



Kansas Association of Oriental Medicine

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Senate Public Health and Welfare Committee

RE: **SUPPORT** bill SB363

Chairman, Ladies and Gentlemen of the Committee:

I want to thank you for the opportunity to speak to you today in **Support** of SB363. My name is Sandra Wilkes, acupuncturist and current president of the Kansas Association of Oriental Medicine. I have been a practicing acupuncturist in Overland Park for seven years and a self-employed resident of Kansas for 35 years. I support SB363 because it is good for Kansans. We as acupuncturists want to pursue our chosen profession in the state we call home, we want to serve our communities and not fear that we will be perceived as practicing unlawfully. We want to give Kansans opportunity for the same accessibility and quality of care from acupuncturists in their state that they would get if they lived in one of the 45 licensed states. Licensing acupuncturists is good for the health and well-being of Kansans, patient and acupuncturist alike.

Acupuncture fills a needed role in the healthcare field. Acupuncture can be used to alleviate pain and to restore health through natural means already inherent in the body. Acupuncture can be used to augment or replace opioids or other painkillers to address pain. Acupuncture may be the only option for some who cannot take medication because of pregnancy or nursing, due to side effects, or because of compromised liver or kidney function. Acupuncture can often improve quality of life in chronic conditions, and can be helpful with emotional issues such as anxiety, depression or dealing with stress. Modern research has confirmed that acupuncture is an effective and useful treatment.

Acupuncturists are professionals, and the experts at acupuncture and its related modalities such as the use of herbs, well-equipped through education and clinical training to address the need for this service.

THE PROBLEM:

Without licensing acupuncturists are working in a legal gray area, and may be accused of unlawful practice.

Forty-five states have acupuncture licensing. Kansas does not. This is a hardship for both patients and for acupuncturists in Kansas.

We are the most qualified of any profession to do acupuncture and related modalities, yet we are excluded from practice by the Healing Arts Act because we are not licensed.

To be a certified acupuncturist through the National Certification Commission of Acupuncture and Oriental Medicine requires extensive education and supervised clinical practice. Including a minimum 2 years pre-med accredited college and 3-4 years post-graduate accredited college education, including the study of biomedicine, therapeutic diet and exercise, herbs, ethics, and evaluation and assessment in clinical practice, in addition to acupuncture and related modalities of treatment. (see chart attached)

As small business owners acupuncturists face the same need for stability, loans, legal contracts and the ability to invest in their future as any other business. Working in an unclear legal environment restricts investment, hiring, commitment, and growth in Kansas.

**THERE ARE MANY GOOD REASONS TO LICENSE ACUPUNCTURE.
KANSAS LICENSING CAN SOLVE TWO OVERARCHING PROBLEMS:**

First, to clarify and establish lawful independent practice for licensed acupuncturists

Acupuncturists have been working in Kansas for many years without incident or safety issues, and there was a time when the practice was somewhat ignored, and was not fully recognized as a medical treatment. Because acupuncture has become medically accepted and more widely-used, we can now be seen as practicing medicine without a license, and have been advised that we need a practice act to practice lawfully, in which a practice act would foreclose any such legal argument.

When the Naturopaths gained licensing (instead of registration), one consequence (unforeseen to us or the Naturopaths) was that of more clearly restricting acupuncture practice to those licensed under the Healing Arts Act, and Naturopaths, since acupuncture was, for the first time, listed by name in a licensed practice. While this gray area has not been squarely addressed in any case before the Board or the courts, earlier this year legal staff of the Board of Healing Arts expressed one possible interpretation of the current statutes in regards to our practice would require us to work in the office of an MD, DO, DC or ND, on their patients, under their supervision, and that the supervising doctor would need to have adequate training in acupuncture to be qualified to supervise us.

This scenario is nearly impossible to find, and is not advantageous for the doctor, the patient, or the acupuncturist. Few doctors (if any?) have more training in acupuncture than we do, and in fact, some Kansas acupuncturists have been recruited to act as teachers in acupuncture programs for medical doctors and chiropractors. Even if employment could be found in a situation as defined, it leaves the doctor liable for the acupuncturist, leaves the patient with limited and expensive access to treatment, and the acupuncturist having to fit into a third-party payer model with a cash-pay service. The results are, more expense in time and money for the patient, more liability and hassle for

the doctor as well as being a legally questionable business arrangement, and is an incongruous and absurd practice model for the acupuncturist, restricting patient interaction and quality of treatment, as well as restricting trade.

If a bill were to pass requiring patients to obtain a referral for acupuncture, the results would be nearly the same. Patients may encounter some doctors who unwilling to make a referral. Referrals are considered by some to be a questionable practice in a cash-pay situation. Referrals make it unusually costly and restrictive for a patient to pay "twice". Referral is not required in 96% of licensed states, (only Mississippi and Louisiana require referral). Most of the few states that originally started with referral have dropped it. The exceptional safety and satisfaction records of acupuncturists, in combination with doctors' complaints of unnecessary hassle and liability, were some of the reasons for referral being removed.

Second, to assist Kansans in discerning safe, fully-trained acupuncturists through state licensing.

Without licensing it is difficult for Kansans (patients and their doctors) to know the difference between a safe, qualified acupuncturist and an untrained and potentially unsafe practitioner. Some individuals take weekend classes, or less, and then use credentials holding themselves out to the public as qualified to perform acupuncture. Unsavory practitioners can take advantage of this confusion, or it can work in reverse and very highly qualified acupuncturists can be overlooked because some do not recognize the difference between the credentials. A licensing title is more easily identified by the patient or doctor, more easily researched, and because the practice is regulated the public is better protected.

There are several standards not required of Kansas acupuncturists without licensing, but that nationally-certified acupuncturists are maintaining statewide regardless, such as continuing education, adherence to the NCCAOM code of ethics, CPR certification renewals, and clean needle requirements. With licensing these standards will be consistently expected of all Kansas licensed acupuncturists, along with carrying liability insurance, thus offering a higher level of safety, quality, and protection for patients.

Without licensing, Kansas is a potential haven for acupuncturists that are unwilling or unable to qualify for licensing in other states. This is unfair to Kansans expecting the same level of safety and quality afforded states with licensing. It is also a detriment to the Kansas economy as highly-qualified nationally-certified acupuncturists gravitate to the 45 states that allow them lawful independent practice in an environment with a more consistent level of respect and trust for the acupuncture profession.

A BRIEF HISTORY AND NOTABLE EVENTS LEADING TO LICENSING EFFORTS

A group of four acupuncturists (not us) introduced a bill in 1999. It didn't make it through committee. The effort went dormant for years.

There have been incidents of confusion for acupuncturists and Kansas Health Authorities that need a practice act to clarify and prevent. Some examples are:

In 2010, a nationally-certified Kansas acupuncturist was sent a letter from a former General Counsel of the KBHA that told her to "cease and desist", no reason given. She

complied, and after 3 months without income, and thousands of dollars in legal fees, she was told by the KBHA that there was no problem, that she was thought to have been representing herself as a doctor but that it had been determined to be untrue and she was allowed to resume work.

This sort of confusion and action can cause untold hardship and destroy a practitioner's reputation and patient base. It causes acupuncturists to choose to locate over the state lines, and leaves patients with less access to acupuncture. There are acupuncturists who return home to Kansas to care for elderly parents or ailing siblings and are shocked to find such an unwelcome and threatening practice environment for acupuncturists.

In 2011, our group introduced a bill. When it was in committee, we were told we needed to go through the Kansas Credentialing Review Board process. So we did that over the next several months. It was an arduous process with a great deal of research and data gathering, in addition to 4 hearings over the course of 6 months. The committee consisted of 7 healthcare individuals selected by the Kansas Department of Health and Environment, who judged our profession on 9 criteria. Acupuncture and Oriental Medicine passed all 9 criteria by all 7 review board members the first week of January 2012. We then waited what was expected to be a couple weeks for the Secretary of the KDHE to sign off on the decision of the committee, so we could reintroduce the bill. Instead the Secretary of the KDHE took the full 120 days and then vetoed the board's decision, putting us out of the 2012 session. However, the then Secretary issued a letter stating that our certification was enough and we were fine to practice without licensing.

In the spring of 2015 one of our nationally-certified acupuncturists was threatened by a chiropractor who told her she was practicing unlawfully and he would turn her in to the KBHA. She called the KBHA to ask the guidelines to practice acupuncture. This was the a second time, since she had called to ask for guidelines on practice when she first moved here from Massachusetts years before, but this time the guidance she received on the relevant laws painted an entirely different landscape for the lawful practice of acupuncture. The response she received was highly restrictive, so restrictive that it would be nearly impossible for us to continue working in our field of practice. We asked our legal counsel to check into it, assuming there was some mistake.

Kansas Association of Oriental Medicine then got a call in May 2015 from a second acupuncturist, one who had just purchased a house in Newton. She was moving back to Kansas to care for her elderly mother and planned to set up acupuncture practice, as she had always done in licensed states. She called me very upset to ask how and when Kansas had become so restrictive to acupuncturists. She explained that staff at the KBHA pointed her to the laws that could be interpreted to restrict her practice to only "in the office of an MD, DO, DC or ND office who does acupuncture and can delegate and supervise, her practice of acupuncture on their patients." Again I had her call our legal counsel, who confirmed this was one possible interpretation of the law, and was indeed the interpretation held by legal staff at the KBHA.

In July of 2015, after a lot of confusion and mixed signals, it was stated that there was a misunderstanding and acupuncturists were not required to have direct supervision. We feel fortunate to have received this additional guidance, but realize the law remains open to differing interpretations. Until this situation is clarified by an acupuncture practice act we are vulnerable to reinterpretation in the future.

OUR INTENT WITH BILL SB363

Kansas Acupuncturists want to be able to practice our chosen profession - for which we are fully-trained and nationally-certified - lawfully and independently in our home state of Kansas.

Kansas Acupuncturists want to set and maintain standards equivalent to those maintained nationally, for the good of Kansans and the profession. We want to utilize acupuncture and the related modalities in this model of healthcare to the extent of our education, training, and talents to evaluate and treat all applicable conditions as appropriate.

We want to practice independently, so that we may live and work in rural as well as urban areas. We want Kansans to be able to have access to safe and effective acupuncture, regardless of whether they live in a city with hospitals and hundreds of doctors, or a small town in western Kansas.

We are not trying to take the practice of acupuncture from any health care provider that already has it in their scope of practice, and as a courtesy we have overtly exempted those who are lawfully practicing acupuncture already.

COMMENTS AND SUGGESTIONS MADE IN OPPOSITION TO SB363

Several entities have recently sent changes that they would like to see incorporated into bill SB363. Their requests are included as direct quotes below, except for KBHA. We have diligently worked to address their concerns. Our proposed amendments in accommodation are in italics below their lists of requested changes.

Kansas Medical Society:

We would support replacing New Sec 2 (b)-(e) with the definitions from Missouri's statute that read:

- (1) "Acupuncture", the use of needles inserted into the body by piercing of the skin and related modalities for the assessment, evaluation, prevention, treatment or correction of any abnormal physiology or pain by means of controlling and regulating the flow and balance of energy in the body so as to restore the body to its proper functioning and state of health;
- (2) "Acupuncturist", any person licensed as provided in sections 324.475 to 324.499 to practice acupuncture as defined in subdivision (1) of this section;
- (3) "Auricular detox technician", a person trained solely in, and who performs only, auricular detox treatment. An auricular detox technician shall practice under the supervision of a licensed acupuncturist. Such treatment shall take place in a hospital, clinic or treatment facility which provides comprehensive substance abuse services, including counseling, and maintains all licenses and certifications necessary and applicable;
- (4) "Auricular detox treatment", a very limited procedure consisting of acupuncture needles inserted into specified points in the outer ear of a person undergoing treatment for drug or alcohol abuse or both drug and alcohol abuse;

Additionally, we would like to insert "prescribing" under New Sec 2.2.A so as to read:
"Prescribing, Dispensing, or administering of any controlled substances as defined by KSA 65-4101, and amendments thereto, or any prescription-only drugs;

And to strike "for surgical purposes as practiced by physicians and surgeons" in New Sec 2.2.B so as to read: "medicine and surgery including the use of lasers"

We would offer an amendment to the bill with these alterations:

- (1) additional phrase added to end of paragraph
- (2) "Licensed acupuncturist"

Kansas Chiropractic Association

After conferring with KCA Members and our lobbyist, John Peterson, we are requesting your group's consideration of the following suggested modifications to the acupuncture bill.

1. Remove Sec. 3(b)(4) which currently states, "Only a person licensed as an acupuncturist under this act shall be entitled, as appropriate, to represent oneself in any manner, specializing in or practicing any form of oriental medicine in the state of Kansas."
2. Change Sec. 2 (k) and (l) to mean together that a person licensed as an acupuncturist under this act is authorized to perform the following services, ... This is where you would list the services currently defined as "oriental medicine" but not refer to the specified services as oriental medicine.
3. Remove the modifier phrase, "as defined by article 28 of Chapter 65" from Sec. 3(k)(2) relating to chiropractic physicians.
4. Change Sec. 3(b)(2) to read, "Only a person licensed as an acupuncturist under this act, a medical physician, an osteopathic physician, a chiropractic physician, or a licensed naturopathic doctor shall be entitled to use the title, as appropriate, "licensed acupuncturist".

5. Change Sec. 3(b)(4) to remove the last sentence which currently reads, "Each licensee, when using the letters or term "Dr." or "Doctor" in conjunction with such licensee's professional practice, whether in any written or oral communication, shall identify oneself as a doctor of oriental medicine."

The proposed amendments to the bill incorporate all changes from the Chiropractors were made with the exception of (4) because, Licensed acupuncturist is the title for those licensed under this act, that meet the criteria outlined in this act.

Kansas Board of Healing Arts

Extensive structural changes throughout the bill to parallel structure and language found in other practice acts within the agency's jurisdiction for consistency and ease of the agency's application and enforcement.

No substantive changes.

Proposed amendments would substantially incorporate the requested changes.

Physical Therapy Association

The following are the concerns that KPTA has with your client's acupuncture legislation:

- 1) We would propose that other healthcare professionals, specifically physical therapists, be exempted from the provisions of the act as occurs in other licensure laws [see language below]
- 2) We would request that the following provision be removed from the legislation as we believe these are terms from western medicine, not eastern or oriental medicine:
"dry needling," "trigger point therapy," "intramuscular therapy,"
- 3) In the past, your group, I believe, has opposed the KPTA efforts to insure that "dry needling" is understood to be within physical therapist's scope of practice. Thus, if agreement is reached on the other provisions with which KPTA is concerned, we would also request that your group agree not to intervene in Board of Healing Arts determinations, or determinations of any other state agency, with regards to KPTA efforts to insure that dry needling is understood to be within the physical therapists scope of practice.

The following provision from the physical therapy licensure act is an example of language which would exempt physical therapists from the provisions of the acupuncture licensure act:

Nothing in this act is intended to limit, preclude or otherwise interfere with the practices of other health care providers formally trained and practicing their profession.

We would be generally satisfied with such language as Revisor Norm Furse may draft for insuring that nothing in the acupuncture licensure act impacts the ability of physical therapists to act within their scope of practice so long as the title for acupuncturists is protected, and physical therapists are not holding themselves out as being acupuncturists.

These changes are not relevant to the acupuncture practice act. This is an issue with the PTA and the, practice act governing the practice of physical therapy. The Kansas Board of Healing Arts has told the Physical Therapists to pursue legislative changes to their scope of practice should they wish to expand their scope. We cannot open their practice act and change their scope for them.

Veterinary Association

Add "human" body to our acupuncture definition
Confirm that this doesn't affect or limit veterinarians

The proposed amendments to the bill would incorporate this.

PERTAINING TO IMPLEMENTATION

We realize budget is important. We have 42 nationally-certified acupuncturists in the state, and an additional 5 to 10 acupuncturists that would be grandfathered in. (see grandfather clause) So we anticipate about 50 acupuncturists to license, should they all remain in practice. We have taken that into consideration when planning the licensing fees, and the fiscal budget figures proposed when the bill was introduced in 2011, to have a neutral impact on the budget.

This act was written with an eye toward minimizing the rules and regulations to save the KBHA time and manpower. Time and budget can also be saved by utilizing the existing resource, the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) for exams and pre-requisite credentialing as done by 43 of the 45 licensed states.

Even though we had met with most of these entities and made the changes they requested at the time of our meeting, these additional requests from opposition have all come since the bill was introduced. Our addendums have been made as quickly as possible. There may be errors due to the rush. We will continue to proof to bring attention to, and correct, any errors we find as the committee considers the bill.

In conclusion, SB363 will help acupuncturists serve Kansans and will give patients greater access to a safe and effective health care option. I want to thank you again for the opportunity to speak before you today in Support of SB363, and ask that this committee pass SB33 out favorably so the people of Kansas can be assured that the acupuncture industry in Kansas is strong and credible. I will be more than happy to answer questions at the appropriate time.

Sincerely,
Sandra Wilkes
acupuncturist and president
Kansas Association of Oriental Medicine
913-709-3239

ACAOm Graduation Hour Requirement

Minimum 3 years—1905 Hours/105 Credits		
	Subject	Hours Required
Acupuncture Program	Oriental Medicine/Acupuncture Theory	705
	Acupuncture Clinic	650
	Biomedicine	450
	Counseling, Communications, Ethics, Practice Management	90
Minimum 4 years—2625 Hours/146 Credits		
Oriental Medicine Program	Oriental Medicine/Acupuncture Theory	750
	Didactic Oriental Herbal Studies	450
	*Acupuncture/Chinese Herbology Clinic	870
	Biomedicine	510
	Counseling, Communications, Ethics, Practice Management	90

*ACAOm Guideline: Herb certificate training program for Master of Acupuncture students and practitioners will be a minimum of 450 hours of didactic instruction in herbs and 210 hours of herbal clinic training.