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HOUSE BILL 1398

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State of Washington

54th Legislature

1995 Regular Session

By Representatives Dyer, Dellwo, Backlund, Quall, Conway, Cody, Morris and Casada

Read first time 01/24/95. Referred to Committee on Health Care.

1 AN ACT Relating to acupuncture; amending RCW 4.24.240, 4.24.290,  
2 7.70.020, 18.06.010, 18.06.020, 18.06.045, 18.06.080, 18.06.090,  
3 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.190, 18.06.200, and  
4 18.120.020; and reenacting and amending RCW 18.130.040.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 4.24.240 and 1985 c 326 s 25 are each amended to read  
7 as follows:

8 (1)(a) A person licensed by this state to provide health care or  
9 related services, including, but not limited to, a ((certified))  
10 licensed acupuncturist, a physician, osteopathic physician, dentist,  
11 nurse, optometrist, ((podiatrist)) podiatric physician and surgeon,  
12 chiropractor, physical therapist, psychologist, pharmacist, optician,  
13 physician's assistant, osteopathic physician's assistant, nurse  
14 practitioner, including, in the event such person is deceased, his or  
15 her estate or personal representative;

16 (b) An employee or agent of a person described in subparagraph (a)  
17 of this subsection, acting in the course and scope of his or her  
18 employment, including, in the event such employee or agent is deceased,  
19 his or her estate or personal representative; or

1 (c) An entity, whether or not incorporated, facility, or  
2 institution employing one or more persons described in subparagraph (a)  
3 of this subsection, including, but not limited to, a hospital, clinic,  
4 health maintenance organization, or nursing home; or an officer,  
5 director, trustee, employee, or agent thereof acting in the course and  
6 scope of his or her employment, including in the event such officer,  
7 director, employee, or agent is deceased, his or her estate or personal  
8 representative;  
9 shall be immune from civil action for damages arising out of the good  
10 faith performance of their duties on such committees, where such  
11 actions are being brought by or on behalf of the person who is being  
12 evaluated.

13 (2) No member, employee, staff person, or investigator of a  
14 professional review committee shall be liable in a civil action as a  
15 result of acts or omissions made in good faith on behalf of the  
16 committee; nor shall any person be so liable for filing charges with or  
17 supplying information or testimony in good faith to any professional  
18 review committee; nor shall a member, employee, staff person, or  
19 investigator of a professional society, of a professional examining or  
20 licensing board, of a professional disciplinary board, of a governing  
21 board of any institution, or of any employer of professionals be so  
22 liable for good faith acts or omissions made in full or partial  
23 reliance on recommendations or decisions of a professional review  
24 committee or examining board.

25 **Sec. 2.** RCW 4.24.290 and 1994 1st sp.s. c 9 s 702 are each amended  
26 to read as follows:

27 In any civil action for damages based on professional negligence  
28 against a hospital which is licensed by the state of Washington or  
29 against the personnel of any such hospital, or against a member of the  
30 healing arts including, but not limited to, an acupuncturist  
31 (~~certified~~) licensed under chapter 18.06 RCW, a physician licensed  
32 under chapter 18.71 RCW, an osteopathic physician licensed under  
33 chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a  
34 dentist licensed under chapter 18.32 RCW, a podiatric physician and  
35 surgeon licensed under chapter 18.22 RCW, or a nurse licensed under  
36 chapter 18.-- RCW (sections 401 through 431, chapter 9, Laws of 1994  
37 1st sp. sess.), the plaintiff in order to prevail shall be required to  
38 prove by a preponderance of the evidence that the defendant or

1 defendants failed to exercise that degree of skill, care, and learning  
2 possessed at that time by other persons in the same profession, and  
3 that as a proximate result of such failure the plaintiff suffered  
4 damages, but in no event shall the provisions of this section apply to  
5 an action based on the failure to obtain the informed consent of a  
6 patient.

7 **Sec. 3.** RCW 7.70.020 and 1985 c 326 s 27 are each amended to read  
8 as follows:

9 As used in this chapter "health care provider" means either:

10 (1) A person licensed by this state to provide health care or  
11 related services, including, but not limited to, a (~~certified~~)  
12 licensed acupuncturist, a physician, osteopathic physician, dentist,  
13 nurse, optometrist, (~~podiatrist~~) podiatric physician and surgeon,  
14 chiropractor, physical therapist, psychologist, pharmacist, optician,  
15 physician's assistant, midwife, osteopathic physician's assistant,  
16 nurse practitioner, or physician's trained mobile intensive care  
17 paramedic, including, in the event such person is deceased, his or her  
18 estate or personal representative;

19 (2) An employee or agent of a person described in part (1) above,  
20 acting in the course and scope of his employment, including, in the  
21 event such employee or agent is deceased, his or her estate or personal  
22 representative; or

23 (3) An entity, whether or not incorporated, facility, or  
24 institution employing one or more persons described in part (1) above,  
25 including, but not limited to, a hospital, clinic, health maintenance  
26 organization, or nursing home; or an officer, director, employee, or  
27 agent thereof acting in the course and scope of his or her employment,  
28 including in the event such officer, director, employee, or agent is  
29 deceased, his or her estate or personal representative.

30 **Sec. 4.** RCW 18.06.010 and 1992 c 110 s 1 are each amended to read  
31 as follows:

32 The following terms in this chapter shall have the meanings set  
33 forth in this section unless the context clearly indicates otherwise:

34 (1) "Acupuncture" means a health care service based on ((a  
35 ~~traditional~~)) an Oriental system of medical theory utilizing Oriental  
36 diagnosis and treatment to promote health and treat organic or  
37 functional disorders by treating specific acupuncture points or

1 meridians. Acupuncture includes (~~but is not necessarily limited to~~)  
2 the following techniques:

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

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

7 (c) Moxibustion;

8 (d) Acupressure;

9 (e) Cupping;

10 (f) Dermal friction technique;

11 (g) Infra-red;

12 (h) Sonopuncture;

13 (i) Laserpuncture;

14 (j) (~~Dietary advice based on traditional Oriental medical theory;~~  
15 ~~and~~

16 ~~(k))~~ Point injection therapy (aquapuncture); and

17 (k) Dietary advice based on Oriental medical theory provided in  
18 conjunction with techniques under (a) through (j) of this subsection.

19 (2) "Acupuncturist" means a person (~~certified~~) licensed under  
20 this chapter.

21 (3) "Department" means the department of health.

22 (4) "Secretary" means the secretary of health or the secretary's  
23 designee.

24 **Sec. 5.** RCW 18.06.020 and 1991 c 3 s 5 are each amended to read as  
25 follows:

26 (1) No one may hold themselves out to the public as an  
27 acupuncturist or (~~certified~~) licensed acupuncturist or any derivative  
28 thereof which is intended to or is likely to lead the public to believe  
29 such a person is an acupuncturist or (~~certified~~) licensed  
30 acupuncturist unless (~~certified~~) licensed as provided for in this  
31 chapter.

32 (2) A person may not practice acupuncture if the person is not  
33 licensed under this chapter.

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

1       (~~(3)~~) (4) The secretary may by rule proscribe or regulate  
2 advertising and other forms of patient solicitation which are likely to  
3 mislead or deceive the public as to whether someone is (~~certified~~)  
4 licensed under this chapter.

5       **Sec. 6.** RCW 18.06.045 and 1992 c 110 s 2 are each amended to read  
6 as follows:

7       Nothing in this chapter shall be construed to prohibit or restrict:

8       (1) The practice (~~([by an individual] licensed, certified, or~~  
9 ~~registered)) by an individual credentialed under the laws of this state  
10 and performing services within such individual's authorized scope of  
11 practice. Health professions authorized to perform acupuncture under  
12 other chapters of state law may follow recommended guidelines developed  
13 by the acupuncture advisory committee to assist in determining the  
14 level of training sufficient to allow for the provision of safe  
15 acupuncture services;~~

16       (2) The practice by an individual employed by the government of the  
17 United States while engaged in the performance of duties prescribed by  
18 the laws of the United States;

19       (3) The practice by a person who is a regular student in an  
20 educational program approved by the secretary, and whose performance of  
21 services is pursuant to a regular course of instruction or assignments  
22 from an instructor and under the general supervision of the instructor;

23       (4) The practice of acupuncture by any person (~~licensed or~~  
24 ~~certified~~) credentialed to perform acupuncture in any other  
25 jurisdiction where such person is doing so in the course of regular  
26 instruction of a school of acupuncture approved by the secretary or in  
27 an educational seminar by a professional organization of acupuncture,  
28 provided that in the latter case, the practice is supervised directly  
29 by a person (~~certified pursuant to~~) licensed under this chapter or  
30 licensed under any other healing art whose scope of practice includes  
31 acupuncture.

32       **Sec. 7.** RCW 18.06.080 and 1994 1st sp.s. c 9 s 502 are each  
33 amended to read as follows:

34       (1) The secretary is hereby authorized and empowered to execute the  
35 provisions of this chapter and shall offer examinations in acupuncture  
36 at least twice a year at such times and places as the secretary may

1 select. The examination shall be a written examination and may include  
2 a practical examination.

3 (2) The secretary shall develop or approve a ((certification))  
4 licensure examination in the subjects that the secretary determines are  
5 within the scope of and commensurate with the work performed by  
6 ((certified)) licensed acupuncturists and shall include but not  
7 necessarily be limited to anatomy, physiology, microbiology,  
8 biochemistry, pathology, hygiene, and acupuncture. All application  
9 papers shall be deposited with the secretary and there retained for at  
10 least one year, when they may be destroyed.

11 (3) If the examination is successfully passed, the secretary shall  
12 confer on such candidate the title of ((Certified)) Licensed  
13 Acupuncturist.

14 (4) The secretary may appoint members of the profession to serve in  
15 an ad hoc advisory capacity to the secretary in carrying out this  
16 chapter. The members will serve for designated times and provide  
17 advice on matters specifically identified and requested by the  
18 secretary. The members shall be compensated in accordance with RCW  
19 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and  
20 43.03.060.

21 (5) The secretary, ad hoc committee members, or individuals acting  
22 in their behalf are immune from suit in a civil action based on any  
23 certification or disciplinary proceedings or other official acts  
24 performed in the course of their duties.

25 **Sec. 8.** RCW 18.06.090 and 1985 c 326 s 9 are each amended to read  
26 as follows:

27 Before ((certification)) licensure, each applicant shall  
28 demonstrate sufficient fluency in reading, speaking, and understanding  
29 the English language to enable the applicant to communicate with other  
30 health care providers and patients concerning health care problems and  
31 treatment.

32 **Sec. 9.** RCW 18.06.110 and 1991 c 3 s 11 are each amended to read  
33 as follows:

34 The uniform disciplinary act, chapter 18.130 RCW, governs  
35 uncertified practice, the issuance and denial of ((certificates))  
36 licenses, and the disciplining of ((certificate)) license holders under

1 this chapter. The secretary shall be the disciplining authority under  
2 this chapter.

3 **Sec. 10.** RCW 18.06.120 and 1992 c 110 s 4 are each amended to read  
4 as follows:

5 (1) Every person (~~certified~~) licensed in acupuncture shall  
6 register with the secretary annually and pay an annual renewal  
7 (~~registration~~) fee determined by the secretary as provided in RCW  
8 43.70.250 on or before the (~~certificate~~) license holder's birth  
9 anniversary date. The (~~certificate~~) license of the person shall be  
10 renewed for a period of one year or longer in the discretion of the  
11 secretary. A person whose practice is exclusively out-of-state or who  
12 is on sabbatical shall be granted an inactive (~~certification~~)  
13 licensure status and pay a reduced (~~registration~~) fee. The reduced  
14 fee shall be set by the secretary under RCW 43.70.250.

15 (2) Any failure to register and pay the annual renewal  
16 (~~registration~~) fee shall render the (~~certificate~~) license invalid.  
17 The (~~certificate~~) license shall be reinstated upon: (a) Written  
18 application to the secretary; (b) payment to the state of a penalty fee  
19 determined by the secretary as provided in RCW 43.70.250; and (c)  
20 payment to the state of all delinquent annual (~~certificate~~) license  
21 renewal fees.

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

29 (4) All fees collected under this section and RCW 18.06.070 shall  
30 be credited to the health professions account as required under RCW  
31 43.70.320.

32 **Sec. 11.** RCW 18.06.130 and 1991 c 3 s 13 are each amended to read  
33 as follows:

34 The secretary shall develop a form to be used by an acupuncturist  
35 to inform the patient of the acupuncturist's scope of practice and  
36 qualifications. All (~~certificate~~) license holders shall bring the

1 form to the attention of the patients in whatever manner the secretary,  
2 by rule, provides.

3 **Sec. 12.** RCW 18.06.140 and 1991 c 3 s 14 are each amended to read  
4 as follows:

5 Every (~~certified~~) licensed acupuncturist shall develop a written  
6 plan for consultation, emergency transfer, and referral to other health  
7 care practitioners operating within the scope of their authorized  
8 practices. The written plan shall be submitted with the initial  
9 application for (~~certification~~) licensure as well as annually  
10 thereafter with the (~~certificate~~) license renewal fee to the  
11 department. The department may withhold (~~certification~~) licensure or  
12 renewal of (~~certification~~) licensure if the plan fails to meet the  
13 standards contained in rules (~~promulgated~~) adopted by the secretary.

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

22 **Sec. 13.** RCW 18.06.190 and 1991 c 3 s 18 are each amended to read  
23 as follows:

24 The secretary may (~~certify~~) license a person without examination  
25 if such person is (~~licensed or certified~~) credentialed as an  
26 acupuncturist in another jurisdiction if, in the secretary's judgment,  
27 the requirements of that jurisdiction are equivalent to or greater than  
28 those of Washington state.

29 **Sec. 14.** RCW 18.06.200 and 1985 c 326 s 20 are each amended to  
30 read as follows:

31 Nothing in this chapter may be construed to require that individual  
32 or group policies or contracts of an insurance carrier, health care  
33 service contractor, or health maintenance organization provide benefits  
34 or coverage for services and supplies provided by a person (~~registered~~  
35 ~~or certified~~) licensed under this chapter.



1       **Sec. 15.** RCW 18.120.020 and 1994 1st sp.s. c 9 s 718 are each  
2 amended to read as follows:

3       The definitions contained in this section shall apply throughout  
4 this chapter unless the context clearly requires otherwise.

5       (1) "Applicant group" includes any health professional group or  
6 organization, any individual, or any other interested party which  
7 proposes that any health professional group not presently regulated be  
8 regulated or which proposes to substantially increase the scope of  
9 practice of the profession.

10       (2) "Certificate" and "certification" mean a voluntary process by  
11 which a statutory regulatory entity grants recognition to an individual  
12 who (a) has met certain prerequisite qualifications specified by that  
13 regulatory entity, and (b) may assume or use "certified" in the title  
14 or designation to perform prescribed health professional tasks.

15       (3) "Grandfather clause" means a provision in a regulatory statute  
16 applicable to practitioners actively engaged in the regulated health  
17 profession prior to the effective date of the regulatory statute which  
18 exempts the practitioners from meeting the prerequisite qualifications  
19 set forth in the regulatory statute to perform prescribed occupational  
20 tasks.

21       (4) "Health professions" means and includes the following health  
22 and health-related licensed or regulated professions and occupations:  
23 Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic  
24 under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW;  
25 dentistry under chapter 18.32 RCW; dispensing opticians under chapter  
26 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under  
27 chapter 18.36A RCW; embalming and funeral directing under chapter 18.39  
28 RCW; midwifery under chapter 18.50 RCW; nursing home administration  
29 under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW;  
30 ocularists under chapter 18.55 RCW; osteopathy and osteopathic medicine  
31 and surgery under chapters 18.57 and 18.57A RCW; pharmacy under  
32 chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A  
33 RCW; emergency medicine under chapter 18.73 RCW; physical therapy under  
34 chapter 18.74 RCW; practical nurses under chapter 18.-- RCW (sections  
35 401 through 431, chapter 9, Laws of 1994 1st sp. sess.); psychologists  
36 under chapter 18.83 RCW; registered nurses under chapter 18.-- RCW  
37 (sections 401 through 431, chapter 9, Laws of 1994 1st sp. sess.);  
38 occupational therapists licensed under chapter 18.59 RCW; respiratory  
39 care practitioners certified under chapter 18.89 RCW; veterinarians and

1 animal technicians under chapter 18.92 RCW; health care assistants  
2 under chapter 18.135 RCW; massage practitioners under chapter 18.108  
3 RCW; acupuncturists ((certified)) licensed under chapter 18.06 RCW;  
4 persons registered or certified under chapter 18.19 RCW; dietitians and  
5 nutritionists certified by chapter 18.138 RCW; radiologic technicians  
6 under chapter 18.84 RCW; and nursing assistants registered or certified  
7 under chapter 18.88A RCW.

8 (5) "Inspection" means the periodic examination of practitioners by  
9 a state agency in order to ascertain whether the practitioners'  
10 occupation is being carried out in a fashion consistent with the public  
11 health, safety, and welfare.

12 (6) "Legislative committees of reference" means the standing  
13 legislative committees designated by the respective rules committees of  
14 the senate and house of representatives to consider proposed  
15 legislation to regulate health professions not previously regulated.

16 (7) "License," "licensing," and "licensure" mean permission to  
17 engage in a health profession which would otherwise be unlawful in the  
18 state in the absence of the permission. A license is granted to those  
19 individuals who meet prerequisite qualifications to perform prescribed  
20 health professional tasks and for the use of a particular title.

21 (8) "Professional license" means an individual, nontransferable  
22 authorization to carry on a health activity based on qualifications  
23 which include: (a) Graduation from an accredited or approved program,  
24 and (b) acceptable performance on a qualifying examination or series of  
25 examinations.

26 (9) "Practitioner" means an individual who (a) has achieved  
27 knowledge and skill by practice, and (b) is actively engaged in a  
28 specified health profession.

29 (10) "Public member" means an individual who is not, and never was,  
30 a member of the health profession being regulated or the spouse of a  
31 member, or an individual who does not have and never has had a material  
32 financial interest in either the rendering of the health professional  
33 service being regulated or an activity directly related to the  
34 profession being regulated.

35 (11) "Registration" means the formal notification which, prior to  
36 rendering services, a practitioner shall submit to a state agency  
37 setting forth the name and address of the practitioner; the location,  
38 nature and operation of the health activity to be practiced; and, if

1 required by the regulatory entity, a description of the service to be  
2 provided.

3 (12) "Regulatory entity" means any board, commission, agency,  
4 division, or other unit or subunit of state government which regulates  
5 one or more professions, occupations, industries, businesses, or other  
6 endeavors in this state.

7 (13) "State agency" includes every state office, department, board,  
8 commission, regulatory entity, and agency of the state, and, where  
9 provided by law, programs and activities involving less than the full  
10 responsibility of a state agency.

11 **Sec. 16.** RCW 18.130.040 and 1994 1st sp.s. c 9 s 603 and 1994 c 17  
12 s 19 are each reenacted and amended to read as follows:

13 (1) This chapter applies only to the secretary and the boards and  
14 commissions having jurisdiction in relation to the professions licensed  
15 under the chapters specified in this section. This chapter does not  
16 apply to any business or profession not licensed under the chapters  
17 specified in this section.

18 (2)(a) The secretary has authority under this chapter in relation  
19 to the following professions:

20 (i) Dispensing opticians licensed under chapter 18.34 RCW;

21 (ii) Naturopaths licensed under chapter 18.36A RCW;

22 (iii) Midwives licensed under chapter 18.50 RCW;

23 (iv) Ocularists licensed under chapter 18.55 RCW;

24 (v) Massage operators and businesses licensed under chapter 18.108  
25 RCW;

26 (vi) Dental hygienists licensed under chapter 18.29 RCW;

27 (vii) Acupuncturists (~~certified~~) licensed under chapter 18.06  
28 RCW;

29 (viii) Radiologic technologists certified and x-ray technicians  
30 registered under chapter 18.84 RCW;

31 (ix) Respiratory care practitioners certified under chapter 18.89  
32 RCW;

33 (x) Persons registered or certified under chapter 18.19 RCW;

34 (xi) Persons registered as nursing pool operators under chapter  
35 18.52C RCW;

36 (xii) Nursing assistants registered or certified under chapter  
37 18.-- (sections 401 through 431, chapter 9, Laws of 1994 1st sp. sess.)  
38 RCW;

1 (xiii) Health care assistants certified under chapter 18.135 RCW;  
2 (xiv) Dietitians and nutritionists certified under chapter 18.138  
3 RCW;  
4 (xv) Sex offender treatment providers certified under chapter  
5 18.155 RCW; and  
6 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW  
7 18.71.205.  
8 (b) The boards and commissions having authority under this chapter  
9 are as follows:  
10 (i) The podiatric medical board as established in chapter 18.22  
11 RCW;  
12 (ii) The chiropractic quality assurance commission as established  
13 in chapter 18.25 RCW;  
14 (iii) The dental quality assurance commission as established in  
15 chapter 18.32 RCW;  
16 (iv) The board on fitting and dispensing of hearing aids as  
17 established in chapter 18.35 RCW;  
18 (v) The board of examiners for nursing home administrators as  
19 established in chapter 18.52 RCW;  
20 (vi) The optometry board as established in chapter 18.54 RCW  
21 governing licenses issued under chapter 18.53 RCW;  
22 (vii) The board of osteopathic medicine and surgery as established  
23 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
24 18.57A RCW;  
25 (viii) The board of pharmacy as established in chapter 18.64 RCW  
26 governing licenses issued under chapters 18.64 and 18.64A RCW;  
27 (ix) The medical quality assurance commission as established in  
28 chapter 18.71 RCW governing licenses and registrations issued under  
29 chapters 18.71 and 18.71A RCW;  
30 (x) The board of physical therapy as established in chapter 18.74  
31 RCW;  
32 (xi) The board of occupational therapy practice as established in  
33 chapter 18.59 RCW;  
34 (xii) The nursing care quality assurance commission as established  
35 in chapter 18.-- RCW (sections 401 through 431, chapter 9, Laws of 1994  
36 1st sp. sess.) governing licenses issued under that chapter;  
37 (xiii) The examining board of psychology and its disciplinary  
38 committee as established in chapter 18.83 RCW;

1 (xiv) The veterinary board of governors as established in chapter  
2 18.92 RCW.

3 (3) In addition to the authority to discipline license holders, the  
4 disciplining authority has the authority to grant or deny licenses  
5 based on the conditions and criteria established in this chapter and  
6 the chapters specified in subsection (2) of this section. This chapter  
7 also governs any investigation, hearing, or proceeding relating to  
8 denial of licensure or issuance of a license conditioned on the  
9 applicant's compliance with an order entered pursuant to RCW 18.130.160  
10 by the disciplining authority.

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