

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 981

Introduced by Hudkins, 21

Read first time January 5, 2000

Committee: Health and Human Services

A BILL

- 1 FOR AN ACT relating to acupuncture; to adopt the Acupuncture
- 2 Practice Act; and to provide a penalty.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known
2 and may be cited as the Acupuncture Practice Act.

3 Sec. 2. It is the purpose of the Acupuncture Practice
4 Act to promote the health, safety, and welfare of the people of the
5 State of Nebraska by establishing an orderly system of licensing
6 for acupuncture practitioners and to provide a valid and effective
7 means of establishing licensing requirements without undue
8 financial burden to the State of Nebraska.

9 Sec. 3. For purposes of the Acupuncture Practice Act:

10 (1) Acupuncture means the insertion, manipulation, and
11 removal of acupuncture needles and the application of manual,
12 mechanical, thermal, electrical, and electromagnetic treatment to
13 specific points or meridians on the human body for the promotion,
14 maintenance, and restoration of health and treatment of disease,
15 based on traditional and modern Oriental medical principles;

16 (2) Commission means the National Certification
17 Commission for Acupuncture and Oriental Medicine;

18 (3) Department means the Department of Health and Human
19 Services Regulation and Licensure; and

20 (4) Practice of acupuncture means the diagnosis or
21 treatment of any pain, illness, or human condition using
22 acupuncture and adjunctive therapies based on traditional and
23 modern Oriental medicine principles. For purposes of this
24 subdivision, adjunctive therapies include the use of moxibustion
25 and the recommendation of dietary guidelines, nutritional support,
26 and therapeutic exercises based on traditional and modern Oriental
27 medical principles.

28 Sec. 4. (1) No person shall engage in the practice of

1 acupuncture without a license issued pursuant to the Acupuncture
2 Practice Act. This restriction does not apply to:

3 (a) Any other health-care professional practicing within
4 the scope of his or her license;

5 (b) A student practicing acupuncture under the
6 supervision of a person licensed under the act as part of a course
7 of study approved by the department; or

8 (c) The practice of acupuncture by any person licensed or
9 certified to perform acupuncture in any other jurisdiction when
10 practicing in an educational seminar sponsored by a state-approved
11 acupuncture or Oriental medicine college or professional
12 organization if the practice is supervised directly by a person
13 licensed under the act.

14 (2) Violation of this section is a Class IV misdemeanor.

15 Sec. 5. (1) To receive a license to practice under the
16 Acupuncture Practice Act, a person shall apply to the department on
17 forms provided by the department. The application shall include
18 documentation indicating (a) that the applicant has current active
19 status as a diplomate in acupuncture of the commission or its
20 successor organization or current licensure as an acupuncture
21 practitioner in good standing in another state or the District of
22 Columbia, which state or district has standards for acupuncture
23 practice licensure no less stringent than those of the Acupuncture
24 Practice Act, and (b) successful completion of a
25 commission-approved Clean Needle Technique Course. The application
26 shall be accompanied by the fee established pursuant to section 10
27 of this act.

28 (2) The department shall waive the requirements of

1 subsection (1) of this section and grant a license to practice
2 acupuncture to a resident applicant, residing in this state on or
3 before the effective date of this act, who (a) presents evidence
4 satisfactory to the department no later than December 31, 2000, of
5 four years of practice of acupuncture at a minimum level of five
6 hundred patient visits on no less than one hundred patients within
7 each of four twelve-month periods and passage of the commission's
8 examination in acupuncture and (b) pays the fee required for
9 issuance of an initial license to practice acupuncture pursuant to
10 section 10 of this act.

11 Sec. 6. (1) An acupuncture practitioner who has received
12 a teaching position in a school of acupuncture in this state, who
13 has at least five years experience as an acupuncture practitioner,
14 and who has established to the satisfaction of the department that
15 he or she has the skills and training equivalent to those
16 established pursuant to section 5 of this act may be issued a
17 limited license as a visiting professor. Such license shall allow
18 the licensee to engage in the practice of acupuncture only to the
19 extent that such practice is incidental to and a necessary part of
20 the practitioner's duties as approved by the department in
21 connection with such teaching position.

22 (2) The initial limited license as a visiting professor
23 shall be granted for one year and may be renewed once for a period
24 of one year upon review and upon written request by the school in
25 which the visiting professor holds such teaching position.

26 (3) Every practitioner who is issued a limited license as
27 a visiting professor shall pay the fee for initial issuance of an
28 acupuncture license pursuant to section 10 of this act prior to

1 beginning practice. Thirty days before the end of the first year
2 such licensee shall submit a renewal form and renewal fee pursuant
3 to such section for the second year.

4 Sec. 7. (1) Each licensee under the Acupuncture Practice
5 Act shall advise each patient as to the importance of consulting
6 with a licensed physician regarding the patient's condition and
7 that acupuncture is not considered to be western medicine for the
8 purposes of treating illness, injury, and disease.

9 (2) The licensee shall keep on file with the patient's
10 records a form signed by the patient attesting to the patient's
11 notice of such advice.

12 Sec. 8. The department may, after due notice and an
13 opportunity for a hearing, deny, suspend, or revoke a license,
14 require remedial education, or issue a letter of reprimand, if an
15 applicant or licensee:

16 (1) Engages in false or fraudulent conduct which
17 demonstrates unfitness to engage in the practice of acupuncture,
18 including:

19 (a) Misrepresentation in connection with an application
20 for a license or an investigation by the department;

21 (b) Attempting to collect fees for services that were not
22 performed;

23 (c) False advertising, including guaranteeing that a cure
24 will result from an acupuncture treatment; or

25 (d) Dividing, or agreeing to divide, a fee for
26 acupuncture services with any person for referring the patient;

27 (2) Fails to exercise proper control over the licensee's
28 practice by:

1 (a) Aiding an unlicensed person in the practice of
2 acupuncture;

3 (b) Delegating professional responsibilities to a person
4 the licensee knows or should know is not qualified to perform such
5 responsibilities; or

6 (c) Failing to exercise proper control over unlicensed
7 personnel working with the licensee in the practice of acupuncture;

8 (3) Fails to maintain records in a proper manner by:

9 (a) Failing to keep written records describing the course
10 of treatment for each patient;

11 (b) Refusing to provide to a patient, upon request,
12 records that have been prepared for or paid for by the patient; or

13 (c) Revealing personally identifiable information about a
14 patient, without consent, unless otherwise allowed by law;

15 (4) Fails to exercise proper care for a patient,
16 including, but not limited to:

17 (a) Abandoning or neglecting a patient without making
18 reasonable arrangements for the continuation of care; or

19 (b) Exercising or attempting to exercise undue influence
20 within the practitioner-patient relationship by making sexual
21 advances or requests for sexual activity or making submission to
22 such conduct a condition of treatment;

23 (5) Displays evidence of habitual substance abuse or
24 mental impairment to such a degree as to interfere with the ability
25 to provide safe and effective treatment;

26 (6) Is convicted of or pleads guilty or nolo contendere
27 to any crime which demonstrates unfitness to engage in the practice
28 of acupuncture;

1 (7) Negligently fails to engage in the practice of
2 acupuncture with the level of skill recognized within the
3 profession as acceptable under the circumstances;

4 (8) Willfully violates any provision of the Acupuncture
5 Practice Act or any rule or regulation of the department pursuant
6 to the act; or

7 (9) Has had a license denied, suspended, or revoked in
8 another jurisdiction for any reason which would be grounds for such
9 action in this state.

10 Sec. 9. (1) A license issued under the Acupuncture
11 Practice Act shall be renewed biennially on or before October 31 of
12 every odd-numbered year. The biennial license renewal shall be
13 accomplished pursuant to rules and regulations of the department.

14 (2) On or before August 1 of each renewal year, the
15 department shall mail an application for renewal of license to each
16 licensee under the act. The applicant shall complete and return
17 the application to the department with the renewal fee established
18 by the department pursuant to section 10 of this act on or before
19 October 31 following the mailing of such notice. Upon receipt of
20 the application and fee, the department shall verify the accuracy
21 of the application and issue to the applicant a certificate of
22 renewal for the renewal period beginning November 1 following the
23 mailing of such notice.

24 (3) A licensee who wishes to have his or her license
25 lapse upon expiration shall give the department written notice to
26 that effect. The department shall notify the licensee in writing
27 of the acceptance or denial of the request to allow the license to
28 lapse. When the lapsed status becomes effective, the right to

1 practice acupuncture and to represent himself or herself as a
2 licensed acupuncture practitioner shall terminate. To restore the
3 license, the individual shall be required to meet the renewal
4 requirements in effect at the time he or she wishes to restore the
5 license and pay the renewal fee and an additional fee of fifty
6 dollars.

7 (4) A licensee who wishes to have his or her license
8 placed on inactive status upon expiration shall give the department
9 written notice to that effect. The department shall notify the
10 licensee in writing of the acceptance or denial of the request to
11 allow the license to be placed on inactive status. When the
12 license is placed on inactive status, the licensee shall not engage
13 in the practice of acupuncture. A license may remain on inactive
14 status for an indefinite period of time. In order to move a
15 license from inactive to active status, an individual shall meet
16 the renewal requirements in effect at the time he or she wishes to
17 regain active status and pay the renewal fee due at such time as
18 specified in section 10 of this act.

19 (5) Any licensee who fails to (a) notify the department
20 that he or she wishes his or her license to lapse or to be placed
21 on inactive status or (b) meet the renewal requirements, on or
22 before the date of expiration of his or her license shall be given
23 a second notice in the same manner as the first notice advising him
24 or her (i) of the failure to pay, (ii) that the license has
25 expired, (iii) that the department will suspend action for thirty
26 days following the date of expiration, (iv) that upon the receipt
27 of the renewal fee, together with the late fee provided in section
28 10 of this act, within that time, the license will be renewed, and

1 (v) that upon the failure to receive the amount then due and such
2 late fee in addition to the regular renewal fee, the license will
3 be placed on lapsed status.

4 Sec. 10. The department may charge fees not to exceed:

5 (1) One hundred fifty dollars for an application for a
6 license to engage in the practice of acupuncture;

7 (2) Three hundred fifty dollars for the issuance of an
8 initial license;

9 (3) Three hundred fifty dollars for renewal of a license;
10 and

11 (4) Fifty dollars as a late fee for late renewal of a
12 license.

13 Sec. 11. (1) The titles "Licensed Acupuncturist" and
14 "Acupuncturist" may only be used by persons licensed under the
15 Acupuncture Practice Act.

16 (2) Possession of a license under the act does not by
17 itself entitle a person to identify himself or herself as a doctor
18 or physician.

19 (3) A person licensed to engage in the practice of
20 acupuncture pursuant to the act shall post the license in a
21 conspicuous location at the practitioner's place of practice.

22 Sec. 12. The Acupuncture Practice Act shall not be
23 construed to require direct third-party reimbursement to persons
24 licensed under the act.

25 Sec. 13. The department may:

26 (1) Issue, suspend, and revoke licenses, collect fees,
27 investigate violations of the Acupuncture Practice Act, and
28 otherwise administer the act;

1 (2) Issue advisory opinions interpreting the act;

2 (3) Sue to enjoin violations of the act. An injunction
3 may be issued even though no person has yet been injured as a
4 result of the unauthorized practice;

5 (4) Employ such personnel as may be needed to carry out
6 the act; and

7 (5) Expend money from the Acupuncture Licensure Fund as
8 necessary to carry out the act.

9 Sec. 14. The Acupuncture Licensure Fund is created. All
10 money collected pursuant to the Acupuncture Practice Act shall be
11 remitted to the State Treasurer for credit to the fund. Money in
12 the fund shall be used to carry out the act. Any money in the fund
13 available for investment shall be invested by the state investment
14 officer pursuant to the Nebraska Capital Expansion Act and the
15 Nebraska State Funds Investment Act.

16 Sec. 15. The department shall adopt and promulgate rules
17 and regulations to carry out the Acupuncture Practice Act.