

ACUPUNCTURE PRACTICE ACT AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig W. Buttars

This act modifies the Acupuncture Licensing Act and the Chiropractic Physician Practice Act by amending provisions governing the practice of acupuncture. The act prohibits the use of titles related to acupuncture by persons who are not licensed acupuncturists or otherwise exempt from licensure. The act requires that licensed physicians and surgeons meet certain standards in order to practice acupuncture. The act prohibits chiropractic physicians from practicing acupuncture unless also licensed as acupuncturists.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-72-102, as last amended by Chapter 26, Laws of Utah 1998

58-72-304, as repealed and reenacted by Chapter 26, Laws of Utah 1998

58-72-502, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-601, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-73-501, as last amended by Chapter 26, Laws of Utah 1998

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

Section 1. Section **58-72-102** is amended to read:

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

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

(1) "Acupuncturist" means a person who has been licensed under this chapter to practice acupuncture.

(2) "Board" means the Acupuncture Licensing Board created in Section 58-72-201.

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

(4) (a) "Practice of acupuncture" means the insertion of acupuncture needles and

28 application of moxibustion to specific areas of the human body based on traditional oriental
29 medical diagnosis and concepts as a primary mode of therapy. Adjunctive therapies within the
30 scope of acupuncture may include:

31 (i) manual, mechanical, thermal, electrical, and electromagnetic treatments based on
32 traditional oriental medical diagnosis and concepts; and

33 (ii) the recommendation of dietary guidelines and therapeutic exercise based on traditional
34 oriental medical diagnosis and concepts.

35 (b) "Practice of acupuncture" does not include:

36 (i) the manual manipulation or adjustment of the joints of the human body beyond the
37 elastic barrier; or

38 (ii) the "manipulation of the articulation of the spinal column" as defined in Section
39 58-73-102.

40 (5) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-72-502.

41 [~~5~~] (6) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-72-503, and
42 as may be further defined by rule.

43 Section 2. Section **58-72-304** is amended to read:

44 **58-72-304. Exceptions from licensure.**

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

48 (1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon
49 under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice
50 Act, if that individual meets the requirements for current active certification in acupuncture under
51 guidelines established by the National Commission for the Certification of Acupuncturists and
52 Oriental Medicine (NCCAOM) as demonstrated through a current certificate or other appropriate
53 documentation; and

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

56 Section 3. Section **58-72-502** is amended to read:

57 **58-72-502. Unlawful conduct -- Penalties.**

58 (1) "Unlawful conduct" includes using the terms "acupuncture," "acupuncturist," "licensed

59 acupuncturist," or any other title, designation, words, or abbreviation tending to indicate that the
60 person is an acupuncturist unless that person is:

61 (a) licensed under this chapter; or

62 (b) exempt from licensure under this chapter as provided in Section 58-1-307 or
63 58-72-304.

64 ~~[(1)]~~ (2) Any person who violates the unlawful conduct provision defined in Subsection
65 58-1-501(1)(a) is guilty of a third degree felony.

66 ~~[(2)]~~ (3) Any person who violates any of the unlawful conduct provisions defined in
67 Subsection (1) or Subsections 58-1-501(1)(b) through (1)(e) is guilty of a class A misdemeanor.

68 Section 4. Section **58-72-601** is amended to read:

69 **58-72-601. Acupuncture license not authorizing medical practice.**

70 Nothing in this chapter may be construed to permit the practice of medicine as defined in
71 Section 58-67-102 or the practice of osteopathic medicine as defined in Section 58-68-102 nor
72 ~~[require]~~ to allow direct payment from third party insurers ~~[directly to acupuncturists]~~ to any
73 practitioner not licensed under this chapter.

74 Section 5. Section **58-73-501** is amended to read:

75 **58-73-501. Unprofessional conduct.**

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

78 (1) engaging in practice as a chiropractic physician after electing to place his license on
79 inactive status, without having established with the board that he has initiated or completed
80 continuing education necessary to reinstate active status of his license;

81 (2) failing to complete required continuing professional education;

82 (3) violating any of the scope of practice standards set forth in Section 58-73-601;

83 (4) failing to maintain patient records in sufficient detail to clearly substantiate a diagnosis,
84 all treatment rendered to the patient in accordance with the recognized standard of chiropractic
85 care, and fees charged for professional services;

86 (5) refusing to divulge to the division on demand the means, methods, device, or
87 instrumentality used in the treatment of a disease, injury, ailment, or infirmity, unless that
88 information is protected by the physician-patient privilege of Utah and the patient has not waived
89 that privilege;

90 (6) refusing the division or its employees access to his office, instruments, laboratory
91 equipment, appliances, or supplies at reasonable times for purposes of inspection;

92 (7) fraudulently representing that curable disease, sickness, or injury can be cured in a
93 stated time, or knowingly making any false statement in connection with the practice of
94 chiropractic;

95 (8) offering, undertaking, or agreeing to cure or treat a disease, injury, ailment, or infirmity
96 by a secret means, method, device, or instrumentality;

97 (9) willfully and intentionally making any false statement or entry in any chiropractic
98 office records or other chiropractic records or reports;

99 (10) knowingly engaging in billing practices which are abusive and represent charges
100 which are fraudulent or grossly excessive for services rendered;

101 (11) performing, procuring, or agreeing to procure or perform, or advising, aiding in or
102 abetting, or offering or attempting to procure or aid or abet in the procuring of a criminal abortion;

103 (12) willfully betraying or disclosing a professional confidence or violation of a privileged
104 communication, except:

105 (a) as required by law; or

106 (b) to assist the division by fully and freely exchanging information concerning applicants
107 or licensees with the licensing or disciplinary boards of other states or foreign countries, the Utah
108 chiropractic associations, their component societies, or chiropractic societies of other states,
109 countries, districts, territories, or foreign countries;

110 (13) directly or indirectly giving or receiving any fee, commission, rebate, or other
111 compensation for professional services not actually rendered or supervised, but this subsection
112 does not preclude the legal relationships within lawful professional partnerships, corporations, or
113 associations; ~~and~~

114 (14) knowingly failing to transfer a copy of pertinent and necessary medical records or a
115 summary of them to another physician when requested to do so by the subject patient or his
116 designated representative[-]; and

117 (15) practicing acupuncture as defined in Section 58-72-102, unless that person is also
118 licensed under Title 58, Chapter 72, Acupuncture Licensing Act.

Legislative Review Note
as of 12-28-00 12:45 PM

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

Office of Legislative Research and General Counsel