

1 *Be it enacted by the Legislature of the state of Utah:*

2 Section 1. Section **58-72-101** is amended to read:

3 **58-72-101. Title.**

4 This [act] chapter shall be known [and may be cited] as the "Acupuncture Licensing Act."

5 Section 2. Section **58-72-102** is amended to read:

6 **58-72-102. Acupuncture licensing -- Definitions.**

7 In addition to the definitions in Section 58-1-102, as used in this chapter:

8 [~~(1)~~] "~~Acupuncture~~" means the stimulation of a certain point or points on or near the surface
9 of the body by the insertion of needles to prevent or modify the perception of pain or to normalize
10 physiological functions, including pain control, for the treatment of certain diseases or
11 dysfunctions of the body, and includes the techniques of electroacupuncture, cupping, and
12 moxibustion.]

13 [~~(2)~~] (1) "Acupuncturist" means a person who has been licensed under this chapter to
14 practice acupuncture.

15 [~~(3)~~] (2) "Board" means the Acupuncture Licensing Board created in Section 58-72-201.

16 (3) "Moxibustion" means a heat therapy that uses the herb moxa to heat acupuncture points
17 of the body.

18 (4) "Practice of acupuncture" means the insertion of acupuncture needles and application
19 of moxibustion to specific areas of the human body based on traditional oriental medical diagnosis
20 and concepts as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture
21 may include:

22 (a) manual, mechanical, thermal, electrical, and electromagnetic treatments based on
23 traditional oriental medical diagnosis and concepts; and

24 (b) the recommendation of dietary guidelines and therapeutic exercise based on traditional
25 oriental medical diagnosis and concepts.

26 [~~(4)~~] (5) "Unprofessional conduct" is as defined in [Section] Sections 58-1-501 and
27 58-72-503, and as may be further defined by rule [includes:];

28 [~~(a)~~] performing, procuring, or agreeing to perform or procure, or advising, aiding in or
29 abetting, or offering to perform, procure, advise, aid in or abet a criminal abortion;]

30 [~~(b)~~] willfully betraying or disclosing a professional secret, or violating a privileged
31 communication, except:]

1 ~~[(i) as required by law; or]~~

2 ~~[(ii) to assist the division in fully and freely exchanging information concerning applicants~~
3 ~~or licenses with the licensing or disciplinary board of other states or foreign countries and~~
4 ~~professional associations;]~~

5 ~~[(c) fraudulently representing that an incurable disease can be cured, or that a curable~~
6 ~~disease, sickness, or injury can be cured in a stated time, or knowingly making any false statement~~
7 ~~in connection with the practice of acupuncture, except as the making of the statement may be~~
8 ~~necessary for accepted therapeutic reasons;]~~

9 ~~[(d) refusing to divulge to the division upon demand the means, methods, device, or~~
10 ~~instrumentality used in the treatment of a disease, injury, ailment, or infirmity;]~~

11 ~~[(e) practicing acupuncture as a partner, agent, or employee of, or in joint venture with any~~
12 ~~person who does not hold a license to practice acupuncture or medicine within this state;]~~

13 ~~[(f) using or administering to himself cocaine, opium, morphine, codeine, heroin, alpha~~
14 ~~eucaine, beta eucaine, chloralhydrate, or any of the salts, derivatives, or compounds of the~~
15 ~~foregoing substances or the using of paraldehyde or barbituric acid, or their salts, compounds or~~
16 ~~derivatives, or amphetamines, hallucinogens or related drugs, or controlled substances, or any~~
17 ~~narcotic or dangerous drug regulated by the statutes of this state or any alcoholic beverages to the~~
18 ~~extent, or in a manner, dangerous or injurious to the person holding the license under this chapter,~~
19 ~~or any other person or the public, or to the extent that its use impairs the ability of persons holding~~
20 ~~licenses to conduct with safety to the public the practice of acupuncture, or being convicted of a~~
21 ~~felony involving the use, consumption, or self-administration of any of the substances referred to~~
22 ~~in this section or any combination thereof;]~~

23 ~~[(g) knowingly selling, furnishing, giving away or administering directly or indirectly, or~~
24 ~~offering to sell, furnish, give away, or administer any of the drugs or compounds mentioned in~~
25 ~~Subsection (f) to a habitue or addict unless permitted by law; or]~~

26 ~~[(h) willfully and intentionally making any false statement in a report or claim form to a~~
27 ~~governmental agency or insurance company with the intent to secure payment not rightfully due.]~~

28 Section 3. Section **58-72-201** is amended to read:

29 **58-72-201. Acupuncture Licensing Board.**

30 (1) There is created an Acupuncture Licensing Board consisting of:

31 (a) two acupuncturists~~[-]~~;

- 1 **(b)** one physician with knowledge of and experience in acupuncture[-];
- 2 **(c)** one other licensed health care practitioner with knowledge of and experience in
- 3 acupuncture[-]; and
- 4 **(d)** one member from the general public.

5 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

6 (3) The duties and responsibilities of the board shall be in accordance with Sections
7 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent
8 rotating basis to:

9 **(a)** assist the division in reviewing complaints concerning the unlawful or unprofessional
10 conduct of a licensee; and

11 **(b)** advise the division in its investigation of these complaints.

12 **(4)** A board member who has, under Subsection (3), reviewed a complaint or advised in
13 its investigation may be disqualified from participating with the board when the board serves as
14 a presiding officer in an adjudicative proceeding concerning the complaint.

15 Section 4. Section **58-72-301** is repealed and reenacted to read:

16 **58-72-301. License required -- License classification.**

17 **(1)** A license is required to engage in the practice of acupuncture, except as specifically
18 provided in Section 58-1-307 or 58-72-304.

19 **(2)** The division shall issue to a person who qualifies under this chapter a license in the
20 classification of acupuncturist.

21 Section 5. Section **58-72-302** is repealed and reenacted to read:

22 **58-72-302. Qualification for licensure.**

23 Notwithstanding Section 58-1-302, all applicants for licensure as an acupuncturist shall:

24 **(1)** submit an application in a form prescribed by the division;

25 **(2)** pay a fee determined by the department under Section 63-38-3.2;

26 **(3)** be of good moral character;

27 **(4)** meet the requirements for current active certification in acupuncture under guidelines
28 established by the National Commission for the Certification of Acupuncturists (NCCA) as
29 demonstrated through a current certificate or other appropriate documentation;

30 **(5)** pass the examination required by the division by rule;

31 **(6)** be able to read, write, speak, understand, and be understood in the English language

1 as demonstrated by passing the Test of English as a Foreign Language, including the test for
2 speaking English and the test for writing English; and

3 (7) meet with the board, if requested, for the purpose of evaluating the applicant's
4 qualifications for licensure.

5 Section 6. Section **58-72-303** is repealed and reenacted to read:

6 **58-72-303. Terms of license -- Expiration -- Renewal.**

7 (1) Each license issued under this chapter shall be issued in accordance with a two-year
8 renewal cycle established by rule. A renewal period may be extended or shortened by as much as
9 one year to maintain established renewal cycles or to change an established renewal cycle.

10 (2) Each license automatically expires on the expiration date shown on the license unless
11 renewed by the licensee in accordance with Section 58-1-308.

12 Section 7. Section **58-72-304** is repealed and reenacted to read:

13 **58-72-304. Exceptions from licensure.**

14 In addition to the exemptions from licensure set forth in Section 58-1-307, the following
15 persons may engage in the practice of acupuncture subject to the stated circumstances and
16 limitations without being licensed under this chapter:

17 (1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon
18 under this title; and

19 (2) a commissioned physician or surgeon serving in the armed forces of the United States
20 or other federal agency.

21 Section 8. Section **58-72-401** is amended to read:

22 **58-72-401. Grounds for denial of license -- Disciplinary proceedings -- Resumption**
23 **of practice.**

24 [(1)] Grounds for refusal to issue a license to an applicant, for refusal to renew the license
25 of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue
26 a public or private reprimand to a licensee, and to issue cease and desist orders shall be in
27 accordance with Section 58-1-401.

28 [(2) The terms of revocation, suspension, or probation under this chapter may include the
29 following:]

30 [(a) suspending, limiting, or restricting the license to practice acupuncture for up to five
31 years, including limiting the practice of the person to, or excluding from the practice of the person,

1 one or more specific branches of acupuncture practice, including any limitation on practice;]

2 [(b) requiring the licensee to submit to care, counseling, or treatment by physicians
3 approved or designated by the board, as a condition for licensure;]

4 [(c) requiring the licensee to participate in a program of education prescribed by the board;
5 or]

6 [(d) requiring the licensee to practice under the direction of a physician or acupuncturist
7 designated by the board for a specified period of time.]

8 [(3) An acupuncturist whose license is suspended under Subsection 58-1-401(2) shall, at
9 reasonable intervals, be afforded the opportunity to demonstrate that he can resume the competent
10 practice of acupuncture with reasonable skill and safety to patients.]

11 Section 9. Section **58-72-501** is amended to read:

12 **58-72-501. Acupuncture licensee -- Restriction on titles used.**

13 (1) A person practicing as an acupuncturist may not display or in any way use any title,
14 words, or insignia in conjunction with his name or practice except the word "acupuncturist." When
15 used in conjunction with the person's practice the term "acupuncturist" shall be displayed next to
16 the name of the acupuncturist.

17 (2) An acupuncturist may not use the term "physician," "physician or surgeon," or "doctor"
18 in conjunction with his name or practice. "Doctor of acupuncture[;]" ["constitutional
19 acupuncturist,"] or "oriental medical doctor" may be used if the term is commensurate with the
20 degree in acupuncture received by the practitioner.

21 (3) Medical doctors who choose to practice acupuncture shall represent themselves as
22 medical doctors practicing acupuncture and not as acupuncturists.

23 Section 10. Section **58-72-503** is enacted to read:

24 **58-72-503. Unprofessional conduct.**

25 Unprofessional conduct includes keeping patient records in any language other than the
26 English language.

27 Section 11. Section **58-73-501** is amended to read:

28 **58-73-501. Unprofessional conduct.**

29 Unprofessional conduct is as defined in Section 58-1-501, as defined by division rule, and
30 also includes:

31 (1) engaging in practice as a chiropractic physician after electing to place his license on

- 1 inactive status, without having established with the board that he has initiated or completed
2 continuing education necessary to reinstate active status of his license;
- 3 (2) failing to complete required continuing professional education;
- 4 (3) violating any of the scope of practice standards set forth in Section 58-73-601;
- 5 (4) failing to maintain patient records in sufficient detail to clearly substantiate a diagnosis,
6 all treatment rendered to the patient in accordance with the recognized standard of chiropractic
7 care, and fees charged for professional services;
- 8 (5) refusing to divulge to the division on demand the means, methods, device, or
9 instrumentality used in the treatment of a disease, injury, ailment, or infirmity, unless that
10 information is protected by the physician-patient privilege of Utah and the patient has not waived
11 that privilege;
- 12 (6) refusing the division or its employees access to his office, instruments, laboratory
13 equipment, appliances, or supplies at reasonable times for purposes of inspection;
- 14 (7) fraudulently representing that curable disease, sickness, or injury can be cured in a
15 stated time, or knowingly making any false statement in connection with the practice of
16 chiropractic;
- 17 (8) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity
18 by a secret means, method, device, or instrumentality;
- 19 (9) willfully and intentionally making any false statement or entry in any chiropractic
20 office records or other chiropractic records or reports;
- 21 (10) knowingly engaging in billing practices which are abusive and represent charges
22 which are fraudulent or grossly excessive for services rendered;
- 23 (11) performing, procuring, or agreeing to procure or perform, or advising, aiding in or
24 abetting, or offering or attempting to procure or aid or abet in the procuring of a criminal abortion;
- 25 (12) willfully betraying or disclosing a professional confidence or violation of a privileged
26 communication, except:
- 27 (a) as required by law; or
- 28 (b) to assist the division by fully and freely exchanging information concerning applicants
29 or licensees with the licensing or disciplinary boards of other states or foreign countries, the Utah
30 chiropractic associations, their component societies, or chiropractic societies of other states,
31 countries, districts, territories, or foreign countries;

1 ~~[(13) knowingly selling, giving away, or directly or indirectly administering, or offering~~
2 ~~to sell, furnish, give away, or administer any of the drugs or compounds referred to in Subsection~~
3 ~~58-72-102(4)(f) to a known addict unless permitted by law;]~~

4 [(14)] (13) directly or indirectly giving or receiving any fee, commission, rebate, or other
5 compensation for professional services not actually rendered or supervised, but this subsection
6 does not preclude the legal relationships within lawful professional partnerships, corporations, or
7 associations; and

8 [(15)] (14) knowingly failing to transfer a copy of pertinent and necessary medical records
9 or a summary of them to another physician when requested to do so by the subject patient or his
10 designated representative.

11 Section 12. **Repealer.**

12 This act repeals:

13 Section **58-72-305, Exceptions from licensure.**

14 Section **58-72-402, Reissuance of license after revocation.**

15 Section **58-72-601, Acupuncture license not authorizing medical practice -- Insurance**
16 **payments.**

Legislative Review Note
as of 11-26-97 7:00 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel