

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 489

By: Bice

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5
6 AS INTRODUCED

7 An Act relating to the practice of acupuncture;
8 providing definitions; creating Acupuncture
9 Committee; providing jurisdiction of Committee;
10 providing for membership; providing standards for
11 membership; providing appointing authority; stating
12 that members shall receive no compensation; providing
13 certain reimbursement; providing powers and duties of
14 Committee; declaring certain acts unlawful; providing
15 standards for licensure; establishing certain fees;
16 providing for renewal of licenses; providing
17 continuing education requirements; providing
18 guidelines for renewal, suspension, and other
19 administrative actions relating to licenses;
20 requiring acupuncturists to perform certain acts;
21 prohibiting certain delegation of duties; requiring
22 maintenance of patient records; requiring notice to
23 patients in certain circumstances; providing
24 standards for acupuncture practice; providing grounds
for denial of licenses; providing penalties for
certain acts; 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 6002 of Title 59, unless there
is created a duplication in numbering, reads as follows:

A. As used in this act:

1 1. "Acupuncture" means a form of primary health care that
2 employs acupuncture diagnosis and treatment, as well as adjunctive
3 therapies and diagnostic techniques, for the promotion, maintenance,
4 and restoration of health and the prevention of disease.

5 Acupuncture shall include, but not be limited to, the insertion of
6 acupuncture needles and the application of moxibustion to specific
7 areas of the human body and the use of electro-acupuncture, Qi Gong,
8 oriental massage, herbal therapy, dietary guidelines, and other
9 adjunctive properties as defined by the State Board of Medical
10 Licensure and Supervision;

11 2. "Acupuncturist" means any person licensed as provided in
12 this act to practice acupuncture as a primary health care provider;

13 3. "Board" means the State Board of Medical Licensure and
14 Supervision;

15 4. "Committee" means the Acupuncture Committee;

16 5. "License" means the document of authorization issued by the
17 Board for a person to engage in the practice of acupuncture;

18 6. "Oriental medicine" means the use of acupuncture, electro-
19 acupuncture, Qi Gong, Guasha, oriental massage, herbal therapy,
20 dietary guidelines, and other adjunctive therapies; and

21 7. "Prescriptive rights" means the prescription, administration
22 and use of needles and devices, restricted devices, and prescription
23 devices used in the practice of acupuncture and oriental medicine.

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1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6003 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. There is hereby established an Acupuncture Committee to
5 assist the State Board of Medical Licensure and Supervision in
6 conducting examinations for applicants and to advise the Board on
7 all matters pertaining to the licensure, education, and continuing
8 education of acupuncturists and the practice of acupuncture.

9 B. The Acupuncture Committee shall consist of five (5) members
10 who shall be appointed by the State Board of Medical Licensure and
11 Supervision as follows:

12 1. Three members shall be acupuncturists licensed to practice
13 in this state; and

14 2. Two members shall be laypersons who are not and who have
15 never been acupuncturists or members of any closely related
16 profession.

17 C. Members of the Committee shall be appointed for terms of
18 four (4) years or for the remainder of an unexpired term of a
19 vacancy. Members shall serve at the pleasure of the appointing
20 authority. Vacancies on the Committee shall be filled by the Board
21 in the same manner as the original appointment.

22 D. Members of the Committee shall be not be compensated but may
23 be reimbursed for all actual and necessary expenses incurred in the
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1 performance of duties required by this act in accordance with the
2 provisions of the State Travel Reimbursement Act.

3 E. The Committee shall have the power and duty to:

4 1. Assist the Board in promulgating rules;

5 2. Assist in selecting and conducting examinations for
6 licensure, and in determining which applicants successfully pass
7 such examination;

8 3. Advise the Board on all matters pertaining to the licensure,
9 education, and continuing education requirements for and practice of
10 acupuncture in this state; and

11 4. Assist and advise in all hearings involving acupuncturists
12 who are deemed to be in violation of this act.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 6004 of Title 59, unless there
15 is created a duplication in numbering, reads as follows:

16 A. It shall be unlawful for any person to practice acupuncture
17 in this state without first obtaining a license from the State Board
18 of Medical Licensure and Supervision, unless such person is
19 currently enrolled in a Committee-approved course of study or is
20 otherwise exempted from this act.

21 B. Any person shall be eligible for licensure who:

22 1. Is a resident of this state;

23 2. Has successfully completed an approved apprenticeship,
24 tutorial program, or master's degree program meeting the standards

1 of the National Certification Commission for Acupuncture and
2 Oriental Medicine (NCCAOM);

3 3. Has submitted all documentation to verify the requirements
4 of paragraph 2 of this section to the Acupuncture Committee created
5 by section 2 of this act;

6 4. Has continuously practiced in this state since January 1,
7 2014, as witnessed by either:

8 a. photocopies of paychecks, paycheck stubs, Internal
9 Revenue Service (IRS) Forms W-2, 1099-Misc., or
10 Schedules C or C-EZ for IRS Form 1040 to verify proof
11 of income, or

12 b. notarized letters from five individuals other than
13 family members attesting to the applicant's continuous
14 practice;

15 5. Is at least twenty-one (21) years of age or older, has good
16 moral character, and has the ability to communicate in the English
17 language, demonstrated by having passed the national written
18 examination in English or, if such examination was satisfactorily
19 completed in a foreign language, by also having passed a nationally
20 recognized English proficiency examination; and

21 6. Pays the required fees set by the Board by rule, but not to
22 exceed the following amounts:

23 a. application fees shall not exceed Three Hundred
24 Dollars (\$300.00), and

1 b. initial biennial licensure fees shall not exceed Four
2 Hundred Dollars (\$400.00), provided applicants shall
3 be permitted to submit separate payments of Two
4 Hundred Dollars (\$200.00) in each half of the
5 biennium.

6 C. Notwithstanding the provisions of subsection B of this
7 section, any applicant shall be eligible for licensure who:

8 1. Is at least twenty-one (21) years of age or older, has good
9 moral character, and has the ability to communicate in the English
10 language, demonstrated by having passed the national written
11 examination in English or, if such examination was satisfactorily
12 completed in a foreign language, by also having passed a nationally
13 recognized English proficiency examination;

14 2. Has completed eighty (80) hours of college credits from an
15 accredited postsecondary institution as a prerequisite to enrollment
16 in a three-year course of study accredited and approved by the
17 Accreditation Commission for Acupuncture and Oriental Medicine
18 (ACAOM), and has completed a three-year course of study in
19 acupuncture and oriental medicine meeting the standards established
20 by the State Board of Medical Licensure and Supervision. Such
21 standards shall include, but not be limited to, successful
22 completion of academic courses in anatomy, physiology, pathology,
23 biomedical terminology, first aid, and cardiopulmonary resuscitation
24 (CPR); provided, however, any person enrolled in an authorized

1 course of study before January 1, 2000, shall only be required to
2 have completed a two-year course of study meeting the standards
3 established by the Board. Such standards shall include, but not be
4 limited to, successful completion of academic courses in anatomy,
5 physiology, and pathology;

6 3. Has acquired a passing score of at least seventy on the
7 NCCAOM Examinations for "Foundations of Oriental Medicine" and
8 "Acupuncture with Point Location" or has acquired a Diplomate of
9 Acupuncture or Diplomate of Oriental Medicine;

10 4. Submits proof of successful completion of a clean needle
11 technique course approved by the NCCAOM; provided, such proof shall
12 be sent by the course provider to the Board; and

13 5. Pays the required fees set by the Board by rule, but not to
14 exceed the following amounts:

15 a. application fees shall not exceed Three Hundred
16 Dollars (\$300.00), and

17 b. initial biennial licensure fees shall not exceed Four
18 Hundred Dollars (\$400.00), provided applicants shall
19 be permitted to submit separate payments of Two
20 Hundred Dollars (\$200.00) in each half of the
21 biennium.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 6005 of Title 59, unless there
24 is created a duplication in numbering, reads as follows:

1 A. The State Board of Medical Licensure and Supervision shall
2 renew a license upon receipt of the renewal application and the
3 required fee set by the Board; provided, such fee shall not exceed
4 Five Hundred Dollars (\$500.00).

5 B. The Board, in consultation with the Acupuncture Committee,
6 shall adopt rules establishing a procedure for the biennial renewal
7 of licenses.

8 C. The Board, in consultation with the Committee, shall by rule
9 prescribe continuing education requirements, not to exceed thirty
10 (30) hours biennially, as a condition for renewal of a license. All
11 education programs that contribute to the advancement, extension or
12 enhancement of professional skills and knowledge related to the
13 practice of acupuncture, whether conducted by a nonprofit or profit-
14 making entity, shall be eligible for approval. The continuing
15 professional education requirements must be in acupuncture or
16 oriental medicine subjects including, but not limited to, anatomy,
17 biological sciences, adjunctive therapies, sanitation and
18 sterilization, emergency protocols, and diseases.

19 D. The Board, in consultation with the Committee, shall have
20 the authority to set a fee, not to exceed One Hundred Dollars
21 (\$100.00), for each continuing education provider. The licensee
22 shall retain in his or her records the certificates of completion of
23 continuing professional education requirements to prove compliance
24 with this subsection. The Board may request such documentation

1 without cause from applicants who are selected at random. All
2 national and state acupuncture and oriental medicine organizations
3 and acupuncture and oriental medicine schools are approved to
4 provide continuing professional education in accordance with this
5 subsection. For the first year of licensure continuing education
6 hours shall not be required.

7 E. A license that has become inactive may be reactivated under
8 this section upon application to the Board. The Board, in
9 consultation with the Committee, shall prescribe by rule continuing
10 education requirements as a condition of reactivating a license.
11 The continuing education requirements for reactivating a license
12 must not exceed ten (10) classroom hours for each year the license
13 was inactive, in addition to completion of the number of hours
14 required for renewal on the date the license became inactive.

15 F. The Board, in consultation with the Committee, shall adopt
16 rules relating to application procedures for inactive status,
17 renewal of inactive licenses, and reactivation of licenses. The
18 Board shall prescribe by rule an application fee for inactive
19 status, a renewal fee for inactive status, a delinquency fee, and a
20 fee for the reactivation of a license. None of these fees may
21 exceed the biennial renewal fee established by the Board for an
22 active license.

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1 G. The Board shall not reactivate a license unless the inactive
2 or delinquent licensee has paid any applicable biennial renewal or
3 delinquency fee, or both, and a reactivation fee.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 6006 of Title 59, unless there
6 is created a duplication in numbering, reads as follows:

7 A. An acupuncturist licensed in this state shall:

8 1. Practice within the scope of education and training as
9 defined by this act;

10 2. Disclose the acupuncturist's legal name on all documentation
11 regarding the practice of acupuncture and advertisements;

12 3. When offering gratuitous services or discounts in connection
13 with acupuncture, the offer shall clearly and conspicuously state
14 whether or not additional charges may be incurred by related
15 services as well as the range of such additional charges;

16 4. Post the license at the place of work or provide the patient
17 documentation of licensure. For purposes of this paragraph,
18 "patient" means any individual from whom the practice of acupuncture
19 is performed;

20 5. Prior to performing initial acupuncture services, document
21 in writing patient assessment information. Written patient
22 assessment information shall include, but not be limited to, the
23 following:

24 a. purpose of the visit,

- b. presence and location of pain and any preexisting conditions,
- c. allergies or current medication used and for what purpose,
- d. if the patient is under the care of any health or mental health care professional,
- e. surgical history,
- f. signed consent for treatment and date signed, and
- g. information provided to the patient concerning fees and financial arrangements;

6. Update patient records at each session. Such updated patient record information shall include, but shall not be limited to, the following:

- a. changes or additions regarding patient assessment,
- b. date and type of acupuncture service provided, and
- c. the signature of the acupuncturist and when applicable the name of the detox technician or acupuncture trainee that provided the acupuncture service;

7. Provide current information concerning anticipated course of treatment;

8. Safeguard the maintenance, storage, and disposal of records of patients so that an unauthorized person shall not have access to patient records; and

1 9. Inform a patient regarding the limits of confidentiality
2 when providing services.

3 B. An acupuncturist shall not delegate acupuncture duties to a
4 person that is not qualified or licensed to perform acupuncture.

5 C. For the purpose of this act, but not necessarily for other
6 legal purposes, an acupuncturist shall maintain patient records for
7 a minimum of five (5) years after the date of service is rendered,
8 or not less than the time required by other applicable regulations,
9 if that time is longer than five (5) years.

10 D. If a licensed acupuncturist discontinues practice in this
11 state, the licensee shall notify the patient in writing at least
12 thirty (30) days in advance of discontinuing practice that the
13 patient records shall be made available to either the patient or
14 another licensed acupuncturist of the patient's choosing. The Board
15 may waive the thirty-day requirement if the licensee can make a
16 showing of good cause for failing to comply.

17 E. If services are to be provided by an acupuncturist trainee,
18 the patient shall be advised in advance.

19 F. Acupuncturists and acupuncturist trainees under the
20 supervision of a licensed acupuncturist shall follow the standards
21 for Clean Needle Technique (CNT) as published by the National
22 Acupuncture Foundation in effect at the time the acupuncture service
23 is performed, and shall follow universal precautions. For the
24 purpose of this subsection, "universal precautions" means an

1 approach to infection control as defined by the United States Center
2 for Disease Control and Prevention (CDC).

3 G. All acupuncture needles shall be disposed of immediately
4 after use and placed in a biohazard container as required by the
5 U.S. Department of Labor, Occupational Safety and Health
6 Administration (OSHA).

7 H. All acupuncture needles that are used must be sterile and
8 disposable, and each needle may be used only once. Specific
9 procedures of the protocol are outlined in the Clean Needle
10 Technique Manual published by the National Acupuncture Foundation.

11 I. After each patient, a chemical disinfectant shall be used on
12 all equipment that does not penetrate the skin, come into direct
13 contact with needles or is made of rubber or plastic. Chemical
14 disinfectants include, but are not limited to:

- 15 1. Chlorine-based agents, such as bleach;
- 16 2. Aqueous solution of two percent (2%) glutaraldehyde; and
- 17 3. Seventy percent (70%) ethyl or isopropyl alcohol.

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 6007 of Title 69, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The following acts shall constitute grounds for denial of a
22 license or disciplinary action to be determined by the State Board
23 of Medical Licensure, in consultation with the Acupuncture
24 Committee:

- 1 1. Demonstration of behavior that lacks integrity, objectivity,
2 and does not foster trust in the profession of acupuncture;
- 3 2. Failing to conduct business and activities relating to
4 acupuncture with honesty and integrity;
- 5 3. Failing to respect and protect the legal and personal rights
6 of the patient or client, including the right to informed consent,
7 refusal of treatment, and refraining from endangering patient
8 health, safety or welfare;
- 9 4. Participating in illegal or unethical acts, or concealing
10 illegal, unethical or incompetent acts of others;
- 11 5. Failing to comply with all state and federal laws and
12 regulations regarding the practice of acupuncture;
- 13 6. Failing to report suspected violations of the laws and
14 regulations governing the practice of acupuncture that are not
15 confidential and any other applicable state or federal laws and
16 rules. The acupuncturist shall cooperate with any investigation or
17 proceeding;
- 18 7. Attempting to obtain, obtaining or renewing a license to
19 practice acupuncture by bribery, by fraudulent misrepresentations or
20 through an error of the Board;
- 21 8. Having a license to practice acupuncture revoked, suspended
22 or otherwise acted against, including the denial of licensure, by
23 the licensing authority of another state, territory or country;
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1 9. Being convicted or found guilty, regardless of adjudication,
2 in any jurisdiction of a crime which directly relates to the
3 practice of acupuncture or to the ability to practice acupuncture.
4 Any plea of nolo contendere shall be considered a conviction for
5 purposes of this chapter;

6 10. False, deceptive or misleading advertising or advertising
7 which claims that acupuncture is useful in curing any disease;

8 11. Encouraging unnecessary or unjustified acupuncture
9 services;

10 12. Engaging in any verbally or physically abusive behavior
11 with a patient/client;

12 13. Exploiting a patient or trainee for the purpose of
13 financial gain. For the purpose of this subsection, "exploitation"
14 shall be defined as any relationship between the acupuncturist,
15 patient/client or trainee that may cause harm to the patient/client;

16 14. Accepting gifts or benefits intended to influence a
17 referral, decision or treatment that are primarily for personal
18 gain;

19 15. Engaging in or exercising influence concerning sexual
20 activity with a patient or during an ongoing professional
21 relationship with such person or within six (6) months after
22 termination of such professional relationship. A patient shall be
23 presumed to be incapable of giving free, full, and informed consent
24 to sexual activity with his or her acupuncturist;

- 1 16. Failing to keep written medical records justifying the
2 course of treatment of the patient;
- 3 17. Making deceptive, untrue or fraudulent representations in
4 the practice of acupuncture or employing a trick or scheme in the
5 practice of acupuncture when such scheme or trick fails to conform
6 to the generally prevailing standards of treatment in the community;
- 7 18. Aiding, assisting, procuring, employing or advising any
8 unlicensed person to practice acupuncture contrary to the provisions
9 of this act or to a rule of the Board;
- 10 19. Gross or repeated malpractice or the failure to practice
11 acupuncture with that level of care, skill, and treatment which is
12 recognized by a reasonably prudent similar acupuncturist as being
13 acceptable under similar conditions and circumstances;
- 14 20. Practicing or offering to practice beyond the scope
15 permitted by law or accepting and performing professional
16 responsibilities which the licensee knows or has reason to know that
17 he or she is not competent to perform;
- 18 21. Delegating professional responsibilities to a person when
19 the licensee delegating such responsibilities knows or has reason to
20 know that such person is not qualified by training, experience or
21 licensure to perform them;
- 22 22. Violating a lawful order of the board previously entered in
23 a disciplinary hearing or failing to comply with a lawfully issued
24 subpoena of the Board;

1 23. Conspiring with another to commit an act or committing an
2 act which would tend to coerce, intimidate or preclude another
3 licensee from lawfully advertising his or her services;

4 24. Fraud or deceit or gross negligence, incompetence or
5 misconduct in the operation of a course of study;

6 25. Failing to comply with state, county or municipal
7 regulations or reporting requirements relating to public health and
8 the control of contagious and infectious diseases;

9 26. Failing to comply with any rule of the board relating to
10 health and safety including, but not limited to, the sterilization
11 of needles and equipment and the disposal of potentially infectious
12 materials;

13 27. Advertising, practicing or attempting to practice under a
14 name other than one's own; and

15 28. Being unable to practice acupuncture with reasonable skill
16 and safety to patients by reason of illness or use of alcohol,
17 drugs, narcotics, chemicals or any other type of material or as a
18 result of any mental or physical condition.

19 B. When the Board finds any person guilty of any of the actions
20 set forth in this act, it may enter an order imposing one or more of
21 the following penalties:

22 1. Refusal to certify an application for licensure;

23 2. Revocation or suspension of a license;

24 3. Restriction of practice;

1 4. Imposition of an administrative fine not to exceed One
2 Thousand Dollars (\$1,000.00) for each count or separate offense;

3 5. Issuance of a reprimand; and

4 6. Placement of the acupuncturist on probation for a period of
5 time and subject to such conditions as the board may specify.

6 C. The Board shall not reinstate the license of an
7 acupuncturist or cause a license to be issued to a person it has
8 deemed to be unqualified until such time as the board is satisfied
9 that he or she has complied with all the terms and conditions set
10 forth in the final order and that he or she is capable of safely
11 engaging in the practice of acupuncture.

12 SECTION 7. This act shall become effective November 1, 2015.

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