18.06.160 Adoption of rules. The director shall adopt rules in the manner provided by chapter 34.04 RCW as are necessary to carry out the purposes of this chapter. [1985 c 326 § 16.]

18.06.170 Acupuncture advisory committee. (1) The acupuncture advisory committee is created. The committee shall be composed of one physician licensed under chapter 18.71 or 18.57 RCW, three acupuncturists certified under this chapter, and one public member, who does not have any financial interest in the rendering of health services.

(2) The director shall appoint members to staggered terms so as to provide continuity in membership. Members shall serve at the pleasure of the director but may not serve more than five years total. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) Each member of the committee shall receive fifty dollars for each day during which the member attends

an official meeting of the group or performs statutorily prescribed duties approved by the director.

(4) The committee shall meet only on the request of the director and consider only those matters referred to it by the director. [1985 c 326 § 17.]

18.06.180 Application of chapter to previously registered acupuncture assistants. All persons registered as acupuncture assistants pursuant to chapter 18.71A or 18.57A RCW on July 28, 1985, shall be certified under this chapter by the director without examination if they otherwise would qualify for certification under this chapter and apply for certification within one hundred twenty days of July 28, 1985. [1985 c 326 § 18.]

18.06.190 Reciprocal licenses. The director may certify a person without examination if such person is licensed or certified as an acupuncturist in another jurisdiction if, in the director's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state. [1985 c 326 § 19.]

18.06.200 Health care insurance benefits not mandatory. Nothing in this chapter may be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1985 c 326 § 20.]

18.06.210 Prescription of drugs and practice of medicine not authorized. This chapter shall not be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 or 18.57 RCW, except as authorized in this chapter. [1985 c 326 § 21.]

18.06.900 Termination—Sunset Act application. RCW 18.06.010, 18.06.020, 18.06.030, 18.06.040, 18.06.050, 18.06.060, 18.06.070, 18.06.080, 18.06.090, 18.06.100, 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.150, 18.06.160, 18.06.170, 18.06.180, 18.06.190, 18.06.200, and 18.06.210 shall terminate on July 1, 1991, and shall be subject to the process provided for in chapter 43.131 RCW. [1985 c 326 § 22.]

18.06.901 Repealer. RCW 18.06.010, 18.06.020, 18.06.030, 18.06.040, 18.06.050, 18.06.060, 18.06.070, 18.06.080, 18.06.090, 18.06.100, 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.150, 18.06.160, 18.06.170, 18.06.180, 18.06.190, 18.06.200, and 18.06.210 are each repealed effective July 1, 1992. [1985 c 326 § 23.]

Chapter 18.08 ARCHITECTS

Sections

18.08.150	Application for examination—Fee.
18.08.190	Expiration of certificate—Renewal—Fee— Withdrawal of registrant.

18.08.220	Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.
18.08.235	Legislative findings—1985 c 37.
18.08.240	Architects' license account—Earnings.
18.08.310	Registration or authorization to practice required.
18.08.320	Definitions.
18.08.330	Board of registration—Appointment, terms, vacancies, removal—Officers—Travel expenses.
18.08.340	Board of registration—Rules—Executive secretary—Staff support—Investigations—Subpoenas.
18.08.350	Certificate of registration—Application—Qualifications.
18.08.360	Examinations.
18.08.370	Issuance of certificates of registration—Seal, use.
18.08.380	Reinstatement of revoked certificates of registration—Replacement of lost, destroyed, or mutilated certificates.
18.08.390	Registration of prior registrants.
18.08.400	Registration of out-of-state registrants.
18.08.410	Application of chapter.
18.08.420	Organization as corporation or joint stock association—Procedure—Requirements.
18.08.430	Renewal of certificates of registration—Withdrawal.
18.08.440	Suspension, revocation, or refusal to issue or renew certificate—Grounds—Penalties.
18.08.450	Revocation or suspension of certificate—Discipline—Board's authority—Procedure.
18.08.460	Violation of chapter—Penalties—Enforcement—Injunctions—Persons who may initiate proceedings.
18.08.900	Severability—1985 c 37.

Public contracts for architectural services: Chapter 39.80 RCW.

Safety requirements as to doors, public buildings, and places of entertainment: RCW 70.54.070.

18.08.150 Application for examination—Fee.

Reviser's note: RCW 18.08.150 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.190 Expiration of certificate—Renewal—Fee—Withdrawal of registrant.

Reviser's note: RCW 18.08.190 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.220 Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.

Reviser's note: RCW 18.08.220 was both amended and repealed during the 1985 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.235 Legislative findings—1985 c 37. The legislature finds that in order to safeguard life, health, and property and to promote the public welfare, it is necessary to regulate the practice of architecture. [1985 c 37 § 1.]

18.08.240 Architects' license account—Earnings. There is established in the state treasury the architects' license account, into which all fees paid pursuant to this chapter shall be paid. All earnings of investments of balances in the architects' license account shall be credited to the general fund. [1985 c 57 § 4; 1959 c 323 § 15.]

DAVID A. MCGUIRE, M.D.

Orthopedic Surgery

DIPLOMAT OF THE AMERICAN BOARD
OF ORTHOPAEDIC SURGERY

4048 LAUREL STREET
SUITE 202
ANCHORAGE, ALASKA 99508

PHONE 907-562-4142

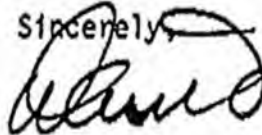
March 31, 1988

Cary Jasper
Family Care Center
901 W. Fireweed
Anchorage, Alaska 99503

Dear Cary:

The letter that you sent me on March 29th is substantially correct. I would emphasize that I have not yet had the opportunity to discuss this issue with the Legislative Committee. There is a Legislative teleconference from the Medical Society scheduled Thursday afternoon. Unfortunately this follows by one day the hearing in the Hess committee. I don't know that there is a great deal that I can do about that. I do feel compelled to state clearly that my discussion with you was my personal opinion. I have no reason to believe that the Legislative Committee will take any other viewpoint, but of course that is a possibility. Again, as soon as there is a determination by the Legislative Committee, there will be a recommendation forthcoming, and I will endeavor to communicate that with you as quickly as possible.

Sincerely,



David A. McGuire, M. D.

DAM:11

cc: Senator Paul Fischer
Hess Committee

Sec. 08.45.030.

- 3) a license to practice Naturopathy in a state that required an examination for the license or have passed the Naturopathic Physicians Licensing Examination sponsored by the American Association of Naturopathic Physicians and administered by Alaska or any other state.
- 4) applicants completing their Naturopathic Studies after 1987 must meet the requirements of A.S. 08.45.030 1,2,&3 and
 - A) have graduated from a Naturopathic school that is a accredited or a candidate for accreditation with the Council on Naturopathic Medical Education or its successor organization recognized by the U.S. Dept. of Education.
 - B) and certification by the American College of Naturopathic Obstetricians, documenting performance of forty or more deliveries if childbirth is to be part of their practice.

Sec. 08.45.050.

- (1) give, prescribe, or recommend in the practice.
 - A) a prescription drug except local antiseptics or anesthetics used in the repair and care of superficial lacerations and lesions.
 - B) no change
 - C) no change
- (2) engage in surgery except for the repair and care of superficial lacerations and lesions.
- (3) use the work "physician" in the person's title unless preceded by the word "Naturopathic."

Sec. 08.45.200.

- (3) Naturopathy means the use of hydrotherapy, dietetics, (including herbal and homeopathic remedies) electrotherapy, (including acupuncture) sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body.

Sec. 08.45.030.

- 3) a license to practice Naturopathy in a state that required an examination for the license or have passed the Naturopathic Physicians Licensing Examination sponsored by the American Association of Naturopathic Physicians and administered by Alaska or any other state.
- 4) applicants completing their Naturopathic Studies after 1987 must meet the requirements of A.S. 08.45.030 1,2,&3 and
 - A) have graduated from a Naturopathic school that is a accredited or a candidate for accreditation with the Council on Naturopathic Medical Education or its successor organization recognized by the U.S. Dept. of Education.
 - B) and certification by the American College of Naturopathic Obstetricians, documenting performance of forty or more deliveries if childbirth is to be part of their practice.

This raises the requirements to get the license.

Sec. 08.45.050.

- (1) give, prescribe, or recommend in the practice.
 - A) a prescription drug except local antiseptics or anesthetics used in the repair and care of superficial lacerations and lesions.
 - B) no change
 - C) no change
- (2) engage in surgery except for the repair and care of superficial lacerations and lesions.

This allows us to ~~prescribe~~ remove a few splinters and cure for lacerations. (cuts)

- (3) use the work "physician" in the person's title unless preceded by the word "Naturopathic."

chiropractors use the term Chiropractic physician. We can use the word Naturopathic physician in every other state. why not in Alaska?

Sec. 08.45.200.

- (3) Naturopathy means the use of hydrotherapy, dietetics, (including herbal and homeopathic remedies) electrotherapy, (including acupuncture) sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body.

This clarifies dietetics as including nonprescription herbs and electrotherapy as including acupuncture. We are the only profession in Alaska trained in Acupuncture we should be able to practice it!

Sec. 08.45.030.

- 3) a license to practice Naturopathy in a state that required an examination for the license or have passed the Naturopathic Physicians Licensing Examination sponsored by the American Association of Naturopathic Physicians and administered by Alaska or any other state.
- 4) applicants completing their Naturopathic Studies after 1987 must meet the requirements of A.S. 08.45.030 1,2,&3 and
 - A) have graduated from a Naturopathic school that is a accredited or a candidate for accreditation with the Council on Naturopathic Medical Education or its successor organization recognized by the U.S. Dept. of Education.
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Sec. 08.45.200.

- (3) Naturopathy means the use of hydrotherapy, dietetics, (including herbal and homeopathic remedies) electrotherapy, (including acupuncture) sanitation, suggestion, mechanical and manual manipulation for the stimulation of physiological and psychological action to establish a normal condition of mind and body.

From the Desk of Dr. Cary Jasper

3/3/88

Dear Sue Wright

Enclosed are copies of
the material submitted earlier.
As you can see, on the top
copy the actual changes are
highlighted in yellow.

If you have any
questions please call.

I would be glad to
give testimony in writing
or by teleconference or
in person if necessary.

Thanks!



S B

4 1 4

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 11, 1988

The Honorable Jan Faiks
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to foreign trade zones. The bill repeals and reenacts AS 45.77.010 to make it more comprehensive and to remove certain ambiguities. The changes are intended to encourage establishment of foreign trade zones by clarifying the authority to apply for foreign trade zone privileges and to operate the zones.

The bill improves on the existing statute by making clear (1) that public corporations may jointly apply for establishment of a foreign trade zone; (2) that both public and private corporations may apply for foreign trade zone privileges; and (3) if the application is approved, that they may operate the zone. For a private corporation, the present statute's requirement of approval from the commissioner of commerce and economic development is retained. Either a public or private applicant may operate the foreign trade zone by contracting with a private operator.

"Public corporation" is defined to include the state, a political subdivision of the state, and a board, commission, or other instrumentality of either, or any combination of these entities. For example, the bill would allow the state to work with a municipality, or several municipalities or their agencies, to apply together for the privilege of establishing or operating a foreign trade zone. The concept of defining "public corporation" to include the state itself is somewhat unusual, but it directly parallels federal law (19 U.S.C. 81a(e)).

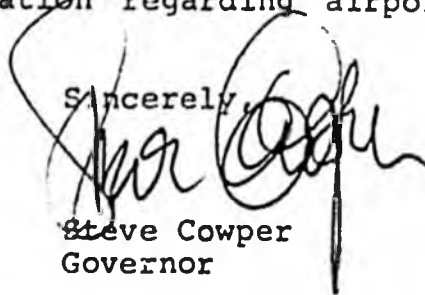
Several other states, including Rhode Island, North Carolina, Maryland, and Tennessee, have a similar statute. This bill goes beyond their versions, however, by making clear the authority of various public entities to cooperate.

The Honorable Jan Faiks

Page 2

Several existing provisions of law provide authority for the state to cooperate with local entities. The Alaska Constitution, art. X, sec. 13, allows the state to agree with local governments for joint or cooperative administration of any functions. And AS 02.15.080 and 02.15.130 provide specifically for such cooperation regarding airport administration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST _____

Bill Version: _____
Publish Date: _____

Revision Date: _____
Title: Relating to Foreign Trade Zone

Agency Affected: DOT&PF
BRU: _____

Sponsor: Rules Committee
Requestor: Governor

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: There is no fiscal impact to the Department of Transportation and Public Facilities

Prepared by: Robert G. Poe, Jr., Deputy Commissioner ^{RGJ} Phone: 465-3900
Division: _____ Date: 2/1/88

Approved by Commissioner: Mark S. Hickey ^{M&H} Date: 2/1/88
Agency: DOT&PF

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 414
PUBLISH DATE: 02-11-88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to foreign trade zones and effective date
Sponsor: Rules Committee
Requester: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Business Development
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: William G. Paulick, Development Specialist Phone: 465-2017
Division: Business Development Date: 03-07 88

Approved by Commissioner: J. Anthony Smith Date: 3/3/88
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10380-2/030288a

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 3, 1988

The Honorable Mitch Abood, Chair
Alaska State Senate
State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SB 414 (Foreign Trade Zones)

Dear Senator Abood:

The senate schedule shows that this bill will be taken up in your committee on Friday, March 4, 1988. Perhaps some comments in addition to the governor's February 11, 1988 transmittal letter (1988 Senate Journal page 2227) would be helpful.

Federal law (19 U.S.C §81a -- 81u) provides for the establishment of foreign trade zones. (See, in particular, 19 U.S.C. 81b(d), dealing with joint state/municipal facilities, and requiring state legislation.) Alaska's law on the subject, AS 45.77.010, is a sparse provision that contains several defects. Senate Bill 414 improves the current law in at least the following four ways:

1. The current law does not provide for a joint application by, for example, the state and a municipality. The bill remedies that by defining "public corporation" to include a combination of the state or its agencies and a political subdivision of the state or the political subdivision's agencies. See proposed AS 44.77.020(3), in sec. 2 of the bill.
2. The current law does not define terms such as "corporation," "state," or "municipality" to make clear whether subdivisions or agencies are authorized to apply for foreign trade zone privileges. The bill provides helpful definitions of the relevant terms, making clear what entities may apply. See proposed AS 45.77.020, in sec. 2 of the bill.


3. In the current law, AS 45.77.010(1) and (3) are contradictory. The qualifications of a corporation which paragraph 1 leads you to expect in paragraph 3 are missing. In addition, paragraph 1 specifies that the commissioner of commerce and economic development applies on behalf of a corporation, but paragraph 3 provides that the corporation's officers do the applying ("through the commissioner"). The bill remedies these problems. See proposed AS 45.77.010(a) and (b), in sec. 1 of the bill.
4. The current law implies that the successful applicant is to be the entity that will "establish, operate, and maintain" the foreign trade zone, without indicating that operations may be handled by contract with a professional operator. The bill remedies this oversight. See proposed AS 45.77.010(c), in sec. 1 of the bill.

I hope that you and your committee will find this helpful, and I will leave to representatives of the Department of Transportation and Public Facilities a description of the benefits to be derived from establishing foreign trade zones in Alaska.

Thank you for this opportunity to comment.

Yours truly,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP/lg

cc: Robert Poe, Deputy Commissioner
Department of Transportation and
Public Facilities

Bob Evans, Legislative Liaison
Office of the Governor

SB

416

Alaska State Senate

P.O. Box V
Juneau, AK 99811
Phone: (907) 465-2444
465-3862/465-4923

P.O. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

SPONSOR'S EXPLANATION OF SENATE BILL 416

This bill would appropriate \$2.3 million to reinstate unemployment benefits for non-instructional employees (custodians, clerks, aides) of school districts.

Until 1984 these employees were covered by the program, but the law was changed by Congress to eliminate them from eligibility. In the wake of that action, the State legislature enacted the state program and funded it through 1986. A fuller explanation of these actions is provided in the attached letter from the Department of Labor to Senator Joe Josephson.

Also attached are two pages extracted from official reports which provide data from 1985 and 1986 about numbers of beneficiaries by census district, benefits paid, and duration.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

P.O. BOX 1149
JUNEAU, ALASKA 99807-0700
PHONE: (907) 465-2700

OFFICE OF THE COMMISSIONER

February 3, 1988

The Honorable Joe P. Josephson
Alaska State Senate
Alaska State Legislation
P.O. Box V
Juneau, AK 99811

Dear Senator Josephson:

Thank you for your letter of January 18, 1988 concerning the State Interim Benefits program which provided unemployment insurance benefits to school employees between school terms. As your constituent has advised you, these benefits were not available during the 1987 summer break; and this was the first time the non-instructional school employees have not had some form of unemployment insurance available to them between school terms.

This is what has happened. Prior to passage of PL 98-21 by Congress in 1983, non-instructional school employees were eligible for regular unemployment insurance benefits during the summer. Until that time, only teachers had been ineligible. When the law was passed in 1983, States were required to amend their unemployment insurance laws to exclude the non-instructional school employees from coverage; and in 1984, legislation was introduced in the Alaska Legislature to do this. As the bill went through the legislative process, there was a concern that the affected school employees would have no warning that benefits would not be available during the summer of 1984. This led to the establishment of the State Interim Benefits program (AS 23.20.354), and it basically provided for the payment of unemployment insurance benefits to the school employees, with the benefits being paid from General Funds.

General Funds were provided for the program again in 1985. However, when budgets were being pared in FY 87, which covered expenditures for July 1, 1986 through June 30, 1987, funding for the Interim Benefits program was reduced so as to provide benefits only for the summer of 1986; and intent language was attached to the Department's FY 87 budget which further clarified that the benefits would not be available after 1986.

The law, AS 23.20.354, is still on the books, but since the program is subject to appropriations, benefits have not been paid since 1986. To

Senator Joe P. Josephson

-2-

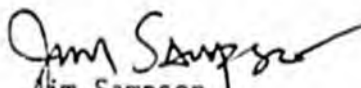
February 3, 1988

answer your question, resumption of the program would require the appropriation of \$2,360,000 in General Funds. Of this, \$2,100,000 would be required for benefit payments and \$260,000 for administrative costs incurred in processing the claims.

Enclosed for your information is claimant and payment data on the program for the three years for which benefits were paid.

Thank you for writing; and if you have further questions, please let me know.

Sincerely,


Jim Sampson
Commissioner

Enclosures

JS/EP/gw
03201

Table 2-11
Payment Data, State Interim Benefits, 1984-1986

YEAR	NUMBER OF FIRST PAYMENTS	NUMBER OF WEEKS PAID	AMOUNT OF PAYMENTS	AVERAGE DURATION IN WEEKS	AVERAGE WEEKLY BENEFIT AMOUNT
1984	1,323	10,210	1,310,049	7.7	129.31
1985	1,166	11,970	1,743,515	8.2	145.57
1986	1,771	14,552	2,124,568	8.3	145.01

State Interim Benefit Recipients by Census Area, 1986

Census Areas and Subareas	Number of Recipients	Percent of Total Recipients	Number of Weeks Paid	Percent of Total Weeks	(\$) Amount Paid	Percent of Total Amount
ALEUTIAN ISLANDS CA	11	0.6	30	0.5	9,132	0.4
ANCHORAGE BOROUGH	631	35.6	5,572	38.0	790,922	37.2
BETHEL CA	140	7.9	1,129	7.7	169,116	8.0
BRISTOL BAY BOROUGH	0	0.0	0	0.0	0	0.0
DILLINGHAM CA	11	0.6	104	0.7	10,793	0.5
FAIRBANKS NORTH STAR BOR.	235	13.3	1,912	13.0	319,597	15.0
HAINES BOROUGH	3	0.2	20	0.1	1,722	0.1
JUNEAU BOROUGH	23	1.3	265	1.7	34,595	1.6
KENAI PENINSULA BOROUGH	165	8.2	1,023	7.2	148,433	7.0
KETCHIKAN GATEWAY BOROUGH	2	0.1	7	0.0	333	0.0
KODIAK CA	85	4.3	713	4.9	102,122	4.3
KODIAK ISLAND BOROUGH	13	1.0	126	0.9	18,533	0.9
NATANUSKA-SUSITNA BOROUGH	168	9.5	1,280	9.7	179,077	8.4
NOME CA	77	4.3	703	4.3	107,322	5.1
NORTH SLOPE BOROUGH	14	0.8	109	0.7	19,376	0.9
PRINCE OF WALES-GUTER KETCH.	13	1.0	137	0.9	17,246	0.8
SITKA BOROUGH	10	0.6	56	0.4	4,125	0.2
SKAGWAY-YAKUTAT-ANGCOON CA	19	1.1	164	1.1	20,924	1.0
SOUTHEAST FAIRBANKS CA	17	1.0	127	0.9	17,793	0.8
VALDEZ-COODOVA CA	3	0.2	48	0.3	7,610	0.4
WAGE HAMPTON CA	34	1.9	274	1.9	43,269	2.0
WRANGELL-PETERSBURG CA	3	0.2	66	0.5	6,737	0.3
YUKON-KOYUKUK CA	61	3.4	552	3.3	68,543	3.2
AREA UNKNOWN	23	1.3	195	1.3	22,013	1.0
IN-STATE TOTALS	1,771	100.0	14,552	100.0	2,124,568	100.0

Note: Includes data on 313 claimants through December 31, 1986. Recipients who filed claims from more than one area in 1986 are assigned to the area in which they received the greatest amount of payments.

SOURCE: Alaska Department of Administration, Monthly Expenditure Journal.

Table 3-11
Payment Data, State Interim Benefits, 1984-1985

YEAR	NUMBER OF FIRST PAYMENTS	NUMBER OF WEEKS PAID	AMOUNT OF PAYMENTS	AVERAGE DURATION IN WEEKS	AVERAGE WEEKLY BENEFIT AMOUNT
1984	1,328	10,210	\$1,310,049	7.7	\$128.31
1985	1,466	11,970	\$1,743,616	8.2	\$145.67

State Interim Benefit Recipients by Census Area, 1985

Area Code	Census Areas and Subareas	Number of Recipients	Percent of Total Recipients	Number of Weeks Paid	Percent of Total Weeks	Amount Paid
010	ALEUTIAN ISLANDS CA	7	0.5%	52	0.4%	\$5,558
020	ANCHORAGE BOROUGH	523	35.7	4,265	35.6	622,397
050	BETHEL CA	107	7.3	810	6.8	129,490
060	BRISTOL BAY BOROUGH	1	0.1	9	0.1	666
070	DILLINGHAM CA	9	0.6	82	0.7	7,677
090	FAIRBANKS NORTH STAR BOR.	190	13.0	1,587	13.3	271,624
100	HAINES BOROUGH	2	0.1	24	0.2	2,758
110	JUNEAU BOROUGH	24	1.6	174	1.5	23,439
122	KENAI PENNINSULA BOROUGH	138	9.4	1,279	10.7	171,118
130	KETCHIKAN GATEWAY BOROUGH	0	0.0	0	0.0	0
140	KOBUK CA	77	5.3	571	4.8	82,556
150	KODIAK ISLAND BOROUGH	13	0.9	97	0.8	13,415
170	MATANUSKA-SUSITNA BOROUGH	127	8.7	1,032	8.6	142,687
180	NOME CA	66	4.5	532	4.4	72,337
185	NORTH SLOPE BOROUGH	17	1.2	106	0.9	18,818
201	PRINCE OF WALES-OUTER KETCH.	17	1.2	104	0.9	13,624
220	SITKA BOROUGH	11	0.8	69	0.6	9,522
231	SKAGWAY-YAKUTAT-ANGOON CA	19	1.3	170	1.4	20,399
240	SOUTHEAST FAIRBANKS "A"	8	0.5	65	0.5	7,074
261	VALDEZ-COROOVA CA	6	0.4	52	0.4	4,561
270	WADE HAMPTON CA	30	2.0	267	2.2	40,293
280	WRANGELL-PETERSBURG CA	9	0.6	84	0.7	12,701
290	YUKON-KOYUKUK CA	57	3.9	492	4.1	63,659
	AREA UNKNOWN	6	0.4	47	0.4	7,243
	IN-STATE TOTALS	1,466	100.0%	11,970	100.0%	\$1,743,616

Note: 43 recipients filed claims from more than one area in 1985 and are assigned to the area in which they received the greatest amount of payments.

SOURCE: Alaska Department of Administration, Monthly Expenditure Journal.

Alaska State Senate

PO. Box V
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465-3862/465-4923



Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

PO. Box 1069
Kotzebue, Alaska 99752
(907) 442-2494

William L. Hensley

MEMORANDUM

TO: Senator Tim Kelly, Chairman
Senator Labor and Commerce Committee

FROM: Senator Willie Hensley *WH*

SUBJ: Request for scheduling of Senate Bill 416

DATE: February 17, 1988

I would appreciate it if you would schedule a hearing on Senate Bill 416, a bill that would provide funding in the amount of \$2.3 million for the state interim benefits program, as soon as may be convenient.

This bill would allow non-instructional employees of school districts to be paid unemployment compensation benefits. These employees -- clerks, custodians, and aides -- are the lowest paid of school districts.

Thank you.

WLH/BA/mjt

*600 of True people are
yours, Tim!*

S B

4 1 1 7

FISCAL NOTE

REQUEST:

Revision Date: N/A
Title: Railbelt Gasline Project

Agency Affected: AK. Power Auth.; OMB
BRU: _____

Sponsor: Fahrenkamp/Uening
Requestor: Sen. LARSEN/COMMERCE

Components: CIP-Feasibility Studies

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL *		500.0	0	0	0	0
-----------	--	-------	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)


GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

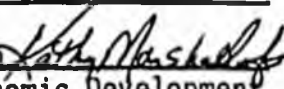
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*Estimated Cost of completing feasibility studies required by AS 44.83.185 and licensing for project established by the legislation.

Prepared by: Robert L. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 3/17/88

Approved by Commissioner: J. Anthony Smith  Date: 3/17/1988
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

March 16, 1988

SB 417 & 418 - Sen Fahrenkamp

- 1) Enstar Natural Gas Company - Richard Barnes *And.*
- 2) Usibelli Coal Mine, Inc. - John Sims
- 3) Alaska Power Authority - Dick Emmerman (teleconference-Anch)
Bob LeResche available for questions in Juneau
- 4) Unified Fairbanks - Chuck Rees (teleconfernce-Fbks)

5) HORACE HUNT - BROWN & ROOT

6) DAVID TIZAL - HOUSE RESEARCH



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 16, 1988

MEMORANDUM

TO: Representative Sam Cotten

FROM: Ginny Fay *GF* and Gretchen Keiser *GK*
Legislative Analysts

RE: An Analysis of the Wasilla-Fairbanks Gas Pipeline Proposal
Research Request 88.095

You requested this agency to examine the Wasilla-Fairbanks Gas Pipeline proposal made by the ENSTAR Natural Gas Company (ENSTAR). This memorandum presents an analysis of what we believe are the major issues to be considered during your deliberations on the proposed gas pipeline. The information covers a broad array of Railbelt energy issues and, following a summary of findings, is presented in several sections:

- 1) The Gas Pipeline Proposal - the routing, size, and throughput of the proposed gas transmission pipeline; potential communities to be served by distribution systems off the transmission gasline; and cost estimates (page 7).
- 2) Statutory, Regulatory and Contractual Considerations - state and federal right-of-way (ROW) leasing, regulation of gas transmission and distribution, and the timing and conditions of state contracting of the gasline operation (page 9).
- 3) Natural Gas Supply and Demand - the ability of Cook Inlet natural gas to meet projected consumption and the potential demand in Fairbanks based on probable costs of space heating or power plant conversions as well as the likely cost of natural gas in Fairbanks (page 14).
- 4) Use of Natural Gas and its Relationship to other Railbelt Energy Sources - the competing (present and future) sources of energy for power generation in the Railbelt, demand-side alternatives for residential and commercial space heating, and alternative markets for fuels displaced by natural gas consumption (page 29).

- 5) The Proposed Gasline's Relationship to North Slope Gas - the compatibility (with respect to timing and engineering) of the proposed gasline with the Trans-Alaska Gas System (TAGS) project and the potential for coupling the pipeline projects to export North Slope gas from Cook Inlet (page 40).
- 6) Employment Impacts - estimates of construction and permanent jobs created by the proposed gasline and estimated employment under alternative expenditures of available state funds (page 46).
- 7) Environmental Effects - the environmental impacts of gasline construction and natural gas use on the air quality and groundwater in the Fairbanks area (page 48).

SUMMARY OF FINDINGS

- A state ROW lease for the proposed gasline would require common carrier status and would designate the location of connections for the interchange of gas with other common carriers and the delivery of gas to any purchaser. These requirements also apply to the state ROW lease currently pending for TAGS.
- Alaska Public Utilities Commission (APUC) certificates would be required prior to operation of the main transmission gasline (assuming the state contracts for pipeline operation) as well as community gas distribution systems. Contrary to ENSTAR's suggestion, it is questionable whether gas could be sold in Fairbanks at the same price as in the southern Railbelt. Statutory provisions prohibit unreasonable preferences to any of a public utility's customers. In addition, fixed costs per household may be higher than anticipated by ENSTAR.
- If the state chose to contract for the gasline operation, prudence suggests that a final contract be in place before construction commences. Furthermore, the state may want gas utilities to obtain advance approvals from the APUC before construction, as is common, if not required, practice among private companies building transmission and distribution gaslines. In addition, there are a number of issues the state might anticipate in order to ensure maximum utilization of the gasline, including: specifying who pays for future connections, compressor stations and upgrades; accessibility of Cook Inlet gas supplies via ENSTAR's Beluga and Kenai gaslines; and assurance that upgrading the existing gas pipeline system would occur when needed in order to prevent bottlenecks in gas shipments north or south.

- Known gas reserves in Cook Inlet are sufficient to supply current end uses for approximately 20 years. Adding Fairbanks gas consumption would probably shave less than one year off the estimated 20-year supply. Best guesses of additional, undiscovered gas resources that would be recoverable from Cook Inlet extend the period during which Cook Inlet gas supplies would be sufficient to meet projected demand for another nine to 22 years.
- This agency estimates that, beginning in 1994, the Fairbanks area annual natural gas consumption would be approximately 4.8 billion cubic feet (BCF). Our estimate is 44 percent of ENSTAR's 10.9 BCF annual gas consumption projection.
- The proposed gas distribution system would potentially serve about 49 percent of the homes in the Fairbanks area. ENSTAR predicts that 90 percent of these potential residential customers will convert to natural gas for space heating. We estimate that a maximum of 80 percent of potential residential customers served by the distribution system, or 41 percent of all homes in the Fairbanks area, would change their heating systems under an aggressive conversion program.
- ENSTAR estimates that 95 percent of both large and small commercial buildings would convert to natural gas for space heating as soon as gas became available. We believe this overestimates commercial conversion. Fairbanks Municipal Utility System (FMUS) plans to extend its hot water space heating system in the downtown commercial district. We estimate that the actual commercial conversion level will be lower than ENSTAR's projections by about 50 percent.
- ENSTAR estimates that electrical power generating facilities would use about 5.8 BCF of gas annually. We estimate annual gas consumption for power generation at 1.1 BCF. Neither of these estimates includes power generation by the military in the Fairbanks area because federal regulations prevent them from converting their coal-fired generating facilities to natural gas. The major problem with ENSTAR's estimate is that it was made before the Anchorage-Fairbanks intertie was completed and does not account for the resulting large decrease in diesel-fired generation in the Fairbanks area. Golden Valley Electric Association (GVEA) would continue to use coal-fired facilities for baseload, purchase power over the electrical intertie, and use natural gas to supplement these other sources of power. FMUS recently decided to sign a ten-year coal contract and does not plan to convert their coal units to natural gas. Similarly, the University does not plan to convert their coal-fired units.

The effect of partial natural gas conversion on electricity prices in Fairbanks would be a reduction of about one-tenth of a cent per kilowatt hour, or \$500,000 in energy savings for all electricity consumed annually.

If the project were 100 percent bond financed, the debt repayment would add about \$3.10/thousand cubic feet (MCF) for a total gas price of about \$7.00/MCF for residential space heating customers. The project is not economically feasible without state financing.

A natural gas pipeline to Fairbanks would provide natural gas primarily for space heating, thereby lowering household energy costs. The total cost of the proposed gasline project is \$220 million. The project would serve approximately 9,325 homes and result in annual fuel savings of \$129 per household, or about \$1.5 million for all households. In contrast, the cost to weatherize all unweatherized homes (about 22,300) potentially served by the gas pipeline at \$2,300 per home would be \$51.3 million; annual fuel savings per household would be about \$345, or about \$8.4 million total. Weatherization would cost the state one-quarter as much as the proposed gasline, affect about 2.5 times as many homes, and reduce annual fuel costs by six times as much as the gasline.

An important consideration regarding the proposed natural gas pipeline is the effect state funding has on the feasibility of privately financed projects. The Usibelli cogeneration facility as now planned would be a privately financed, 100 to 150 megawatt (MW) coal-fired plant used to dry coal for export. Approximately 85 percent of the plant's annual energy output would be available for Railbelt energy needs. In addition to the Usibelli project, other projects including municipal waste pellet projects in Fairbanks and Anchorage, could be affected.

We estimate that natural gas would displace about 21 million gallons (496,000 barrels) of fuel products consumed annually in the Fairbanks area. MAPCO, which refines the No. 4 turbine fuel used for power generation in the Fairbanks area, is unlikely to find a new market for the turbine fuel displaced by power plant conversions to natural gas. The displacement of diesel heating fuels (No. 1 and 2) from the Fairbanks market will likely affect all three refiners currently marketing these products in Fairbanks. Competition from MAPCO and Petro Star (North Pole refiners) for the remaining diesel fuel sales in Fairbanks would likely bump Tesoro (a Nikiski refiner) out of the local market.

With respect to developing new markets, Petro Star appears to be the most vulnerable because virtually all its diesel fuels are currently sold locally and the company lacks experience and facilities in other markets. Tesoro is likely to export displaced fuels out of state--along with surplus diesel fuels due to the shrinking commercial jet fuel market serving foreign airlines. During the last two years, MAPCO has acquired distribution facilities in Anchorage and Nenana and has been positioning itself to more vigorously move its refined products out of the Railbelt. This strategy--in addition to current experimentation with a different military jet fuel product in order to increase sales to the military in Alaska--could alleviate the surplus of diesel fuel products MAPCO would experience once natural gas reaches the Fairbanks market.

At some point in the future, competition for dwindling Cook Inlet gas supplies will likely push prices upward, ultimately encouraging some users to look elsewhere for natural gas. When North Slope gas might be used by Southcentral consumers is uncertain, but would depend on: 1) the success of future exploration in Cook Inlet; 2) pipeline access; 3) the price of North Slope gas in Railbelt markets; and 4) the price and feasibility of alternative energy sources for space heating and power generation in the Railbelt.

Initially, the proposed Wasilla-Fairbanks gasline would rely upon Cook Inlet gas supplies, making the timing of the gasline independent of the TAGS project. We estimate that delivery of North Slope gas to the Railbelt customers is not likely to occur until after the turn of the century. Yukon Pacific, sponsor of the TAGS, predicts that by the time North Slope gas is needed in the Railbelt, the TAGS will likely be operating at maximum capacity to meet export demand.

The design differences (size, maximum pressure and throughput, and gas temperature) between the Wasilla-Fairbanks gasline and the TAGS would not present technical obstacles preventing a connection between the two pipelines. A number of modifications would be necessary, including: 1) installing a regulator station in Fairbanks, 2) upgrading compression on the northern segment of the TAGS, 3) adding compressor stations along the Wasilla-Fairbanks gasline, and 4) providing some capability for gas storage in the Railbelt to accommodate periodic shutdown of the TAGS. While upfront costs might not be prohibitive, the use of gas as fuel for the compressor stations represents a significant ongoing expense.

There appear to be significant problems with a suggestion that the state build a Wasilla-Fairbanks gasline large enough to accommodate North Slope gas throughput for export from Cook Inlet (thereby shaving hundreds of miles off a rerouted TAGS project) while ensuring intrastate deliveries to Railbelt consumers. Major cost differences exist between the two proposed gaslines, and the state would need considerably more money than the \$228 million available in the Railbelt Energy Fund. Following considerable study, Yukon Pacific concluded that Valdez is preferable as a terminus for the TAGS project.

If the state wants to provide gas to Fairbanks while at the same time enhance the exportability of North Slope gas, state support for the TAGS project and state financing of the necessary facilities for TAGS gas deliveries at Fairbanks may be the best approach. Under this scenario, new gas turbines in Fairbanks (when new electrical capacity is needed in the Railbelt) could provide power to Anchorage via the intertie. A gasline delivering North Slope gas to southern Railbelt customers might also be feasible some time after the year 2000.

Construction of the gas pipeline would require about 700 workers for about 15 months. Construction of the Fairbanks area distribution system would require 200 workers during three summer construction seasons. We do not believe that operation of the gas distribution system would result in a net gain in employment to the Fairbanks economy. The weatherization alternative would create about 260 full-time jobs for a one-year period. Construction of the Usibelli plant would require 300 workers. In addition, it would add approximately 175 jobs for the life of the project.

The route selected for construction of the gasline from Wasilla to Fairbanks would provide the best construction conditions with the least environmental impacts. To the extent that natural gas would replace coal, wood, or fuel oil for space heating and electrical power generation, there would be an improvement in air quality. The burning of natural gas, however, would increase water vapor emissions which could increase ice fog. The net effect on air quality would probably be positive.

THE GAS PIPELINE PROPOSAL

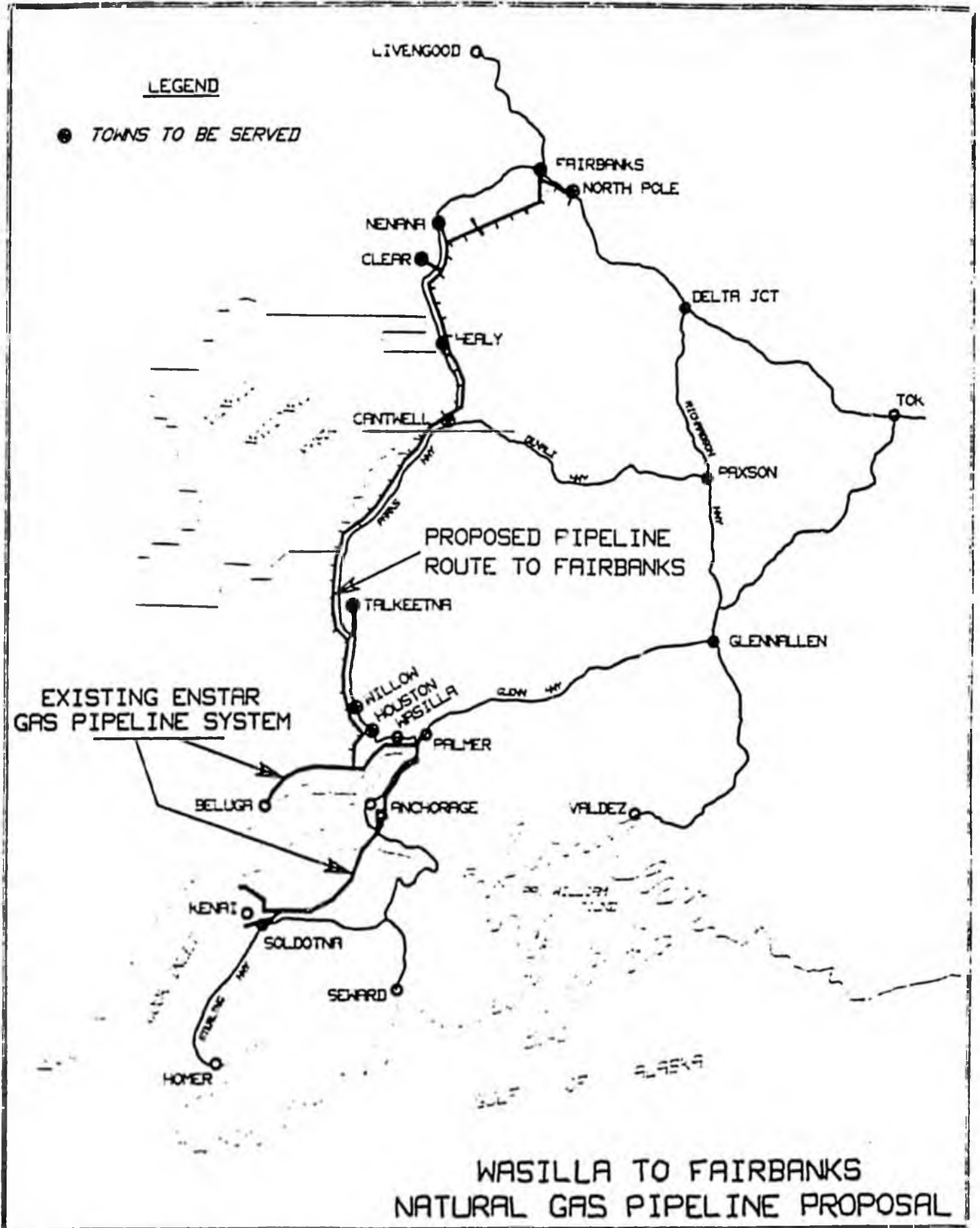
The ENSTAR proposal consists of a gas transmission pipeline from the vicinity of Wasilla to Fairbanks, with a gas distribution system to serve residences, businesses and electric utilities in the Fairbanks-North Pole area. Near Wasilla, the gas pipeline would be connected to ENSTAR's existing Beluga gasline, thereby providing access to natural gas from the Beluga field on the west side of Cook Inlet. The proposal specifies a 305-mile route that generally parallels the Parks Highway or Anchorage-Fairbanks intertie for all but about 60 miles (Figure 1). Additional Railbelt communities in the vicinity of the proposed gasline route include: Houston, Willow, Talkeetna, Cantwell, Healy, Anderson and Nenana. The uninsulated, steel pipeline would be buried along most of the route, with the exception of a few aerial crossings, most notably at the Nenana River and Hurricane Gulch.

The 20-inch pipeline, initially constructed without compressor stations, could transport up to 200 million cubic feet of natural gas per day (MMCF/day)--considered by proponents to be adequate to meet demand in the Fairbanks areas in the foreseeable future.¹ At maximum design pressure (1,440 psi, with compressor stations south of Fairbanks, between Healy and Cantwell, and between Talkeetna and Willow) the proposed gasline would be capable of throughput up to about 400 MMCF/day.² ENSTAR suggests that at some time in the future, after a North Slope gasline has been built, the gas flow through the proposed Wasilla-Fairbanks pipeline could be reversed, thereby making abundant North Slope gas available for Southcentral customers.

¹As a frame of reference, the Department of Natural Resources estimates the natural gas consumption for space heating and power generation in the Anchorage area at 65 BCF in 1987, or roughly 178 MMCF/day on average.

²Ronald Page, Vice President - Operations, ENSTAR Natural Gas Company, personal communication, February 26, 1988.

FIGURE 1



Source: ENSTAR National Gas Company