

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1102

By: Easley

AS INTRODUCED

An Act relating to professions and occupations; providing short title; defining terms; stating legislative intent; stating application of act to certain persons and practices; creating Oklahoma State Board of Acupuncture and Oriental Medicine; providing for appointment of members, qualifications, terms of office, vacancies, removal for cause, compensation, officers, meetings and quorum; requiring Board act in compliance with certain statutes; stating powers and duties; creating revolving fund for certain purposes; providing for income and expenditures; requiring licensure to practice acupuncture after certain date; noting exceptions; stating licensure requirements; stating requirements for acupuncture schools; authorizing Board to consider certain standards in establishing entrance and course standards for schools; stating subject matter of written and practical examinations; stating application requirements and requiring Board notification of time and place of examination; authorizing Board to set fees by rule; stating term of license and renewal requirements; authorizing Board to take certain disciplinary actions for certain purposes; stating conditions under which acupuncturist may perform acupuncture; requiring certain referral, evaluation, and proof of evaluation prior to beginning treatment; stating penalty for performing acupuncture without required evaluation; stating penalties; providing for civil action and injunctive relief; providing for licensure without examination and in lieu requirements for persons practicing acupuncture prior to certain date; making such licensees subject to renewal requirements; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.11 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Acupuncturist Licensing Act".

B. 1. In its concern with the need to eliminate the fundamental causes of illness and with the need to treat the whole person, the Legislature intends to establish, in the Acupuncturist Licensing Act, a framework for the practice of the art and science of acupuncture and oriental medicine.

2. The purpose of the Acupuncturist Licensing Act is to:

- a. encourage the effective utilization of the skills relative to practitioners of acupuncture and oriental medicine by citizens desiring their services,
- b. remove the existing legal constraints which unnecessarily hinder the effective provision of health care services, and
- c. subject individuals practicing acupuncture and oriental medicine to regulation and control as a primary health care profession.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.12 of Title 59, unless there is created a duplication in numbering, reads as follows:

As used in the Acupuncturist Licensing Act:

1. "Board" means the Oklahoma State Board of Acupuncture and Oriental Medicine;

2. "Acupuncture medicine practitioner means a practitioner licensed pursuant to the provisions of the Acupuncturist Licensing Act to practice acupuncture and oriental medicine in this state and includes the terms acupuncture medical doctor, acupuncture medical physician, doctor of oriental medicine, doctor of acupuncture, acupuncture doctor, acupuncture physician, acupuncture practitioner, licensed acupuncturist and acupuncturist;

3. "Acupuncture medicine" means the distinct system of primary health care that uses all diagnostic and treatment techniques of

acupuncture and oriental medicine, both traditional and modern, for the prevention or correction of any disease, illness, injury, pain or other condition;

4. "Techniques of acupuncture and oriental medicine", include, but are not limited to, acupuncture, moxibustion or heating modalities, cupping, magnets, ion pumping cords, cold laser, electro-acupuncture including electrodermal assessment, manual therapy (tui na), oriental massage, breathing and exercise techniques, the administration of herbal substances, meridian therapy, and the ordering of diagnostic imaging or laboratory testing;

5. "Acupuncture" means the insertion and manipulation of needles to the body, and the use of acupuncture and oriental medicine and other modalities and procedures at specific locations on the body, for the prevention, cure, or correction of any disease, illness, injury, pain, or other condition;

6. "Moxibustion" means the use of heat generated by the combustion of an herbal preparation composed wholly or in part of artemesia (moxa/mugwort) at specific locations on the body for the prevention, cure, or correction of any disease, illness, injury, pain, or other condition;

7. "Cupping" means the heating of air or mechanical creation of suction in a cup and application of the cup to specific locations on the body to induce local vasodilatation and mechanical expansion of underlying tissue;

8. "Ion pumping cords" means the application of wires containing diodes to acupuncture needles which have been placed on the body;

9. "Magnets" means the application of magnets to specific locations on the body;

10. "Cold laser" means the noninvasive application of devices known as "light amplification by stimulated emission of radiation by laser" to specific locations on the body;

11. "Electroacupuncture electrodermal assessment" means the use of electronic biofeedback and electrostimulation instruments;

12. "Manual therapy (tui na) and oriental massage" means manipulation of skeletal and soft tissues;

13. "Breathing and exercise techniques" means the use of qi gong and other techniques of therapeutic breathing and exercise;

14. "Administration of herbal and botanical substances" means the administration of herbs of animal, vegetable, or mineral origin for health maintenance and the treatment of effects of disease;

15. "Devices for meridian therapy" means all assessment and/or treatment devices for use with acupuncture meridians; and

16. "Diagnostic imaging or laboratory testing" means modern diagnostic methods, including, but not limited to, blood tests, urinalysis, x-ray, thermography, bone density scan, MRI, CT, and any other advanced imaging technique which may be required for the safe practice of acupuncture and oriental medicine.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.13 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Acupuncturist Licensing Act does not apply to a health care professional licensed under another statute of this state and acting within the scope of that license.

B. The Acupuncturist Licensing Act does not:

1. Limit the practice or permit the unauthorized practice of medicine and surgery, osteopathic medicine, podiatric medicine, or chiropractic; or

2. Permit a person to dispense, administer, or supply any controlled substance, narcotic, or dangerous drug, if the person is not otherwise authorized by law to do so.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.14 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created, to continue until November 1, 2007, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Acupuncture and Oriental Medicine. The Board, appointed by the Governor with the advice and consent of the Senate, shall be composed of five (5) members, of which three members shall be acupuncturists and two members shall be lay persons who are not acupuncturists and who are not licensed or trained in a health care profession.

2. The three acupuncturist members shall be certified by the National Commission for the Certification of Acupuncturists.

3. The two lay members shall represent the public and shall have documented experience or participation of at least three (3) years in civic or governmental operations.

B. No person who is required to register as a lobbyist under the laws of this state shall be eligible for appointment to the Board.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.15 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. Members of the Oklahoma State Board of Acupuncture and Oriental Medicine shall hold office, beginning November 1, 2003, for terms of four (4) years, except that members initially appointed to the Board shall be appointed for staggered terms, as determined by the Governor, which shall expire sequentially on October 31 of each year, beginning October 31, 2004. Initial members, at the time of their original appointment, shall meet certification requirements in lieu of licensure requirements.

2. Members shall serve until their terms expire and their successors are appointed and qualified. Any vacancy on the Board

shall be filled for the balance of an unexpired term by appointment of the Governor with the advice and consent of the Senate. Members may be removed from the Board by the Governor for incompetence, neglect of duty, or malfeasance in office.

B. Members of the Board shall serve without compensation but are entitled to be reimbursed for all actual and necessary expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

C. The Board shall elect a chair, vice-chair, and secretary-treasurer at its first meeting and annually thereafter. The Board shall hold regular meetings at least once every six (6) months at a time and place determined by the Board and may hold special meetings at the call of the chair. A majority of the Board shall constitute a quorum for the transaction of business.

D. The Board shall act in accordance with the Oklahoma Open Meeting Act, the Oklahoma Open Records Act, and the Administrative Procedures Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.16 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Board of Acupuncture and Oriental Medicine has the power and duty to:

1. Keep records and minutes necessary for the orderly conduct of business;
2. Maintain a list of currently licensed acupuncturists;
3. Promulgate rules as necessary to carry out the provisions of the Acupuncturist Licensing Act;
4. Enforce the laws of this state which relate to the practice of acupuncture and the conduct of the practitioners of acupuncture;
5. By rule, set fees for licensing and other services performed by the Board or its staff;

6. Administer an examination which has been validated by an independent testing professional association or organization to applicants for licensure to practice acupuncture;

7. Develop requirements for licensure by endorsement from jurisdictions outside this state;

8. Develop forms for application for licensure to practice acupuncture;

9. Issue a license to practice acupuncture in this state to persons who meet the requirements of the Acupuncturist Licensing Act and the rules promulgated pursuant thereto; and

10. By rule, establish standards for entrance requirements and courses of instruction for acceptable acupuncture schools and requirements for tutorial programs and for sources of continuing education programs.

B. The Board may:

1. Employ staff in accordance with the applicable laws of this state; and

2. Contract for services.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.17 of Title 59, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Oklahoma State Board of Acupuncture and Oriental Medicine to be designated the "Acupuncture Board Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies collected pursuant to the provisions of the Acupuncturist Licensing Act. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Board for implementation and enforcement of the Acupuncturist Licensing Act and rules promulgated pursuant thereto, except that ten percent (10%) of all revenue generated by the Board shall be deposited in the General Revenue Fund.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.18 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Except as provided in subsection B of this section, beginning January 1, 2004, no person shall practice acupuncture in this state without first obtaining a license from the Oklahoma State Board of Acupuncture and Oriental Medicine.

B. The following persons may practice acupuncture in this state without obtaining a license from the Board:

1. Any individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; and

2. A student, trainee, or visiting teacher so designated while participating in a course of study or training under the supervision of an acupuncturist licensed by the Board in a program approved by the Board.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.19 of Title 59, unless there is created a duplication in numbering, reads as follows:

An applicant for licensure to practice acupuncture shall meet the following requirements:

1. Have graduated from a course of training of at least one thousand eight hundred (1,800) hours, including three hundred (300) clinical hours, approved by the Oklahoma State Board of Acupuncture and Oriental Medicine or be a graduate of an acceptable acupuncture school whose entrance requirements and course of instruction meet standards set by rule of the Board;

2. Be at least twenty-one (21) years of age;

3. Have completed at least forty-eight (48) semester hours of college courses, including basic science courses approved by rule of the Board;

4. Be certified as having passed the Clean Needle Technique course, given by the National Council of Acupuncture Schools and Colleges and have completed a course acceptable to the Board on the subject of acquired immunodeficiency syndrome;

5. Have achieved a passing score of at least sixty-five percent (65%) on an examination that is given by the National Commission for the Certification of Acupuncturists or that is determined by the Board to be equivalent to the examination given by the National Commission for the Certification of Acupuncturists; and

6. Be of good moral character.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.20 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. To be an acceptable acupuncture school, the school must:

1. Maintain a resident course of instruction equivalent to not less than six terms of four (4) months each for a total of not less than one thousand eight hundred (1,800) instructional hours;

2. Provide supervised patient treatment for at least two terms of the resident course of instruction;

3. Maintain a course of instruction in anatomy, histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

4. Have the necessary teaching force and facilities as determined by the Board for proper instruction in required subjects.

B. In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the Oklahoma State Board of Acupuncture and Oriental Medicine may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.21 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. 1. The examination for licensure as an acupuncturist shall be conducted on practical and theoretical acupuncture and other related subjects as required by the Oklahoma State Board of Acupuncture and Oriental Medicine.

2. The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as the Board may require.

B. An application for examination must be:

1. In writing on a form prescribed by the Board;

2. Verified by affidavit;

3. Filed with the Board; and

4. Accompanied by a fee set by rule of the Board.

C. The Board shall notify all applicants of the time and place of the examination.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.22 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Board of Acupuncture and Oriental Medicine shall, by rule, set fees for acupuncture examinations, licensure, renewal of license, and related services in amounts that are reasonable and necessary to cover the costs of administering and enforcing the Acupuncturist Licensing Act.

B. 1. A license to practice acupuncture shall be valid for one (1) year.

2. The Board shall set dates for license renewal and, by rule, set a penalty fee for late renewal.

3. Each renewal application shall be accompanied by evidence of twenty-two (22) hours of continuing education from sources approved by the Board.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.23 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State Board of Acupuncture and Oriental Medicine may deny or, after notice and hearing, suspend, revoke or refuse to renew a license to practice acupuncture, on such terms and conditions as the Board may require, if the applicant for a license or the holder of a license:

1. Uses drugs or intoxicating liquors to an extent that affects the person's professional competence;

2. Obtains or attempts to obtain a license by fraud or deception;

3. Is adjudged mentally incompetent by a court of competent jurisdiction;

4. Practices acupuncture in a manner detrimental to the public health, safety, or welfare;

5. Violates provisions of the Acupuncturist Licensing Act or rules promulgated pursuant thereto;

6. Is convicted of a felony or a crime involving moral turpitude. Conviction in a trial court shall constitute a conviction for the purposes of the Acupuncturist Licensing Act regardless of the right to appeal; or

7. Holds himself or herself out as a physician unless the person is also licensed by the appropriate regulatory board as such.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.24 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An acupuncturist may perform acupuncture on a person who was referred by another licensed health care professional if the acupuncturist commences the treatment within thirty (30) days of the date of the referral. The acupuncturist shall refer the person to a physician after performing acupuncture 20 times or for thirty (30) days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

B. An acupuncturist shall obtain reasonable documentation that the person has been evaluated by a physician for the condition to be treated within six (6) months prior to the date acupuncture is to be performed. If the acupuncturist is unable to determine that an evaluation has taken place, the acupuncturist must obtain a written statement signed by the person on a form prescribed by the Oklahoma State Board of Acupuncture and Oriental Medicine that states that the person has been evaluated by a physician within the prescribed time frame. The form shall contain a clear statement that the person should be evaluated by a physician for the condition being treated by the acupuncturist.

C. A license to practice acupuncture shall be denied or, after notice and hearing, be revoked or not be renewed if the holder of a license has performed acupuncture on a person who was not evaluated by a physician for the condition being treated within six (6) months before the date acupuncture was performed.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.25 of Title 59, unless there is created a duplication in numbering, reads as follows:

Any violation of the provisions of the Acupuncturist Licensing Act shall constitute a misdemeanor and shall be punishable, upon conviction, by a fine of not more than Five Thousand Dollars (\$5,000.00) or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. Each day a violation continues shall constitute a separate offense.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.26 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Board of Acupuncture and Oriental Medicine, the Attorney General, or a district attorney may bring a civil action to compel compliance with this act or to enforce a rule promulgated pursuant to this act.

B. The Board shall have authority to file for injunctive relief in any district court of this state.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 170.27 of Title 59, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State Board of Acupuncture and Oriental Medicine shall establish appropriate and reasonable requirements which may be used in lieu of the requirements set forth in Section 9 of this act to determine those persons practicing acupuncture on or before the effective date of this act who are eligible for licensure without examination to practice acupuncture in this state. Persons who meet these requirements must apply for licensure without examination on or before June 1, 2004; provided, such licensees shall be subject to continuing education requirements and disciplinary actions set forth in the Acupuncturist Licensing Act.

SECTION 18. This act shall become effective November 1, 2003.

49-1-5143 KSM 01/09/03