LEGISLATIVE GENERAL COUNSEL
₵ Approved for Filing: RCL ₵
₵ 01-09-98 10:04 AM ₵

H.B. 57

ACUPUNCTURE PRACTICE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

AN ACT RELATING TO OCCUPATIONS AND PROFESSIONS; AMENDING DEFINITIONS; MODIFYING QUALIFICATIONS FOR LICENSURE; REQUIRING ENGLISH LANGUAGE PROFICIENCY; REPEALING CERTAIN SECTIONS; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

AMENDS:

58-72-101, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-102, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-201, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-401, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-501, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-73-501, as renumbered and amended by Chapter 253, Laws of Utah 1996

ENACTS:

58-72-503, Utah Code Annotated 1953

REPEALS AND REENACTS:

58-72-301, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-302, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-303, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-304, as renumbered and amended by Chapter 253, Laws of Utah 1996

REPEALS:

58-72-305, as renumbered and amended by Chapter 253, Laws of Utah 1996

58-72-402, 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~~] §

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

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

58-72-101. Title.

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

Section 2. 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) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body, and includes the techniques of electroacupuncture, cupping, and moxibustion.~~]

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

[~~(3)~~] (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) **Ĥ (a) ĥ** "Practice of acupuncture" means the insertion of acupuncture needles and application of moxibustion to specific areas of the human body based on traditional oriental medical diagnosis and concepts as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include:

Ĥ [~~(a)~~] (i) ĥ manual, mechanical, thermal, electrical, and electromagnetic treatments based on traditional oriental medical diagnosis and concepts; and

Ĥ [~~(b)~~] (ii) ĥ the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical diagnosis and concepts.

Ĥ (b) "PRACTICE OF ACUPUNCTURE" DOES NOT INCLUDE:

(i) THE MANUAL MANIPULATION OR ADJUSTMENT OF THE JOINTS OF THE HUMAN BODY BEYOND THE ELASTIC BARRIER; OR

(ii) THE "MANIPULATION OF THE ARTICULATION OF THE SPINAL COLUMN" AS DEFINED IN SECTION 58-73-102. ĥ

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

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

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

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

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

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

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

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

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

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

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

Ş [~~ĥ [~~] Section **3.** Section **58-72-201 is amended to read:**

58-72-201. Acupuncture Licensing Board.

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

(a) two acupuncturists[~~,~~] ; [~~]ĥ~~] ş

§ [~~h~~] § (b) one physician with knowledge of and experience in acupuncture[~~,~~] ;

(c) one other licensed health care practitioner with knowledge of and experience in acupuncture [~~,~~] ; and

(d) one member from the general public.

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

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

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

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

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

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

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

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

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

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

58-72-302. Qualification for licensure.

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

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

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

(3) be of good moral character;

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

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

(6) **§ ~~[be able to read, write, speak, understand, and be understood in the English language]~~**

ESTABLISH PROCEDURES, AS DEFINED BY RULE, WHICH SHALL ENABLE PATIENTS TO GIVE INFORMED CONSENT TO TREATMENT; AND §

Ş [~~as demonstrated~~ Ĥ [~~by passing the Test of English as a Foreign Language, including the test for speaking English and the test for writing English~~] IN ACCORDANCE WITH DIVISION RULE Ĥ ~~; and~~] ş

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

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

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

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

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

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

58-72-304. Exceptions from licensure.

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

(1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under **Ĥ [~~this title~~] CHAPTER 67, UTAH MEDICAL PRACTICE ACT, AND CHAPTER 68, UTAH OSTEOPATHIC MEDICAL PRACTICE ACT Ĥ** ; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58-72-503. Unprofessional conduct.

Unprofessional conduct includes **§ [~~keeping patient records in any language other than the~~]** **THE FAILURE TO TRANSMIT RECORDS IN THE ENGLISH LANGUAGE TO THE DIVISION, THE PATIENT'S PRACTITIONER, OR A THIRD PARTY INSURANCE PAYOR UPON REQUEST.** **[~~English language.~~] §**

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

58-73-501. Unprofessional conduct.

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

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

inactive status, without having established with the board that he has initiated or completed continuing education necessary to reinstate active status of his license;

(2) failing to complete required continuing professional education;

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

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

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

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

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

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

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

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

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

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

(a) as required by law; or

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

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

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

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

Section 12. **Repealer.**

This act repeals:

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

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

Ş [~~Section 58-72-601, Acupuncture license not authorizing medical practice -- Insurance payments.~~] ş

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