SUNSET EVALUATION UPDATE

ACUPUNCTURE

Chapter 436E, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

Submitted by the

Legislative Auditor of the State of Hawaii
Honolulu, Hawaii

Report No. 87–20
December, 1987

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report updates our sunset evaluation of the practice of acupuncture under Chapter 436E, Hawaii Revised Statutes, which was conducted in 1984. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate acupuncture to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Board of Acupuncture, the Department of Commerce and Consumer Affairs, and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

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December 1987

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Sunset Evaluation Update

PRACTICE OF ACUPUNCTURE

This report evaluates the regulation of acupuncture under Chapter 436E, Hawaii Revised Statutes, to determine whether the public interest is best served by reenactment, modification, or repeal of the statute. An evaluation of the regulation of acupuncture was first conducted by this office in 1984. Our findings and recommendations were reported in the *Sunset Evaluation Report, Acupuncture, Chapter 436D, Hawaii Revised Statutes.* This update summarizes information contained in the 1984 report and presents the findings and recommendations from our current evaluation of the practice of acupuncture.

Occupational Characteristics

The practice of acupuncture is based on a traditional Chinese system of healing that strives to balance the flow of Qi (vital energy) along pathways known as "meridians" in the human body. Qi is composed of two opposite forces known as Yin and Yang. When these forces are balanced, the result is good health. An imbalance results in disharmony or disease.

Acupuncturists identify patterns of energy imbalance by conducting an evaluation of patients that includes such steps as looking at the patient's physical appearance, listening to the patient's voice and respiration, taking a medical history, and feeling the patient's pulse. They then seek to restore harmony by inserting needles in certain points on the body and leaving them in for a specific

period of time.[1] Acupuncturists also regulate the flow of energy by other means such as applying burning floss over acupuncture points (moxibustion).

Although acupuncture has been used in China for more than 2000 years, it has only recently become popular in the United States. During the past 15 years, there has been a growing acceptance in the medical community of the use of acupuncture to manage pain. In addition, many states have begun to grant independent practice rights to acupuncturists.

In Hawaii, the practice of medicine by Chinese physicians was first regulated in 1880. The Minister of the Interior was authorized to grant a license to individuals who produced a diploma or authority to practice medicine in China, were of good moral character, and proved their identity.[2] This licensing law was repealed in 1896 when the Board of Medical Examiners was established.

More than 75 years later, the Legislature passed Act 206, SLH 1974, which established an independent board to regulate the practice of acupuncture in Hawaii.

Today, there are 147 licensed acupuncturists in Hawaii. Of this number, 48 percent are on the island of Oahu, 31 percent on the neighbor islands, and 21 percent on the mainland or abroad.[3]

Emerging national trends. Since our last evaluation of the practice of acupuncture, two national organizations have become active in setting standards for the education, training, and examination of acupuncturists.

The National Commission for the Certification of Acupuncturists (NCCA) was established in 1982 to certify individuals who demonstrate competency in the practice of acupuncture. The NCCA established standards for the training of acupuncturists and developed a professionally validated examination which was first administered in 1985. Individuals who meet NCCA's standards are permitted to use

the title "Diplomate in Acupuncture of the National Commission for the Certification of Acupuncturists" or "Dipl.Ac. (NCCA)."[4]

The National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NAC) was established in 1982 to develop accreditation processes for schools of acupuncture and Oriental medicine. The NAC has established standards for the accreditation of graduate level professional programs in acupuncture (e.g., programs that require students to complete two years of undergraduate education and three years of formal acupuncture training).[5] It plans to apply for federal recognition from the U.S. Commissioner on Education who sets standards for the operation of private accrediting agencies.

By mid–1987, NAC had accredited one acupuncture school in Maryland. It had also accepted eight schools as candidates for accreditation and was considering applications from three additional schools.[6] One Hawaii school has been accepted as a candidate for accreditation.[7]

State regulation. There is no uniformity in state regulation of the practice of acupuncture. Some states restrict the use of acupuncture to licensed physicians. Other states permit the practice of acupuncture by certified individuals working under the direction of a licensed physician. In these cases, the acupuncturist functions as a type of physician's assistant. Still other states permit the independent practice of acupuncture by individuals who have met a variety of requirements ranging from registration to licensure.

In 1987, one state allowed acupuncturists to practice upon registering their names and addresses with the regulatory agency. Thirteen states allowed certified or licensed acupuncturists who met education and training standards and passed an examination to practice independently. The standards set by these states are not

uniform, but many states have begun to incorporate NCCA requirements into their regulatory programs.

Prior Sunset Evaluation

In 1984, the Legislative Auditor completed a sunset evaluation of Chapter 436D, HRS (Legislative Auditor, *Sunset Evaluation Report, Acupuncture*, Report No. 84–6, January 1984). In the report, we recommended that Chapter 436D be reenacted with modifications.

Need for regulation. We found that there is considerable risk to the public if acupuncture is performed by unqualified persons. The improper insertion of acupuncture needles can cause injury or death, and the use of unsterilized needles or inadequate antiseptic practices can cause infections such as hepatitis, peritonitis, and AIDS. Therefore, continued regulation of acupuncture is in the public interest.

Need for informed consent. We found that diagnostic techniques used in traditional Oriental medicine may not adequately distinguish between those diseases that respond to acupuncture treatment and those that do not. We also found that using acupuncture to treat infectious diseases, heart disease, cancer, and urinary tract infections may delay more appropriate medical treatment with serious consequences for patients. Therefore, acupuncturists should be required to disclose the limitations of treatment and obtain informed consent from patients.

Student practice. We found that the statute did not permit students to practice on human beings and recommended that it be amended to allow students to practice under the direct supervision of a licensed acupuncturist.

Licensing program. We found that licensing requirements for residency, good moral character, health clearances, and alien registration cards were not clearly

related to competency. We also found that additional requirements imposed by the board, such as oral interviews with applicants, were used to deny licenses without any guidelines or procedures. We recommended that all the irrelevant requirements be eliminated.

Examination program. We found that the board's written examination was unreliable and of questionable validity. In addition, the board's oral–practical and clinical examinations were not completely standardized, did not protect anonymity, and used arbitrary passing scores. We recommended that the department develop more valid and reliable written examinations, and more objective practical and clinical examinations.

Board operations. We found that some board members made decisions that directly furthered their own personal interests. In addition, some board members were using titles in violation of the law. We recommended that the department consult with the State Ethics Commission to determine how conflicts of interest could be avoided on the board.

Subsequent Developments

In 1984, the Legislature held hearings to determine whether Chapter 436D should be extended or sunsetted. It passed Senate Bill No. 1745 to sunset the Board of Acupuncture and transfer the licensing program to the Board of Medical Examiners.

The Legislature's decision to sunset the board was based on two considerations. *First*, three industry board members had violated a rule adopted by the board, and they had failed to comply with an Attorney General's opinion that they were not entitled to call themselves "doctors" or "acupuncture physicians."

Second, the board had allowed foreign applicants to take the licensing examination indiscriminately when it failed to establish guidelines for the approval of foreign acupuncture schools.[8]

The Governor vetoed Senate Bill No. 1745-84 on the grounds that the practice of acupuncture was more appropriately regulated by the Board of Acupuncture. Because the veto meant that Chapter 436D would be sunsetted on December 31, 1984, the Governor expressed the hope "that the Legislature would act quickly during the 1985 legislative session to reinstate the Board of Acupuncture."[9]

In 1985, several bills were introduced to establish a new acupuncture licensing program. As required by Chapter 26H (the Hawaii Regulatory Licensing Reform Act), the Legislative Auditor prepared a "sunrise" analysis of these proposals (Legislative Auditor, *Sunrise Analysis of Proposals to Regulate the Practice of Acupuncture*, February 1985).

In this analysis, we found that the practice of acupuncture should be regulated to protect public health and safety. We also found that it was not in the public's interest to establish an independent board due to the potential for conflict of interest and self-serving actions by members of a small occupation (there were only 84 licensed acupuncturists in 1984). We recommended that a new licensing program be established under the Director of the Department of Commerce and Consumer Affairs (DCCA) who could be assisted by an advisory committee of licensed acupuncturists.

During the 1985 legislative session, the Legislature held hearings to determine whether the practice of acupuncture should be regulated. It passed Senate Bill No. 665 to establish a new licensing program under the jurisdiction of an independent board. In taking this action, the Legislature expressed its belief that

"the profession will rectify its past failures and shortcomings to make a strong and effective regulatory body."[10]

Senate Bill No. 665–85 (Act 214, SLH 1985) was signed into law on June 4, 1985. New board members were appointed by the Governor on August 1, 1985, and confirmed by the Senate during the 1986 legislative session. The board promulgated rules and regulations implementing the new licensing statute on November 20, 1986.

Summary of Current Statute and Regulations

The Board of Acupuncture. The board is composed of five members who are appointed by the Governor and confirmed by the Senate. Three members must be licensed acupuncturists and two must be private citizens. The term of office is two years, and no member may serve more than two terms. Members serve without pay, but they are reimbursed for their expenses.

The board is empowered to issue licenses to acupuncture practitioners. It is authorized to adopt rules, set licensing standards, conduct examinations, investigate violations, hold hearings, maintain records, and do all things necessary to carry out its functions. The board may contract with a testing agency to prepare, administer, and grade its examinations. It must delegate the authority to receive, arbitrate, investigate, and prosecute complaints to DCCA.

Scope of regulation. The practice of acupuncture is defined as follows:

> ". . . stimulation of a certain acupuncture point or points on the human body for the purpose of controlling and regulating the flow and balance of energy in the body. The practice includes the techniques of piercing the skin by inserting needles and point stimulation by the use of acupressure, electrical, mechanical, thermal, or traditional therapeutic means."[11]

Licensed acupuncturists are authorized to treat patients for pain relief and analgesia, functional disorders, and abnormal conditions. They may also treat patients who are referred by a medical doctor or dentist for other conditions. And, they may refer patients with an ailment beyond their scope of practice to a medical doctor or dentist.

Acupuncturists who are licensed in another state or country may give lectures or demonstrations at acupuncture and medical society meetings or acupuncture schools. Licensed physicians, dentists, and osteopaths may also practice acupuncture.

Unlicensed persons may not practice acupuncture, offer to practice acupuncture, or claim that they are qualified to practice acupuncture.

Title restrictions. Licensed acupuncturists may use the title "Licensed Acupuncturist" or L.Ac. Licensees who have earned a doctoral degree from a college or university approved by the board in recognition of accomplishments in the study or practice of acupuncture may use the title Ph.D. Licensees who have earned a doctoral degree in the study or practice of acupuncture from a college or university approved by the board may use the title Doctor or Dr. Other titles, prefixes, and designations may be permitted when authorized by the board or a department of education curriculum.

Licensing standards. In order to qualify for a license, applicants must fulfill the following requirements: (1) graduate from a board–approved school, (2) complete at least two academic years (not less than 600 hours) of training in the science of acupuncture, (3) complete at least one clinical year (not less than 12 months and not less than 900 hours) of clinical internship training, and (4) pass a written examination.

Grandfather clauses. Persons holding a valid, current license to practice acupuncture on December 31, 1984, were eligible to receive a new license if they applied for this license by December 31, 1985.

Students enrolled in a board–approved training program prior to December 31, 1984, are eligible for examination and licensure under standards in effect on that date if they complete their training by December 31, 1989.

Health and safety standards. Licensed acupuncturists must keep accurate medical records for each patient that they treat. These records must be held for seven years and be made available for inspection by the board or its duly authorized representative.

Licensed acupuncturists must also: (1) use fresh coverings on the examining table for each patient, (2) wash their hands with soap and water before handling needles and between treatment of different patients, (3) clean each patient's skin with a germicidal solution before inserting a needle, (4) sterilize reusable needles after each use, and (5) follow other sanitation practices and procedures to insure and protect patient health and safety.

Professional offices that are located in a residential building must be set apart in rooms used solely for acupuncture practice. All offices must be equipped with a washroom and toilet facilities, and they must be open for inspection by the board or DCCA during normal business hours.

Disciplinary program. The board may suspend or revoke an acupuncture license for the following reasons: (1) assuring that a manifestly incurable ailment can be permanently cured; (2) false, fraudulent, or deceptive advertising, and making untruthful and improbable statements; (3) habitual use of habit–forming controlled substances; (4) procuring a license through fraud, misrepresentation, or

deceit; (5) professional misconduct, gross carelessness, or manifest incapacity in the practice of acupuncture; or (6) violating board rules.

Unlicensed activity. It is a misdemeanor for unlicensed persons to: (1) practice, treat, or instruct in any phase of acupuncture practice; (2) use any word or title to induce the belief that they are engaged in acupuncture practice; (3) use the titles Acupuncturist, D.Ac., or D.O.M.; (4) buy, sell, or fraudulently obtain a diploma or license to practice acupuncture; or (5) violate the statutes.

Persons found guilty of unlicensed activity may be fined up to $1000 for each violation.

Summary of Current Findings

Our current evaluation of the regulation of acupuncture results in the following findings:

1. There is a need to continue regulation of the practice of acupuncture in order to protect public health and safety.

2. There are insufficient safeguards relating to the handling and disposal of acupuncture needles.

3. Some education and training requirements have created problems. The provision for the board to approve acupuncture schools is inappropriate and other requirements relating to training are unclear or unnecessary.

4. Failure to require official school transcripts and verify examination score reports submitted by applicants may lead to fraud.

5. The board has taken questionable actions in recognizing doctoral degree programs offered by unaccredited colleges and in authorizing a graduate of an unaccredited program to use a doctoral title.

6. Many licensees are using unauthorized titles. Some of the unauthorized titles are misleading while others need not be restricted.

Need for Regulation

The practice of acupuncture poses a danger to the health and safety of the public. Acupuncturists may insert very fine needles up to a depth of 4 inches in the body to achieve therapeutic results. The improper insertion of needles in certain points on the body can cause loss of consciousness, collapse, or even death. Improperly inserted needles can also penetrate or perforate nerves, organs, and blood vessels causing a variety of medical complications. And failure to properly sterilize needles or disinfect the skin prior to their insertion can cause serious infections.

Acupuncturists practice independently, and they are not required to work under the direction or supervision of another health professional (such as a physician). However, certain medical conditions cannot be effectively treated with acupuncture. Failure to recognize these conditions and refer patients to other health professionals can result in harm due to the delay of effective treatment.

There have been no complaints alleging consumer injury from acupuncture treatment. However, Chapter 436E should be reenacted because of the potential danger to public health and safety presented by the practice of acupuncture.

Standards for Use of Acupuncture Needles

The rules require acupuncturists to follow sanitation practices and procedures in order to safeguard public health and safety. However, there is only one guideline for the handling and disposal of acupuncture needles. This guideline requires

acupuncturists to sterilize reusable needles at a minimum temperature of 250 degrees Farenheit (or 121 degrees Centigrade) for not less than 30 minutes.

Although there are no known cases of AIDS being transmitted from the practice of acupuncture, the disease has been transmitted from tattooing, and acupuncture needles are inserted more deeply into the body than tattoo needles. In addition, acupuncturists may inadvertently stick themselves with a contaminated needle if they do not take adequate precautions when handling and disposing of this equipment.

The U.S. Public Health Service notes that most hospital needle-stick injuries occur when personnel are engaged in such practices as disposing of used needles, recapping needles after use, handling trash containing uncapped needles, and cleaning up after procedures in which needles have been used.[12]

In our interviews, we asked several acupuncturists how they handled needles. There was no uniform response. One acupuncturist replied that used needles were recapped and tossed into a garbage pail for disposal. Another acupuncturist replied that they were placed in a special container and taken to a hospital for disposal.

In May 1987, the board discussed the AIDS problem and voted to defer implementing specific guidelines "until more research and information is received to indicate the board's rules do not adequately address this matter and the associations are not adequately training and educating [their] members."[13] However, the board did not contact the health department for advice prior to making this decision, and it apparently did not consider that many acupuncturists are not members of professional associations.

We asked the Department of Health (DOH) to review the rules in light of the AIDS epidemic. The department suggested that the board consider adding a number

of specific guidelines to reduce the possibility of AIDS transmission. For example, acupuncturists should not recap needles; they should place reusable needles into a germicidal solution prior to sterilization; and they should place all used needles in a special container and consider taking this container to a hospital for incineration.

In order to ensure that the public is fully protected, the board should formally consult with DOH and other knowledgeable public health officials to determine whether additional guidelines are needed to protect patients and acupuncturists.

Licensing Program

Under the original licensing program, applicants were required to complete two years and 1056 hours of training in a school or private tutorship approved by the board. They were also required to pass written, oral–practical, and clinical examinations.

The new licensing program is substantially different. Applicants are now required to complete approximately three years and 1500 hours of training in a board–approved school and pass written examinations. The tutorship training option and the oral–practical and clinical examinations have been eliminated.

Students who were enrolled in a board–approved training program prior to December 31, 1984 (when the original licensing statute was sunsetted) may qualify for examination and licensure under the original licensing standards.

Education and training requirements. Statutory provisions relating to board approval of acupuncture schools have created problems for the board and for local acupuncture schools. In addition, several education and training requirements need to be clarified, strengthened, or eliminated.

Board approval of acupuncture schools. Section 436E-5(b) requires applicants to graduate from a board-approved school in order to qualify for a license. This requirement is apparently intended to ensure that applicants have received good training from a legitimate school. However, the board has found it difficult to implement the requirement. Instead of approving schools, the board is approving the education and training qualifications of individual applicants.

Under this approach, the board reviews training documents to determine whether applicants have completed the required number of hours of academic and clinical training. It does not make any determination about the quality of training of an applicant's school. And although industry board members voice their opinions about the reputation of various schools, there is no clear basis to deny applications from graduates of "disreputable" schools. This fails to ensure that applicants have been trained by a legitimate school.

There is no federally-recognized agency to accredit entry-level training programs in acupuncture, and the board is reluctant to approve schools because it lacks the expertise to determine the quality of education and training that they provide. It also lacks the resources to review and monitor all domestic and foreign schools.

The board has recently decided to contact other states and countries for information on schools that are approved or accredited by a governmental authority in their jurisdiction. This information could be used to determine which schools meet certain official standards. However, the board has no specific plans for how to use this information and there are no guidelines in the rules to govern its deliberations.

In order to establish a clear and rational basis for board decisions, the statute should be amended to repeal provisions relating to the board's authority to approve schools. Instead, it should require applicants to graduate from a school that is licensed or approved by a governmental authority or accredited by an agency recognized by a governmental authority.

In Hawaii, this would mean that applicants must graduate from a school licensed by the Department of Education (DOE) which is the agency responsible for licensing all private trade, technical, and vocational schools in Hawaii. In other jurisdictions, applicants must graduate from schools licensed, approved, or accredited by the appropriate governmental authority in that jurisdiction.

Erroneous claims by local acupuncture schools. Chapter 300, HRS, requires private vocational schools to be licensed by the DOE. Formerly, the DOE required acupuncture schools to obtain approval of their curriculums by the Board of Acupuncture in order to qualify for a vocational school license. Licensed schools then advertised their programs as being "approved by the board."

The DOE no longer requires acupuncture schools to have their curriculums approved by the Board of Acupuncture. And the board has not approved curriculums that were developed to conform with the new education and training standards. However, local acupuncture schools are continuing to advertise that their programs are approved by the board. One school's 1987 catalogue states that it is approved by the board. And a second school is advertising in the 1987 Maui yellow pages directory that it is approved by the board.

The board should immediately inform local acupuncture schools that it is not approving curriculums or schools. When the statute is amended to require applicants to be graduates of a licensed or accredited school, the board should adopt rules on what schools may advertise in this respect.

Clinical internship training requirement. Certain aspects of the provisions relating to the new clinical internship training requirement need to be clarified.

Authorization to practice. The statute does not clearly authorize unlicensed students to practice on human beings or require them to work under the "direct" supervision of a licensed acupuncturist. Since applicants must complete a clinical internship in order to qualify for a license, Section 436E–4 should be amended to exempt students from licensing requirements if they practice under the direct supervision of a licensed acupuncturist.

Duration of clinical internship. There is no time limit on clinical internship training. Therefore, interns can practice indefinitely without being required to demonstrate competency on the licensing examination. Since this would circumvent the intent of the licensing law, the board should consider amending the rules to place a time limit on the unlicensed practice of acupuncture by interns.

Tutorship training option. The statute contains several provisions relating to tutorship training. Since the tutorship training option has expired, the statute should be amended to remove these provisions.

Examination requirements. In our 1984 evaluation, we found that the board's written examination was unreliable and of questionable validity. We also found that the oral–practical and clinical examinations were not completely standardized, did not protect the anonymity of applicants, and did not use a valid passing score.

The current board has appropriately decided to use written examinations instead of oral–practical and clinical examinations. The board has contracted with NCCA (the National Commission for the Certification of Acupuncturists) to use a comprehensive written examination that was developed by a professional testing service. This examination adequately assesses the entry–level competency of

acupuncturists, and it has been professionally validated. The board is also using a written jurisprudence examination developed by DCCA. Both examinations have been successfully administered. The board's decision to use these examinations corrects the deficiencies noted in our previous report.

Failure to verify documents. The board does not require official verification of information submitted by applicants. As a result, applicants could qualify for a license by submitting fraudulent information.

Training documents. The rules require applicants to submit notarized applications, verification of education and training, and any other documents requested by the board. They also state that the board will accept a "photostatic copy" of diplomas, certificates, or other certified documents as meeting its verification requirements.

Although the department reports that applicants must submit *official* school transcripts (e.g., transcripts stamped with an original school seal or original registrar's signature), we find that unofficial transcripts or copies are being accepted. The use of unofficial transcripts creates the potential for fraud since applicants can obtain a copy of a school transcript, place their name on the transcript, have the document copied, and submit it to the board.

The board also accepts transcripts which do not show the date of enrollment. This is a serious omission because the student grandfathering clause only applies to students who enrolled in acupuncture school prior to December 31, 1984. Applicants could fraudulently claim that they were enrolled before this date and qualify for a license under the original (lower) education and training standards.

We discovered one case where an applicant reported on a notarized application form that he was enrolled in a local acupuncture school in September 1984. The

transcript submitted by the applicant did not include the date of enrollment to support his claim, and a review of board records reveals that he was enrolled in September 1985. However, the applicant was permitted to take the May 1987 licensing examination under the original (lower) training standards.

In order to ensure that applicants have received the training reported on their applications and to reduce the possibility of fraud, the board should require applicants to submit official school transcripts which include an original school seal or original registrar's signature. Since the student grandfathering clause is effective through 1989, the board should also require official verification of the date of enrollment.

Examination score reports. Applicants are required to pass the NCCA written comprehensive examination in order to qualify for a license. This examination is offered in Hawaii and a number of other locations in the United States. The board has permitted applicants who take the examination in other locations to submit copies of their examination score reports without requiring independent verification from NCCA. This again creates the potential for fraudulent reporting of examination results.

The NCCA will report examination results directly to the department if applicants submit a formal request and pay a $15 fee. This procedure is already followed by a number of licensing programs in other states. In order to ensure that applicants have actually passed the NCCA examination, the board should discontinue its policy of accepting copies of examination score reports and require applicants to have NCCA forward their scores directly to the department.

Inappropriately recognized doctoral degree programs. The board has recognized four doctoral degree programs developed by local acupuncture colleges. One program plans to award a Ph.D. degree to students who complete at least nine years of acupuncture training and practice. The second program plans to award a Ph.D. degree to students who complete at least five years of acupuncture training and practice. Neither program conforms with commonly accepted standards for Ph.D. programs since they are unaccredited, and they do not require applicants to have a baccalaureate or master's degree.

The third program plans to award a "Doctor of Acupuncture" degree to students who complete at least three years of acupuncture training. And the fourth program plans to award an "Oriental Medical Doctor" degree to students who complete at least four years of acupuncture training. Both of these programs are unaccredited, and neither program requires a level of education and training commonly associated with doctoral degrees.

Since the programs are not accredited, and since students may be misled into thinking that board–recognized programs have met some kind of educational standards, the board should rescind its recognition of all four programs.

Need for clearer standards on the use of doctoral titles. Countries such as China, Korea, and Japan have approved or accredited doctoral degree programs in acupuncture for many years. These programs are offered by legitimate institutions that provide quality education and training at the doctoral level.

However, NAC (the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine) believes that U.S. acupuncture schools are in too early a developmental stage to justify the issuance of doctoral degrees. The commission notes that the curricula, programs, faculties, libraries,

and facilities of domestic institutions are inadequate for doctoral education and training. Therefore, the commission's position is that "a school that awards a professional doctorate degree is misleading its applicants, its students, and the consuming public," and it "thus must question the integrity of the institution that continues at the present time to issue that degree."[14]

Since there is no assurance that unaccredited doctoral degree programs can provide a quality education at the doctoral level, and since the board has acted arbitrarily in recognizing unaccredited programs, the statute should be amended to repeal provisions relating to the use of Ph.D. and Doctor titles. A new provision should be enacted which prohibits the use of doctoral titles by licensed acupuncturists unless they have received their doctoral degrees from a college or university that is accredited by a governmental authority or an agency recognized by a governmental authority. This approach will enable graduates of accredited foreign universities to use doctoral titles. It will also enable graduates of U.S. institutions to use doctoral titles when doctoral degree programs in acupuncture are accredited.

Inappropriately authorized Ph.D. title. In December 1986, the board authorized a graduate of an unaccredited mainland university to use a Ph.D. title. This decision was based on the board's understanding that the university was approved by a state department of education and a state licensing program. However, our review indicates that the department of education had authorized the university to award degrees, but it had not made any judgment on the value, appropriateness, or applicability of the Ph.D. degree. Also, the doctoral program had not been reviewed or approved by the state licensing program.

The doctoral program (which has been discontinued) did not require a level of education and training commonly associated with Ph.D. degrees. Students were not required to complete a baccalaureate or master's degree prior to admission, and they could earn the Ph.D. degree after just two years of vocational school training and one year of "doctoral" study.

Since there is no assurance that the unaccredited program provided a quality education at the doctoral level and since the public may be misled into thinking that the licensee has more education than he actually received, the board should rescind its decision.

Unauthorized use of titles. According to the statute, the only persons who are authorized to use Ph.D. and Doctor titles are graduates of board–approved colleges and universities. The statute also permits licensed acupuncturists to use other titles, prefixes, and designations that are authorized by the board or a department of education curriculum.

A review of the yellow pages and local acupuncture school catalogues reveals that many licensees are using unauthorized titles such as Ph.D., D.O.M., D.C.M., D.Ac., C.A., and Dipl.Ac. (NCCA). The use of titles which are similar to doctoral titles may be misleading. However, there is no need to require the board to oversee the individual use of other titles.

Doctoral titles and pseudo–doctoral titles. Some licensed acupuncturists are using unauthorized titles that imply a doctoral level of training. For example, they are using D.C.M. (Doctor of Chinese Medicine), Dr.Ac. (Doctor of Acupuncture), D.O.M. (Doctor of Oriental Medicine), and Ph.D. (Doctor of Philosophy) titles.

The use of these titles should be restricted to graduates of accredited doctoral programs. In addition, the department should request the Regulated Industries

Complaints Office (RICO) to investigate the unauthorized use of doctoral titles and titles similar to doctoral titles by licensed acupuncturists.

Other titles. Many licensees are using unauthorized titles that do not imply a doctoral level of education. For example, they are using C.A. (Certified Acupuncturist) and Dipl.Ac. (NCCA) titles. The C.A. title is awarded by licensing programs in other states. And the Dipl.Ac. (NCCA) title is awarded by a national certification program.

There is no need to restrict the use of titles which give consumers accurate information about the qualifications of a licensed acupuncturist. Therefore, the statute should be amended to repeal restrictions on the use of nondoctoral titles, prefixes, and designations by licensees. At the same time, RICO should enforce statutory prohibitions against false, fraudulent, or deceptive advertising by licensees.

Acupuncture institutions are not complying with state law. Chapter 446E requires unaccredited degree granting institutions in Hawaii to disclose their accreditation status in all communications and contracts. The statute further requires that this disclosure be made in "boldface print" using specific language. Failure to comply with the statute is an "unfair or deceptive act or practice."

This law is designed to protect student interests. However, none of the local acupuncture colleges offering degrees in acupuncture are printing the required disclosure statement in their catalogues or advertisements. The Office of Consumer Protection, which is responsible for enforcing Chapter 446E, should monitor compliance with the disclosure requirement and take appropriate actions to ensure that it is met.

Recommendations

We recommend as follows:

1. Chapter 436E, Hawaii Revised Statutes, be reenacted. In reenacting the statute, the Legislature should consider making the following amendments:

- *Repeal provisions relating to the board's authority to approve schools. Instead, require applicants to graduate from a school that is licensed or approved by a governmental authority or accredited by an agency recognized by a governmental authority.*
- *Exempt students in clinical training under the direct supervision of a licensed acupuncturist from licensing requirements.*
- *Eliminate references to tutorship training.*
- *Prohibit the use of doctoral titles by licensed acupuncturists unless they have graduated from a college or university that is accredited by a governmental authority or an agency recognized by a governmental authority.*
- *Repeal restrictions on the use of nondoctoral titles, prefixes, and designations by licensed acupuncturists.*

2. The Board of Acupuncture should take the following actions:

- *Consult with public health officials to determine whether additional guidelines are needed to protect patients and acupuncturists in light of the AIDS epidemic.*
- *Set a time limit on the unlicensed practice of acupuncture by interns.*
- *Require applicants to submit official transcripts which include an original school seal or original registrar's signature and the date of enrollment.*

- *Discontinue the practice of accepting copies of examination score reports and have the National Commission for the Certification of Acupuncturists forward scores directly to the department.*
- *Rescind recognition of unaccredited doctoral degree programs and rescind decision to authorize a graduate of an unaccredited program to use the Ph.D. title.*

NOTES

1. Background information taken from Ted J. Kaptchuk, *The Web That Has No Weaver*, Congdon & Weed, New York, 1983.

2. Act 19, 1880.

3. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report*, Honolulu, June 16, 1987.

4. National Commission for the Certification of Acupuncturists, *National Certification of Acupuncturists, A Handbook*, Washington, D.C., 1987.

5. National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine, *Handbook of Accreditation*, Columbia, Md., December 1986.

6. *Acupuncture Accreditation*, Newsletter of the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine, Summer 1987, p. 2.

7. The Tai Hsuan Foundation was accepted as a candidate for accreditation in 1987.

8. Senate Conference Committee Report No. 67 on Senate Bill No. 1745, S.D. 1, Twelfth Legislature, 1984.

9. Governor's Message No. 356 on Senate Bill No. 1745–84.

10. Senate Conference Committee Report No. 52 on Senate Bill No. 665, S.D. 1, Thirteenth Legislature, 1985, State of Hawaii.

11. Section 436E–2, Hawaii Revised Statutes.

12. Walter Williams, "CDC Guidelines for Infection Control in Hospital Personnel," in *Guidelines for Prevention and Control of Nosocomial Infections*, U.S. Public Health Service, Centers for Disease Control, Atlanta, Ga., 1983.

13. Board of Acupuncture, Minutes of Meeting, Honolulu, May 19, 1987, p. 4.

14. National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine, *Scope of Accreditation*, Columbia, Md., May 1985, p. 5.

APPENDICES

APPENDIX A

COMMENTS ON AGENCY RESPONSES

A preliminary draft of this Sunset Evaluation Report was transmitted on October 1, 1987, to the Board of Acupuncture and the Department of Commerce and Consumer Affairs for their review and comments. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not submit a response.

The board agrees that Chapter 436E should be reenacted with amendments. It acknowledges that the method currently used to approve schools is a problem, but it states that the recommendation to repeal the board's authority to approve schools may not be the best solution. While the approval of acupuncture schools was not a priority issue in the past, the board does acknowledge that "the entire realm of accreditation" needs review, and it recently formed a committee to study the matter. The board also agrees that the use of doctoral titles should be restricted to those with advanced degrees from an accredited university or college. However, it is apprehensive about relying on other governmental authorities to determine the doctoral level of competence.

The board finds merit in the recommendations that it consult with public health officials on additional guidelines to protect patients and practitioners against AIDS, require applicants to submit official transcripts, and have examination score results sent directly to the department. The board also agrees that a time limit should be set for interns to practice acupuncture. Finally, the board has taken under advisement the recommendation to rescind recognition of unaccredited doctoral degree programs and the decision to authorize a graduate of an unaccredited program to use the Ph.D title.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813

CLINTON T. TANIMURA
AUDITOR

October 1, 1987

COPY

Mr. Paul W. Condry, Chairperson
Board of Acupuncture
Department of Commerce and Consumer Affairs
1010 Richards Street
State of Hawaii
Honolulu, Hawaii 96813

Dear Mr. Condry:

Enclosed are six preliminary copies, numbered 4 through 9, of our *Sunset Evaluation Update, Practice of Acupuncture*. These copies are for review by you, other members of the board, and your executive secretary. This preliminary report has also been transmitted to Robert Alm, Director of the Department of Commerce and Consumer Affairs.

The report contains our recommendations relating to the regulation of acupuncture. If you have any comments on our recommendations, we would appreciate receiving them by November 2, 1987. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2

JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF ACUPUNCTURE
STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

October 30, 1987

RECEIVED
OCT 30 2 55 PM '87
OFC. OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura
Legislative Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

On behalf of the Board of Acupuncture, thank you for the opportunity to review and comment on the Sunset Evaluation Update, Practice of Acupuncture Report. Your auditor appears to have identified many, if not all, of our major concerns. We have discussed most of the report's findings in varying degrees, and it is encouraging to see definite recommendations and solutions to the issues.

The board would like to address the recommendations contained at the end of your report as follows:

We agree with recommendation number 1, that Chapter 436E, Hawaii Revised Statutes, be reenacted with amendments. However, the recommendation to repeal the board's authority to approve schools may not be the best solution. The board agrees that there is a current problem with regard to the method used in approving acupuncture schools, but as the report cited, only thirteen states certify or license acupuncturists. Of the states, the board is aware of only six that approve acupuncture schools. Also, to

date, there is no national accrediting agency that has been approved by the federal government to accredit acupuncture schools. We are concerned that the approval process of other government agencies may vary widely from the standards in Hawaii.

In the past, the board did not consider the approval of acupuncture schools as a priority issue, and instead reviewed the education and training of each applicant. As a guide, the board considered the list of approved schools used by the previous Board of Acupuncture.

However, the board did acknowledge that the entire realm of accreditation needed review, and recently formed a committee to initiate fact finding. Locally, the board would like to visit and review the acupuncture schools, but understands that funds are not available.

The board agrees that the use of doctoral titles should be restricted to highly skilled acupuncturists, as evidenced by an advanced degree from an accredited university or college. However, the board has similar concerns with regard to the recommendation that the schools be accredited by a governmental authority or an agency recognized by a governmental authority. Again, there is an apprehension to rely on other governmental authorities to determine the doctoral level of competence. Since educational standards, as well as governmental recognition, may vary from state to state, country to country, it may be more prudent to establish state criteria which could be equitably applied.

The board finds merit with the recommendation in number 2 to consult with public health officials, require applicants to submit official transcripts and require examination score results be sent directly to the department. In fact, the board has been in contact with the Department of Health and has implemented the requirements to submit official transcripts and directly receive examination score results.

Moreover, the board agrees with the recommendation to set a time limit for interns to practice acupuncture. However, we are undecided as to the length of time to intern.

Furthermore, the board has taken under advisement the recommendation to rescind the recognition of unaccredited doctoral degree programs and the decision to grant the designation of a Ph.D. title to a licensee, and seeks legal advise from the Attorney General's Office.

We wish to express our appreciation for the comments and recommendations contained in your report. It was encouraging to read a report that acknowledged our efforts for improvement and which offered reasonable recommendations for further improvement.

Very truly yours,

Board of Acupuncture

Paul Condry, Chairman

APPENDIX B

DIGEST

A BILL FOR AN ACT
RELATING TO ACUPUNCTURE

Amends acupuncture law to comply with suggested changes made in Legislative Auditor's Sunset Evaluation Update. Repeals provisions relating to board's authority to approve schools and requires applicants to graduate from a school licensed or approved by a governmental authority. Exempts students in clinical training from licensing requirements. Repeals provision for tutorship training. Imposes restriction on doctoral titles.

FOURTEENTH LEGISLATURE, 1988
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO ACUPUNCTURE.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates. (a) The following chapters are hereby repealed effective December 31, 1988:

(1) Chapter 465 (Board of Psychology)

(2) Chapter 468E (Board of Speech Pathology and Audiology)

(3) Chapter 468K (Travel Agencies)

(4) Chapter 373 (Commercial Employment Agencies)

(5) Chapter 442 (Board of Chiropractic Examiners)

(6) Chapter 448 (Board of Dental Examiners)

[(7) Chapter 436E (Board of Acupuncture)]

(b) The following chapters are hereby repealed effective December 31, 1989:

(1) Chapter 444 (Contractors License Board)

(2) Chapter 448E (Board of Electricians and Plumbers)

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(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(6) Chapter 439 (Board of Cosmetology)

(7) Chapter 454 (Mortgage Brokers and Solicitors)

(8) Chapter 454D (Mortgage and Collection Servicing Agents)

(c) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(4) Chapter 458 (Board of Dispensing Opticians)

(5) Chapter 460J (Pest Control Board)

(6) Chapter 462A (Pilotage)

(7) Chapter 438 (Board of Barbers)

(d) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 448H (Elevator Mechanics Licensing Board)

(2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(3) Chapter 457B (Board of Examiners of Nursing Home

Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(f) The following chapters are hereby repealed effective December 31, 1993:

(1) Chapter 441 (Cemetery and Funeral Trusts)

(2) Chapter 443B (Collection Agencies)

(3) Chapter 452 (Board of Massage)

(4) Chapter 455 (Board of Examiners in Naturopathy)

(5) Chapter 459 (Board of Examiners in Optometry)

(g) The following chapter is hereby repealed effective December 31, 1994:

(1) Chapter 436E (Board of Acupuncture)

[(g)] (h) The following chapters are hereby repealed effective December 31, 1997:

(1) Chapter 463 (Board of Private Detectives and Guards)

(2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 436E-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a definition of "approved school" to read:

""Approved school" means a school licensed or approved by a governmental authority or accredited by an agency recognized by a governmental authority."

2. By amending the definition of "earned degree" to read:

""Earned doctoral degree" means an academically or a clinically obtained doctoral degree (not honorary)[.] awarded by an accredited college or university."

SECTION 3. Section 436E-4, Hawaii Revised Statutes, is amended to read as follows:

"[[]§436E-4[]] Exemptions. (a) Any person licensed under chapters 448, 453, and 460, if certified by their respective boards as qualified to practice acupuncture by reason of formal training in acupuncture shall be exempt from this chapter.

(b) A licensed acupuncturist of another state or country for demonstrations or lectures to be given at acupuncture or medical society meetings or at acupuncture schools shall be exempt from licensing procedures set forth in this chapter.

Rev. 10/86

(c) Any student practicing acupuncture under the direct supervision of a licensed acupuncturist shall be exempt from licensing requirements while enrolled in a clinical internship program as described in section 436E-5(b)."

SECTION 4. Section 436E-5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§436E-5[]] Qualifications for examination. (a) No person shall be licensed to practice acupuncture unless the person has passed an examination and has been found to be possessed of the necessary qualifications as prescribed in the rules adopted by the board pursuant to chapter 91.

(b) Before any applicant shall be eligible for such examination, the applicant shall furnish satisfactory proof to the board that the applicant:

(1) Has completed a formal program of acupuncture (traditional oriental medicine) and received a certificate or diploma from an [institute or private tutorship approved by the board.] approved school. The training in the science of acupuncture (traditional oriental medicine) shall be for a period of not less than two academic years (not less than six hundred hours) and one clinical year in a clinical

internship program supervised by a licensed acupuncturist (not less than twelve months and not less than nine hundred hours) for a total of not less than one thousand five hundred hours.

(2) [Students who have completed not less than two years of a formal course of acupuncture and have received a certificate or diploma from an approved school or a qualified private tutor approved by the board shall be required to complete not less than twelve months (not less than nine hundred hours) of practice of acupuncture on human subjects in a clinical internship program supervised by a licensed acupuncturist prior to licensure.

(3) Tutorships which have been approved by the board prior to December 31, 1984, shall be acceptable for examination upon their completion; provided tutorships shall no longer be an accepted status to qualify for examination for acupuncture licensure after June 30, 1987.] <u>Students who graduate from an approved school without one clinical year of training in a clinical internship program may complete this requirement under the direct supervision of a licensed acupuncturist.</u>

(c) Any person who had a valid and current license to practice acupuncture in this State on December 31, 1984, shall be issued a license under this chapter upon application and payment of a license fee not later than December 31, 1985.

(d) Students who started training prior to December 31, 1984, in a school [or tutorship program] approved by the board prior to December 31, 1984, and who [shall] complete their training by December 31, 1989:

(1) Shall not lose their rights of continued education, earned or accumulated credits; and

(2) For purposes of this chapter their requirements for examination and licensure will be as provided in chapter 436D and chapter 16-72, Hawaii Administrative Rules, as they existed on December 31, 1984, provided that the school [or tutorship] has not altered its program so as to lower the standards for completion of the program."

SECTION 5. Section 436E-13, Hawaii Revised Statutes, is amended to read as follows:

"[[]§436E-13[]] <u>Use of titles.</u> (a) A licensee who has been awarded a license to practice acupuncture by the board of acupuncture in this State may use the title of "Licensed

Rev. 10/86

Acupuncturist" or designation "L.Ac." with the licensee's name in an advertisement for acupuncture or announce or append the designation to the licensee's name.

(b) A licensee who has been awarded an earned doctoral degree [may use the designation "Ph.D." in an advertisement for acupuncture or announce or append the designation to the licensee's name if the degree was granted from a university or college recognized and approved by the board in recognition of accomplishments in the study or practice of acupuncture (traditional oriental medicine).

(c) A licensee who has been awarded an earned doctoral degree from a university or college recognized and approved by the board in the study or practice of acupuncture (traditional oriental medicine), may use the word "Doctor" or the prefix "Dr." providing] <u>in acupuncture (traditional oriental medicine) may use a doctoral title, prefix, or designation in advertisements, provided</u> the word "Acupuncturist" immediately follows the licensee's name.

<u>(c) A licensee who does not comply with subsection (b) may not use any doctoral title, prefix, or designation in connection with the licensee's practice of acupuncture.</u>

[(d) Other titles, prefixes, or designations shall be

permitted under this chapter when authorized by the board or a department of education curriculum]."

SECTION 6. Section 436E-14, Hawaii Revised Statutes, is repealed.

["[§436E-14] Foreign school curricula and standards. The board of acupuncture shall not recognize and approve an earned doctoral degree from a foreign university or college whose curricula and standards are not equivalent to or higher than institutions in the United States which have been recognized and approved by the board in the study or practice of acupuncture."]

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

INTRODUCED BY:_____