

Legislative Analysis



REGISTER ACUPUNCTURISTS

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House Bill 5205 as enrolled/Pocket Vetoed

Sponsor: Rep. Randy Richardville

House Committee: Health Policy

Senate Committee: Health Policy

First Analysis (1-25-05)

BRIEF SUMMARY: The bill would prohibit a person from using the titles relating to acupuncture unless he or she was registered under provisions of the Public Health Code.

FISCAL IMPACT: The bill would create state costs to develop and administer the registration, regulation, complaint review, and to support a state board for the registration of the profession of acupuncturist. Annual registration fees of \$150 and initial processing fees of \$75 per individual are established with the intent that they will fully support the state registration system costs for this profession. The costs and revenue are dependent upon the number of persons who seek State of Michigan registration. The Michigan Association of Acupuncture and Oriental Medicine estimates that there are about 100 - 200 acupuncturists in Michigan who will meet the requirements of the bill. Average annual registration revenue from 100 persons would be approximately \$15,000-17,000. Persons will be subject to discipline under Part 161 of the Public Health Code for acupuncturist registration violations or unlawful practice without registration, which may include fines.

THE APPARENT PROBLEM:

Michigan is one of only a handful of states that does not regulate the practice of acupuncture. Acupuncture is a centuries old method for the prevention or correction of disease, injury, pain, or other condition. Most individuals are familiar with the traditional Chinese approach to acupuncture which uses thin needles made of metal to stimulate pathways in the body called "meridians."

Since acupuncture is not regulated by the state, anyone can in theory proclaim himself or herself an acupuncturist and treat others for a fee, whether or not that individual had received training in acupuncture or followed standard procedures in performing acupuncture. Done properly by trained professionals, acupuncture can be beneficial; if done incorrectly, acupuncture can result in serious complications such as infections and punctured lungs or other organs. In addition, blood-borne diseases, such as HIV and hepatitis B and C, can be transmitted by improperly sterilized equipment or by a provider using single-use needles more than once.

Some people believe that in order to increase the public safety, Michigan should join the 41 other states that regulate the practice of acupuncture. Under a system of registration, a person seeking services from a registered acupuncturist would at least know that the

individual had completed a minimum level of education and met certain competency standards.

THE CONTENT OF THE BILL:

The bill would create Part 165 within the Public Health Code to regulate the practice of acupuncture. "Acupuncture" would be defined as the insertion and manipulation of needles through the surface of the human body and the use of related therapies at specific locations on the human body for the prevention or correction of disease, injury, pain, or other condition. An "acupuncturist" would be an individual who practiced acupuncture and related therapies and was registered, or otherwise authorized, under the bill.

The bill would prohibit the use of certain titles relating to acupuncture unless a person was registered under Part 165. The bill's provisions would not apply to a licensed physician or to an individual certified by the National Acupuncture Detoxification Association (NADA).

The Michigan Board of Acupuncture would be created within the Department of Community Health (DCH) and would consist of eight voting members who would serve four-year terms. Composition of the board would consist of four acupuncturists, three physicians, and one member of the public.

The DCH, in consultation with the board, would have to promulgate rules establishing the minimum standards for registration. The professional standards issued by a certified program recognized by the National Commission for Certifying Agencies or by a nationally recognized trade association could be adopted by reference. The DCH would be prohibited from developing rules that diminish competition or exceed the minimum level of regulation necessary to protect the public.

There would be a \$75 application fee and a \$150 annual registration fee. Further, the bill would specify that it would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services by an individual registered as an acupuncturist under Part 165.

The bill contained an effective date of July 1, 2005 (but was pocket vetoed).

MCL 333.16131 et al.

BACKGROUND INFORMATION:

Though the bill was passed by both the House of Representatives and the Senate and was ordered enrolled, it was subsequently pocket vetoed. Usually, the governor has 14 days after being presented with a bill to sign it, veto it, or do neither; after the 14 days, a bill that has not been vetoed becomes law. However, if the legislature adjourns sine die (as it does at the end of the legislative session) before the 14-day time period is up, the bill is said to be "pocket vetoed" and will not take effect.

ARGUMENTS:

For:

Currently, 41 states regulate the practice of acupuncture; Michigan is one of the few states that does not. As acupuncture gains in popularity as a complement to conventional medicine, it is imperative that a regulatory structure that ensures a minimum level of education, training, and competency be established to protect the public. When performed by a trained practitioner, acupuncture has been shown to reduce pain, provide relief from symptoms of many disease conditions, alleviate depression, and aid in smoking cessation. However, acupuncture performed by an untrained or incompetent practitioner can lead to infections, punctured organs, and transmission of blood-borne diseases such as HIV and hepatitis B and C.

The bill would establish a registration system. Unless a person were registered, he or she could not use certain titles related to acupuncture. A patient who sought out a registered acupuncturist would know that the practitioner had completed a minimum level of education and training considered to meet current professional standards. For example, in order to be certified by the National Certification Commission for Acupuncture and Oriental Medicine, an applicant must be trained in Oriental medicine, study human anatomy, and pass an examination in acupuncture. Since many physicians refer patients for acupuncture, registration will ensure that patients are referred only to credentialed and properly trained individuals.

The registration fees established in the bill should pay for the registration program and therefore should not place a burden on the Department of Community Health. Should the fees not be sufficient to pay for the registration program, subsequent legislation could adjust the fees as necessary. Though the DCH is charged with promulgating rules to set forth the minimum registration standards, the bill's provisions would allow the department to adopt by reference the professional standards recognized by national certifying agencies.

Though some view licensure or registration bills as an impediment to competition and an attempt by "insiders" to keep "outsiders" out, the bill specifies that departmental rules could not diminish competition or exceed the level of regulation needed to protect the public from incompetent or untrained individuals.

For:

The bill would not apply to licensed physicians (many of whom are also trained in acupuncture) or individuals certified by the National Acupuncture Detoxification Association (NADA). Some studies have shown that auricular acupuncture, which involves placement of acupuncture needles in the outer ear, can be a beneficial component of programs to treat addictions. It is important, therefore, that NADA specialists be exempted as they utilize a five-point ear acupuncture for chemical dependency treatment and not the "full-service" acupuncture provided by other practitioners. Once training is completed and a certificate issued, a NADA Acupuncture Detoxification Specialist agrees to practice only within the limits of his or her training.

Many NADA specialists are social workers and substance abuse counselors who work in social service agencies treating individuals with drug and alcohol dependencies. Other practitioners include probation and corrections officers, psychologists, and medical professionals. Ingham County's Community Corrections Advisory Board has instituted a substance abuse treatment program for offenders using acupuncture as part of its treatment plan. The bill would effectively protect the public's health without jeopardizing the strides in treating chemical addictions provided by Acupuncture Detoxification Specialists.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.