

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 363

As Further Amended by Senate Committee of
the Whole

Brief*

SB 363, as further amended by the Senate Committee of the Whole, would create the Acupuncture Practice Act, provide for the licensure of individuals by the Kansas State Board of Healing Arts (Board), and exempt licensed physical therapists from the Acupuncture Practice Act when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act. The bill also would amend the Physical Therapy Practice Act to include the practice of dry needling within the scope of practice for licensed physical therapists, define dry needling, and exempt licensed acupuncturists from the Physical Therapy Practice Act. Additionally, the Board would be required to adopt rules and regulations applicable to dry needling.

With regard to the Acupuncture Practice Act, the bill would define key terms; outline the treatments included and excluded in the practice of acupuncture; establish penalties for violation of the Acupuncture Practice Act; establish requirements for the licensure of acupuncturists and the licensure application, renewal, and reinstatement procedures for reciprocal, active, exempt, and inactive licenses, and for the grandfathering of individuals currently practicing acupuncture; establish licensure fees; and provide for the discipline of the licensees, including non-disciplinary resolutions; exempt certain individuals from licensure; and provide for the deposit of fees, charges, and penalties in the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

State Treasury, with a portion of the funds deposited in the State General Fund.

The bill also would establish an Acupuncture Advisory Council (Council) and set out the Council's duties, membership requirements, meeting days, and compensation; and define the duties and authority of the Board.

Additionally, with regard to the Acupuncture Practice Act, the bill would provide for the assessment of civil fines; ensure protection from civil damages for good faith reporting; authorize injunctions; address the confidentiality of patient and complaint information; and amend existing law to clarify the practice of healing arts would not include acupuncturists. Finally, the bill would include a severability clause.

The Acupuncture Practice Act and the Physical Therapy Practice Act would take effect on publication in the statute book, but the effective date of certain provisions of the Acupuncture Practice Act would be delayed, as outlined in the bill details that follow.

Acupuncture Practice Act

Definitions (New Section 2)

The following would be among the terms defined in the Acupuncture Practice Act:

- “ACAOM” would mean the national accrediting agency recognized by the U.S. Department of Education that provides accreditation for educational programs for acupuncture and oriental medicine. For purposes of the Acupuncture Practice Act, the term ACAOM also would include any entity deemed by the Board to be the equivalent of ACAOM;

- “Acupuncture” would mean the use of needles inserted into the human 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 and stimulating the body to restore itself to its proper functioning and state of health;
- “National Certification Commission for Acupuncture and Oriental Medicine” (NCCAOM) is a national organization that would validate entry-level competency in the practice of acupuncture and oriental medicine through the administration of professional certification examinations. For purposes of the Acupuncture Practice Act, NCCAOM would also include any entity deemed by the Board to be the equivalent of the NCCAOM; and
- “Physician” would be defined as a person licensed to practice medicine and surgery or osteopathy in the state.

Practice of Acupuncture (New Section 2)

The practice of acupuncture would include, but not be limited to:

- Techniques sometimes called “dry needling,” “trigger point therapy,” “intramuscular therapy,” “auricular detox treatment,” and similar terms;
- Mechanical, thermal, pressure, suction, friction, electrical, magnetic, light, sound, vibration, manual treatment, and electromagnetic treatment;

- The use, application or recommendation of therapeutic exercises, breathing techniques, meditation, and dietary and nutritional counselings; and
- The use and recommendation of herbal products and nutritional supplements, according to the acupuncturist's level of training and certification by the NCCAOM, or its equivalent.

The practice of acupuncture would not include:

- Prescribing, dispensing, or administering of any controlled substances as defined in KSA 2015 Supp. 65-4101 *et seq.* or any prescription-only drugs; or
- The practice of:
 - Medicine and surgery including obstetrics and the use of lasers or ionizing radiation;
 - Osteopathic medicine and surgery or osteopathic manipulative treatment;
 - Chiropractic;
 - Dentistry; or
 - Podiatry.

***License Required for Practice of Acupuncture
(New Section 3)***

Beginning July 1, 2017, the practice of acupuncture would be prohibited unless the individual possesses a current and valid acupuncture license issued under the Acupuncture Practice Act. Only a person licensed as an acupuncturist under the Acupuncture Practice Act would be entitled to use the terms "licensed acupuncturist" or the designated letters "L.Ac." A violation of this section would be a class B misdemeanor.

Use of Needles (New Section 4)

Needles used in acupuncture would be required to be prepackaged, single-use, sterile, and used only on an individual patient in a single treatment session.

***Individuals Exempt from Acupuncture Licensure
(New Section 5)***

Effective July 1, 2017, the bill would exempt the following health professionals from acupuncture licensure:

- Any person licensed to practice medicine and surgery, osteopathy, dentistry or podiatry, a licensed chiropractor, or a licensed naturopathic doctor when acting or practicing within each licensed professional's scope of practice and not representing oneself as being licensed under the Acupuncture Practice Act;
- Any herbalist or herbal retailer if not holding oneself out as a licensed acupuncturist;
- Any health care provider in the U.S. armed forces, federal facilities, and other military service when acting in the line of duty in the state;
- Any student, trainee, or visiting teacher of acupuncture, oriental medicine, or herbology while participating in a course of study or training under the supervision of an acupuncturist licensed under the Acupuncture Practice Act in a Council-approved program, including continuing education programs and any acupuncture or herbology programs recognized by the NCCAOM or its equivalent as a route to certification;
- Any person rendering assistance in an emergency or disaster relief;

- Any person practicing self-care or any family member providing gratuitous care not holding oneself out to the public as an acupuncturist;
- Any person who massages, if such person does not practice acupuncture or hold oneself out as a licensed acupuncturist;
- Any person whose professional services are performed pursuant to delegation by and under the supervision of a practitioner licensed under the Acupuncture Practice Act;
- Any team acupuncturist or herbology practitioner traveling with and treating individuals associated with an out-of-state or national team that is temporarily in the state for training or competition purposes; and
- Any person licensed as a physical therapist when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act.

Licensure Requirements (New Section 6)

Applications for Licensure

Applicants for licensure as acupuncturists would be required to file an application, on forms provided by the Board, and show to the satisfaction of the Board the applicant:

- Is at least 21 years of age;
- Has successfully completed secondary schooling or its equivalent;

- Has satisfactorily completed a course of study involving acupuncture from an accredited school of acupuncture which the Board would determine to have educational standards substantially equivalent to the minimum educational standards for acupuncture colleges as established by the ACAOM or NCCAOM;
- Has satisfactorily passed a license examination approved by the Board;
- Has the reasonable ability to communicate in English; and
- Has paid all fees required for licensure pursuant to section 11 of the bill.

Applications for Reciprocal License (New Section 7)

The bill would allow reciprocal licensure for individuals in the active practice of acupuncture in another state, territory, District of Columbia, or other country upon certification from the proper licensing authority that the applicant is duly licensed; has never had his or her license limited, suspended, or revoked; has never been censured or received other disciplinary actions; and, as far as the records of such authority are concerned, the applicant is entitled to such licensing authority's endorsement.

Additionally, the applicant would be required to present the following proof satisfactory to the Board:

- The other jurisdiction in which the applicant last practiced has and maintains standards at least equal to those maintained in Kansas;
- The applicant's original license was based on an examination at least equal in quality to the examination required in this state and the passing

grade required to obtain such original license was comparable to that required in this state;

- The date of the applicant's original license and all endorsed licenses and the date and place from which any license was attained;
- The applicant has been actively engaged in practice under such license or licenses since issued (the Board may adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice);
- The applicant has a reasonable ability to communicate in English; and
- The applicant has paid all application fees prescribed by section 11 of the bill.

Applicants for license by endorsement would be required to have qualifications substantially equivalent to the Kansas requirements for licensure under the Acupuncture Practice Act.

Grandfathered License (New Section 8)

The Board would be required to waive the education and examination requirements for an applicant for an acupuncture license who submits an application on or before January 1, 2018, and who, on or before July 1, 2017:

- Is 21 years of age or older;
- Has successfully completed secondary schooling or its equivalent;
- Has met both of these requirements:

- Has completed a minimum of 1,350 hours of study (excluding online study) in acupuncture; and
 - Has been engaged in the practice of acupuncture with a minimum of 1,500 patient visits during at least 3 of the 5 years immediately preceding July 1, 2017, which would require documentation in the form of 2 affidavits from office partners, clinic supervisors, or other individuals approved by the Board, who have personal knowledge of the years of practice and number of patients visiting the applicant for acupuncture. The Board would be authorized to adopt rules and regulations for further verification of the applicant's practice of acupuncture; or
 - Has satisfactorily passed an examination approved by the Board;
- Has the reasonable ability to communicate in English; and
 - Has paid all fees required for licensure as prescribed by section 11 of the bill.

Annual License Process (New Section 9)

The licensure process for an acupuncturist established by the bill would be effective on July 1, 2017. Licenses would be issued annually and would be canceled on March 31 of each year unless renewed in the manner prescribed by the Board. The Board would be authorized to prorate the amount of the fee established under section 11 of the bill when a license is renewed for less than 12 months. License renewal would be requested on a form provided by the Board and accompanied by the established renewal fee to be paid by the renewal date of the license.

Active License

The bill would create a designation of an active license. The Board would be authorized to issue an active license upon written application on a form provided by the Board and payment of fees established pursuant to section 11 of the bill. Every active licensee would be required to submit evidence of satisfactory completion of continuing education required by the Board, with such continuing education requirements required to be established by rules and regulations adopted by the Board.

Prior to license renewal, active licensees would be required to submit to the Board evidence of maintenance of professional liability insurance. The Board would be required to fix by rules and regulations the minimum level of professional liability insurance coverage.

Renewal Notice

At least 30 days before the renewal date of a licensee's license, the Board would be required to notify the licensee of the renewal date by mail to the licensee's last known mailing address. A licensee who fails to submit the renewal application and pay the renewal fee by the renewal date would be required to be given notice that:

- The licensee has failed to submit the application and pay the renewal fee by the renewal date;
- The license would be deemed canceled if not renewed within 30 days following the renewal date;
- The license would not be canceled if, within the 30-day period, the renewal application, the renewal fee, and an additional late fee established by rules and regulations not to exceed \$500 is received; and

- The license would be deemed canceled by operation of law and without further proceedings if both fees are not received within the 30-day period.

Reinstatement of License

The bill would allow for the reinstatement of any acupuncturist license within two years of cancellation for failure to renew upon recommendation of the Board, payment of renewal fees, and proof of compliance of continuing education requirements established by the Board by rules and regulations. The Board would be authorized to require a person who has not been in the active practice of acupuncture and seeks reinstatement or has not been engaged in a formal educational program during the two years preceding the application for reinstatement to complete additional testing, training, or education as deemed necessary by the Board to establish the licensee's present ability to practice with reasonable skill and safety.

Exempt License

The bill would create a designation of an exempt license. The Board would be authorized to issue an exempt license to any licensee who makes written application on a form provided by the Board and pays the fee established by section 11 of the bill. The Board would be authorized to issue an exempt license to a person who is not regularly engaged in the practice of acupuncture in the state and who does not hold oneself out as being professionally engaged in such practice. An exempt licensee would be entitled to all privileges attendant to the practice of acupuncture for which the license is issued. An exempt license could be renewed and would be subject to all provisions of the Acupuncture Practice Act, except as otherwise provided.

The Board would be authorized to require the holder of an exempt license to provide evidence of satisfactory completion of continuing education requirements, which

would be required to be established by rules and regulations of the Board.

An exempt licensee would be allowed to apply for an active license to regularly engage in the active practice of acupuncture upon filing a written application with the Board on a form provided by the Board and submission of the license fee established in section 11 of the bill. The Board would be required to adopt rules and regulations establishing appropriate continuing education requirements for exempt licensees whose license has been exempt for less than two years to become licensed to regularly practice acupuncture in the state. For a licensee whose license has been exempt for more than two years and has not been in the active practice of acupuncture since the license has been exempt, the Board would be authorized to require completion of such additional testing, training, or education as the Board would deem necessary to establish the licensee's present ability to practice with reasonable skill and safety. A person holding an exempt license would not be prohibited from serving as a paid employee of a local health department or an indigent health care clinic.

Inactive License

Effective on and after July 1, 2017, the bill would create the designation of an inactive license, which may be issued by the Board upon written application and payment of the requisite fee. The bill would allow the Board to issue an inactive license only to persons who are not regularly engaged in the practice of acupuncture in the state and do not hold themselves out to the public as being professionally engaged in such practice. The holder of an inactive license would not be entitled to practice acupuncture in the state. Provisions would be made for the renewal of an inactive license, and an inactive licensee would be subject to all provisions of the Acupuncture Practice Act unless otherwise noted. A holder of an inactive license would not be required to

submit evidence of completion of the continuing education requirements.

An inactive licensee would be allowed to apply for an active license upon filing a written application with the Board on a form provided by the Board and submitting the license fee established in section 11 of the bill. The Board would be required to adopt rules and regulations establishing appropriate continuing education requirements for inactive licensees whose license has been exempt for less than two years to become licensed to regularly practice acupuncture in the state. For a licensee whose license has been exempt for more than two years and has not been in the active practice of acupuncture or engaged in a formal education program since the license has been inactive, the Board would be authorized to require completion of such additional testing, training, or education as the Board would deem necessary to establish the licensee's present ability to practice with reasonable skill and safety.

Reinstatement of Revoked License (New Section 10)

The bill would allow a person whose acupuncture license has been revoked to apply for reinstatement after the expiration of three years from the effective date of the revocation. An application for reinstatement would have to be made on a form provided by the Board and accompanied by the fee set out in section 11 of the bill. The applicant would have to prove by clear and convincing evidence sufficient rehabilitation to justify reinstatement. If the Board does not reinstate a license, the applicant would be ineligible to reapply for reinstatement for three years from the effective date of denial. Proceedings for an application for reinstatement would be conducted according to the Kansas Administrative Procedure Act (KAPA) and reviewable under the Kansas Judicial Review Act (KJRA). The Board, on its own motion, would be authorized to stay the effectiveness of a revocation order.

Fees (New Section 11)

The Board would be required to charge and collect in advance nonrefundable fees for acupuncturists as established by the Board through rules and regulations in amounts not to exceed the fees specified in the bill.

***Deposit of Fees, Charges, and Penalties
(New Section 12)***

Moneys received by the Board for fees, charges, and penalties would be deposited in the State Treasury, with 10.0 percent of the amount credited to the State General Fund and the balance credited to the Healing Arts Fee Fund.

Acupuncture Advisory Council (New Section 13)

A Council would be established to assist the Board in carrying out the provisions of the Acupuncture Practice Act. The Council would consist of five members appointed as follows:

- The Board would appoint one member who is a physician licensed to practice medicine and surgery or osteopathy, and the member would serve at the pleasure of the Board;
- The Governor would appoint three acupuncturists who have at least three years of experience in acupuncture preceding the appointment and are actively engaged in the state in the practice or teaching of acupuncture (at least two of these appointments would be made from a list of four nominees submitted by the Kansas Association of Oriental Medicine). The appointments would be for a term of four years and until a successor has been appointed; and

- One member, appointed by the Governor from the public who is not engaged, directly or indirectly, in the provision of health services.

The bill would require, insofar as possible, that the members appointed to the Council by the Governor be from different geographic areas.

The bill would address the filling of vacancies and quorum. The Council would be required to meet at least once each year at a time of its choosing at the Board's main office and at such other times as may be necessary on the call of the chairperson or on the request of a majority of the Council's members. A majority of the Council would constitute a quorum.

Board members would receive compensation for attending the meetings of the Council, or a subcommittee of the Council, as provided in KSA 75-3223(e), from the Healing Arts Fee Fund.

Duties of the Council (New Section 14)

The Council would be tasked with advising the Board regarding examination, licensing and other fees; rules and regulations to be adopted to carry out provisions of the Acupuncture Practice Act; the annual continuing education requirements to maintain an active license; changes and new requirements taking place in the area of acupuncture; and such other duties and responsibilities as the Board may assign.

Duties of the Board (New Section 15)

The Board would promulgate rules and regulations necessary to administer the provisions of the Acupuncture Practice Act .

Grounds for Disciplinary Action (New Section 16)

Provisions dealing with grounds for disciplinary action and administrative review would take effect on July 1, 2017. The bill would establish 13 grounds for which a licensee's license may be revoked, suspended, limited, or placed on probation, or the licensee publicly censured, or an application for a license or for reinstatement denied. The grounds for disciplinary action outlined in the bill include unprofessional conduct; obtaining a license by means of fraud or misrepresentation in applying for or securing an original, renewal or reinstated license; professional incompetency; felony conviction; violation of any provisions of the Acupuncture Practice Act; violation of a lawful order or rule and regulation of the Board; failure to report to the Board information regarding adverse action taken against the licensee; and the inability to practice due to impairment by reason of physical or mental illness, or condition, or use of alcohol, drugs, or controlled substances. The Board would be authorized to take action in accordance with KSA 2015 Supp. 65-2842 when a reasonable suspicion of impairment exists. Information relating to impairment would be confidential and not subject to discovery by or release to any person or entity outside a Board proceeding. The bill would require the provision regarding confidentiality expire on July 1, 2022, unless the Kansas Legislature reviews and reenacts the provision prior to its expiration date.

The Board would be authorized to order the denial, refusal to renew, suspension, limitation, probation or revocation of a license, or other sanction on a finding of a violation of the Acupuncture Practice Act. Administrative proceedings would be conducted in accordance with KAPA and reviewable under KJRA.

***Board Jurisdiction in Disciplinary Actions
(New Section 17)***

The bill would grant the Board jurisdiction in proceedings for disciplinary action against any licensee practicing under the Acupuncture Practice Act, and such action would be required to comply with KAPA. Before or after formal charges have been filed, the bill would authorize the Board and licensee to enter into a stipulation that would be binding on both parties. An enforcement order based on a stipulation would allow for the ordering of any disciplinary action. Additionally, the Board would be authorized to temporarily suspend or temporarily limit the license of any licensee in accordance with the emergency adjudicative proceedings provisions under KAPA if the Board determines grounds exist for disciplinary action and the licensee's continuation of practice would constitute imminent danger to public health and safety. Judicial review and civil enforcement of any agency actions under the Acupuncture Practice Act would be in accordance with KJRA.

Non-Disciplinary Resolution (New Section 18)

The Board or a committee of the Board would be authorized to implement non-disciplinary resolutions concerning a licensed acupuncturist consistent with KSA 2015 Supp. 65-2838a.

Assessment of a Civil Fine (New Section 19)

The Board, in addition to any other penalty prescribed by the Acupuncture Practice Act, would be authorized to assess a civil fine against a licensee for violation of such Act, after proper notice and an opportunity for the licensee to be heard. The civil fine would not exceed \$2,000 for the first violation, \$5,000 for the second violation, and \$10,000 for the third and for each subsequent violation. All civil fines collected would be deposited in the State Treasury to the credit of the

State General Fund. Fines collected under this section would be considered administrative fines pursuant to federal law (11 USC § 523).

***Confidentiality of Complaint Information
(New Section 20)***

Any complaint or report, record or other information relating to a complaint in the possession of the Board would be deemed confidential and disclosure by the Board in a manner which identifies or enables identification of the person who is the subject or source of the information would be prohibited, except the disclosure would be permitted as specifically outlined in the bill. Re-disclosure by an agency authorized to receive the information disclosed by the Board would be prohibited unless otherwise authorized by law. These provisions regarding confidentiality would expire on July 1, 2022, unless the Kansas Legislature reviews or reenacts the provisions before their expiration.

***Protection from Civil Damages for Good Faith Reporting
(New Section 21)***

No person reporting in good faith to the Board concerning alleged incidents of malpractice or the qualifications, fitness or character of or disciplinary action taken against a person licensed, registered or certified by the Board would be subject to a civil action for damages as a result of reporting the information. Likewise, any state, regional, or local association composed of persons licensed to practice acupuncture and the individual members of any associated committees, which in good faith investigates or communicates the same type of information regarding a licensee, would be immune from liability in a civil action based on the information disclosed in good faith.

Patient Confidentiality (New Section 22)

Effective July 1, 2017, confidential relations and communications between a licensed acupuncturist and a patient would be on the same basis as that provided by law between a physician and a patient.

Injunctions (New Section 23)

On and after July 1, 2017, the Board would be authorized to seek an injunction against any person violating the provisions of the Acupuncture Practice Act, without regard to whether proceedings have been or may be instituted before the Board or criminal proceedings have been or will be instituted.

Severability Clause (New Section 24)

If any provision of the Acupuncture Practice Act or its application to any person or circumstance is held invalid, such invalidity would not affect the remainder of the provisions or applications of such Act, which could be given effect without the invalid provision or application. Accordingly, the provisions of the Acupuncture Practice Act would be considered severable.

Exclusion from the Practice of Healing Arts (Section 25)

The bill would add acupuncturists licensed and practicing in accordance with the Acupuncture Practice Act, amendments to such Act, rules and regulations adopted, and their interpretations by the Kansas Supreme Court to the list of persons not included in the practice of healing arts.

Physical Therapy Practice Act Amendments (New Section 26 and Sections 27 and 28)

The Board would be required to adopt rules and regulations establishing minimum education and training requirements for the practice of dry needling by a licensed physical therapist. The bill also would replace references to “Article 29 of Chapter 65 of the *Kansas Statutes Annotated*, and amendments thereto” with “the Physical Therapy Practice Act.”

Dry needling would be added to the definition of “physical therapy.” The bill would define “dry needling” to mean “a skilled intervention using a thin filiform needle to penetrate into or through the skin and stimulate underlying myofascial trigger points or muscular or connective tissues for the management of neuromuscular pain or movement impairments.”

Additionally, the bill would exempt from the Physical Therapy Practice Act licensed acupuncturists practicing their profession, when licensed and practicing in accordance with the Acupuncture Practice Act. The licensed acupuncturist exemption would take effect and be in force on and after July 1, 2016.

Background

SB 363 Background

At the February 3, 2016, Senate Committee on Public Health and Welfare hearing on SB 363, as introduced, two representatives and an attorney for the Kansas Association of Oriental Medicine, a private citizen, a physician, and a representative of the Kansas Association of Osteopathic Medicine testified in favor of the bill. The proponents generally stated the bill would clarify and establish the lawful independent practice for licensed acupuncturists and give

Kansans access to a safe and effective health care option with fully-trained acupuncturists. The proponents stated 45 states currently license acupuncturists. Additionally, the proponents presented amendments to address concerns expressed by varying stakeholders. Written testimony in favor of the bill was provided by three physicians and an acupuncturist.

Opponent testimony was provided by representatives of the Kansas Chiropractic Association (KCA) and the Kansas Physical Therapy Association (KPTA). The KPTA representative generally stated disagreement with the definition of what acupuncture includes, that physical therapists are not exempted from the bill, and that physical therapists' scope of practice would be limited as it relates to dry needling. The KCA representative stated support for the base principle of the bill, expressed concern with regard to some of the bill language, and proposed amendments that, if made, would lead the KCA to support the bill. Written testimony in opposition to the bill was provided by a representative of the KPTA, a doctor of physical therapy, a nurse practitioner, and a private individual.

Neutral testimony was provided by a representative of the Kansas Medical Society (KMS) who stated having no issue with the practice of acupuncture, but proposed amendments to more clearly define the practice of acupuncture. Written neutral testimony was provided by the Board and the Secretary of Health and Environment.

On February 22, 2016, the Senate Committee of the Whole amended SB 363, as recommended by the Senate Committee, to delete references to licensure of oriental medicine, including in the renaming of the Acupuncture Practice Act; add, amend, and delete definitions, including the addition of osteopaths under the definition of a physician and clarifying that acupuncture as defined in the Acupuncture Practice Act applies only with regard to the human body; amend the treatments included in the practice of acupuncture; add the prescribing of any controlled

substances or prescription-only drugs, obstetrics, the use of ionizing radiation, dentistry, and podiatry to the list of activities not included in the practice of acupuncture; remove language specifying persons practicing acupuncture would have to be licensed to practice medicine and surgery, be a licensed chiropractor, or a licensed naturopathic doctor; exempt osteopaths, dentists, and persons performing professional services pursuant to delegation by and under the supervision of a practitioner licensed under the Acupuncture Practice Act from acupuncture licensure requirements; make changes in the requirements for applications for licensure; with regard to the requirements for reciprocal licensure, add requirements that the applicant's original license be based on an examination at least equal in quality to the one in Kansas, the passing grade required to obtain such a license be comparable to that required in Kansas, the applicant has been actively engaged in practice under such license since issued, that the Board would be authorized to adopt rules and regulations establishing qualitative and quantitative practice activities which qualify as active practice and remove language referencing individuals for whom English is the second language in addressing the reasonable ability to communicate in English; clarify that an applicant for licensure by endorsement would be required to have qualifications substantially equivalent to Kansas requirements; remove the requirement that the practice of acupuncture during three of the last five years prior to the effective date of the Acupuncture Practice Act for grandfathered licensees had to have occurred in Kansas; add an age requirement, successful completion of secondary schooling or its equivalent, and the satisfactory passage of a license examination approved by the Board for grandfathered licenses; for grandfathered licensees, remove accountants as eligible to verify the required minimum number of patient visits, eliminate some specified forms of documentation as to the number of patient visits, replace the specified documentation with Board rule and regulation authority for further verification options, remove the Board's discretion to approve licensure based on successfully passing the NCCAOM board examinations and submitting an application

prior to January 1, 2018, even if other requirements are not met, and remove the requirement that the reasonable ability to communicate in English be determined by rules and regulations adopted by the Board; permit licenses renewed for a period of less than 12 months to be prorated; remove the Board's option to request an active licensee submit to a continuing education audit and instead require the submission of evidence of completion of continuing education requirements, with such requirements established by rules and regulations adopted by the Board; authorize the Board to fix by rules and regulations the minimum level of coverage for professional liability insurance; change the renewal notice requirement from 60 to 30 days before the renewal date and require a second 30-day notice be sent if licensee fails to renew before the renewal date informing the licensee of a 30-day grace period; replace the immediate cancellation of a license for failure to renew by the renewal date with a 30-day grace period and payment of the renewal fee and an additional late fee, but deem the license as canceled by operation of law without further proceedings if no payment is received within the grace period; make changes to reinstatement requirements for failure to renew by establishing specific requirements for reinstatement within two years of cancellation and providing for additional testing, training, or education requirements for those not in active practice or engaged in a formal education program during the two years preceding the reinstatement application; create an exempt license; make changes to inactive licenses, including additional requirements for becoming licensed to regularly practice; require a three-year waiting period from the effective date of license revocation before making application for license reinstatement, place the burden of proof by clear and convincing evidence on the applicant to show sufficient rehabilitation to justify reinstatement, prohibit the applicant from applying for three years after the date of Board denial of a request for reinstatement, require procedures conducted on an application for reinstatement to be in accordance with KAPA, and allow the Board to stay the effectiveness of an order of revocation; replace provisions related to license fees for two different time frames with one set of maximum

allowable fees, add fees, and increase some maximum fee amounts; reduce the amount of fees, charges, or penalties credited to the State General Fund from 20.0 percent to 10.0 percent; change the Council membership requirements, appointment method and terms and clarify the goal that appointments be made from different geographic areas applies only to Governor appointees; change the location of the Council meetings; remove the method of appointment of the chairperson and vice-chairperson; delete Board duties, including the keeping of a roster of licensees and establishing a clean needle technique and allowing for such specificity in rules and regulations adopted by the Board; remove concealment of material facts as a ground for disciplinary action; authorize disciplinary action by the Board if a reasonable suspicion of impairment exists; replace the requirement the Legislature review provisions related to confidentiality prior to their expiration date with the Legislature's option to review and reenact such provisions prior to the expiration date; remove language stating a person whose license is suspended, limited, or revoked cannot engage in any conduct or activity in violation of the order; replace details related to non-disciplinary resolutions with a statutory reference; delete section on Board access to information in investigations; clarify civil fines collected would be considered administrative fines pursuant to federal law; clarify language in the severability clause; and make technical amendments.

On March 7, 2016, SB 363, as amended by the Senate Committee of the Whole, was referred to the Senate Committee on Public Health and Welfare. On March 15, 2016, the Senate Committee amended the bill to exempt licensed physical therapists from the requirements for an acupuncture license; insert the language of 2016 SB 490, as amended by the Senate Committee; and change the bill title.

On March 21, 2016, the Senate Committee of the Whole amended the bill to clarify that the exemption of licensed physical therapists from the requirements for an acupuncture license would include physical therapists performing dry

needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act. The added language represents the specifically agreed to language resulting from a compromise by the stakeholders.

According to the fiscal note prepared by the Division of the Budget on SB 363, as introduced, the Board estimates enactment of the bill would result in the licensure of 42 new acupuncturists under the Acupuncture Practice Act and result in the collection of revenues from license fees of \$12,600, 10.0 percent of which (\$1,260) would be remitted to the State General Fund. The Board indicates the addition of a new group of practitioners to license would result in increased complaints, investigations, and caseload activity and would require an increase in 2.00 FTE positions and operating expenditures, for a total expenditure of \$144,235. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

SB 490 Background

At the hearing on SB 490 before the Senate Committee on Public Health and Welfare, testimony in favor of the bill was offered by two KPTA representatives, a physical therapist, and two private citizens. The KPTA representatives testified the bill was introduced to clarify that dry needling is within a licensed physical therapist's scope of practice. The KPTA representatives expressed concern that, even if this bill passes, physical therapists would be violating the acupuncture licensure bill (2016 SB 363, as introduced) should it pass without an amendment exempting physical therapists. The physical therapist testified regarding the training provided for dry needling and stated dry needling is not acupuncture. The private citizens shared favorable experiences with dry needling treatments performed by a physical therapist. Written proponent testimony also was provided by legal counsel for the KPTA.

Opponent testimony was offered by a KCA representative who testified the bill would allow all physical therapists to perform dry needling regardless of their educational level and without additional training in the practice of dry needling. The representative stated, should the bill be passed out of the Senate Committee favorably, language should be added to require certification in proficiency in dry needling for all physical therapists who perform the procedure.

Neutral testimony was offered by representatives of the Kansas Association of Oriental Medicine and KMS. The KMS representative stated KMS has no objection to physical therapists or acupuncturists performing dry needling, assuming they have the requisite education, training, and competence. However, the KMS representative stated a clear definition of dry needling and how it differs from acupuncture should be included in the bill for the purpose of providing clear direction for the Board over the professions it regulates. Written neutral testimony was provided by a representative of the Board.

The Senate Committee amended the bill to add “dry needling” to the physical therapists’ scope of practice and define the term; require rules and regulations establishing minimum education and training requirements for dry needling by licensed physical therapists; and exempt licensed acupuncturists from the Physical Therapy Practice Act. [The language in SB 490, as amended by the Senate Committee, was inserted into SB 363, as amended by the Senate Committee of the Whole, subsequently amended by the Senate Committee, and again amended by the Senate Committee of the Whole.]

According to the fiscal note prepared by the Division of the Budget on SB 490, as introduced, the Board states enactment of the bill could result in an increase in the number of reports and complaints regarding practitioners alleged to have violated requirements contained in the Physical Therapy Practice Act. The Board states increased complaints could

result in an increase in the number of corresponding investigations that would need to be performed by Board staff and the number of disciplinary cases handled, which would proportionately increase related operational expenses. The Board cannot estimate the number of additional reports and complaints, so the possible increase in operational expenses cannot be determined at this time. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.