2019 -- S 0215
LC001123
STATE OF RHODE ISLAND
IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2019

A N ACT
RELATING TO BUSINESSES AND PROFESSIONS - THE HEALING ART OF ACUPUNCTURE AND ORIENTAL MEDICINE - NEW TITLE

Introduced By: Senator Joshua Miller
Date Introduced: January 31, 2019
Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

SECTION 1. The title of Chapter 5-37.2 of the General Laws entitled "The Healing Art of Acupuncture and Oriental Medicine" is hereby amended to read as follows:

CHAPTER 5-37.2
The Healing Art of Acupuncture and Oriental Medicine

CHAPTER 5-37.2
THE HEALING ART OF ACUPUNCTURE AND EAST ASIAN MEDICINE

SECTION 2. Sections 5-37.2-1, 5-37.2-1.1, 5-37.2-2, 5-37.2-7, 5-37.2-8.1, 5-37.2-9, 5-37.2-10, 5-37.2-12, 5-37.2-12.1, 5-37.2-12.2, 5-37.2-12.3, 5-37.2-14, 5-37.2-15, 5-37.2-18, 5-37.2-19, 5-37.2-20 and 5-37.2-21 of the General Laws in Chapter 5-37.2 entitled "The Healing Art of Acupuncture and Oriental Medicine" are hereby amended to read as follows:

5-37.2-1. Legislative declaration -- Acupuncture and Oriental Medicine.

The practice of the healing art of acupuncture and Oriental East Asian medicine, and any branch of acupuncture and Oriental East Asian medicine, is declared to be a learned profession, affecting public safety and welfare and charged with the public interest, and subject to protection and regulation by the state.

5-37.2-1.1. Board of acupuncture and Oriental medicine, Board of acupuncture and East Asian medicine.

(a) The director of the department shall appoint a board of acupuncture and Oriental East
Asian medicine. The board shall consist of five (5) members, all of whom shall be residents of the state, four (4) of whom shall be doctors of acupuncture and Oriental East Asian medicine licensed by the department and engaged in the practice of acupuncture and Oriental East Asian medicine in the state for at least five (5) years prior to their appointment, and there shall be one public member. The members shall be appointed for terms of three (3) years; each member may serve a maximum of two (2) consecutive, full terms. No member of the board of acupuncture and Oriental East Asian medicine shall receive compensation for his or her attendance at meetings of the board.

(b) The director of health may remove any member from the board for neglect of any duty required by law or for any incompetency, unprofessional, or dishonorable conduct. Vacancies created by voluntary resignation or removal by the director of health shall be filled in the same manner as the original appointment was made for the remainder of the term.

5-37.2-2, Definitions.

Unless the context otherwise requires, the words, phrases, and derivatives employed in this chapter have the meanings ascribed to them in this section:

(1) "Acupuncture" means the insertion of needles into the human body by piercing the skin of the body, for the purpose of controlling and regulating the flow of energy and blood in the body.

(2) "Acupuncture and East Asian medicine" means a form of health care, with a foundation in classical Chinese medical concepts and theory, that employs Chinese medical diagnostic methods such as pulse, tongue, palpatory and observational diagnosis, acupuncture and adjunct therapies for the promotion, maintenance or restoration of health, and the treatment or prevention of any ailment. The techniques and modalities of acupuncture and East Asian medicine may include acupuncture, electro-acupuncture, laser acupuncture, moxibustion (heat therapy), cupping, TDP and infrared lamps, Tuina, Qi Gong, Gwa/sha, Chinese herbal medicine, homeopathy and supplemental therapy, Chinese dietary therapy, breathing exercises, and lifestyle changing consultations.

(3) "Auricular acupuncture technician" means a qualified individual, not licensed as an acupuncturist, who is certified to practice auricular acupuncture using a standardized protocol developed by the National Acupuncture Detox Association (NADA) for the treatment of addictions, mental and behavioral health, disaster relief, and emotional trauma. Auricular acupuncture specialist training is that which is based on the program developed by NADA, and is delivered by NADA, or equivalent.

(4) "Department" means the state department of health.
(24)(5) "Doctor of Acupuncture and Oriental East Asian Medicine" means a person licensed under the provisions of this chapter to practice the art of healing known as acupuncture and Oriental East Asian medicine.

(4) "Oriental medicine" means a form of health care, based on classical Chinese medical concepts and modern Oriental medical techniques, that employs Chinese medical diagnosis such as pulse, tongue, palpatory, and observational diagnosis, as well as acupuncture therapies and diagnostic techniques based on newer scientific models for the assessment, treatment, prevention, and cure of any disease with the purpose of full health restoration. The techniques and modalities of Oriental medicine include acupuncture, electro-acupuncture, laser acupuncture, moxibustion (heat therapy), cupping, TDP and infrared lamps, Tuina, Qi Gong, Gwa/sha, thermography, herbal GMP standardized therapy, homeopathy, and supplement therapy, Chinese dieting therapy, breathing exercises, and lifestyle change consultations.

(6) "Doctor of Acupuncture" means a person licensed under the provisions of this chapter to practice the art of healing known as acupuncture.

(7) "General Supervision" includes, but is not limited to being available by phone or other electronic means during business hours.

(8) "Qualified individual" means a licensed health care professional, recovery coach, peer counselor, or a person trained and certified in acudetox. A qualified individual is required to be under general supervision of a licensed acupuncturist.

5-37.2-7. Powers of department.

For the purpose of conducting its responsibilities under this chapter, the department shall:

(1) Engage persons of established reputation and known ability in acupuncture and Oriental East Asian medicine as consultants to the department; the Rhode Island Society of Acupuncture and Oriental Medicine and any other professional association of acupuncture and Oriental East Asian medicine are designated as appropriate bodies with which the department shall consult for referral of consultants and other assistance to the department.

(2) Maintain an office in the state to carry out the provisions of this chapter;

(3) Promulgate rules and regulations, or either of them, not inconsistent with the provisions of this chapter. These rules and regulations may include a code of ethics regulating the professional conduct of licensees; and

(4) Compel the attendance of witnesses and the production of evidence by subpoena and administer oaths.

5-37.2-8.1. License required.

(a) Unless licensed as a doctor of acupuncture and Oriental East Asian medicine under
this chapter, or exempt from licensure under the provisions of this chapter, no person shall practice or hold himself or herself out as practicing, or engaging in the practice of, acupuncture and Oriental East Asian medicine, either for compensation or gratuitously.

(b) This chapter shall not be construed to make unlawful the activities of persons involved in research performed under the auspices of a federal- or state-regulated research institution.

5-37.2-9. Special licensing.

(a) Upon application to the department prior to July 1, 1980, any person who has been an instructor in the art of acupuncture and Oriental or acupuncture and East Asian medicine at a domestic or foreign college or university satisfactory to the department for a period of two (2) years and who has had at least ten (10) years experience, shall be granted a license by the department as a doctor of acupuncture and Oriental or doctor of acupuncture and East Asian medicine without the necessity of taking an examination.

(b) An acupuncturist licensed to practice acupuncture in another jurisdiction may perform acupuncture and East Asian medicine while teaching or demonstrating or providing acupuncture in connection with teaching or participating in an educational seminar in Rhode Island. Any exemption under this subsection shall not exceed sixty (60) days cumulatively in a calendar year.

(c) An auricular acupuncture technician must be a qualified individual as defined in § 5-37.2-2. Any individual performing auricular acudetox shall not use the title "acupuncturist", "doctor of acupuncture" or "doctor of acupuncture and East Asian medicine", as defined in § 5-37.2-2, or otherwise represent himself or herself as an acupuncture professional, and shall not perform acupuncture outside of the scope of the auricular acudetox procedure. Applicants for an auricular acupuncture technician license shall submit to the department:

(i) A complete and legible application form;

(ii) Payment of the fees set by the board; and

(iii) Evidence of completion of NADA certification training or an equivalent training certificate.

(d) Nothing in this chapter is intended to limit, interfere with, or prevent a certified auricular acupuncture technician from practicing within the scope of their certification.

5-37.2-10. Application for licenses -- Fees.

An applicant for examination for a license to practice acupuncture and Oriental East Asian medicine or any branch of acupuncture and Oriental East Asian medicine shall:

(1) Submit an application to the department on forms provided by the department;

(2) Submit satisfactory evidence that he or she is twenty-one (21) years or older and
meets the appropriate education requirements;

(3) Pay a fee as set forth in § 23-1-54; and

(4) Pay any fees required by the department for an investigation of the applicant or for the services of a translator, if required, to enable the applicant to take the examination.

5-37.2-12. Issuance of licenses to practice acupuncture.

The department shall issue a license for the practice of acupuncture and Oriental East Asian medicine where the applicant meets the requirements of § 5-37.2-12.1 except as exempted.

5-37.2-12.1. Examination requirements and issuance of license.

(a) No person shall be licensed as a doctor of acupuncture and Oriental East Asian medicine unless he or she has passed the examination by the National Certification Commission for Acupuncture and Oriental Medicine or successor entity equivalent, and has completed herbal training according to competencies as set by Accreditation Commission for Acupuncture and Oriental Medicine, or demonstrated that they are qualified by training, experience, or certification.

(b) No person shall be licensed as a Doctor of Acupuncture unless they have passed the examination by the National Certification Commission for Acupuncture and Oriental Medicine or equivalent.

Before any applicant is eligible for licensure, he or she shall furnish satisfactory proof that he or she:

(1) Is a United States citizen or legal alien;

(2) Has demonstrated proficiency in the English language;

(3) Is at least twenty one (21) years of age;

(4) Is of good moral character;

(5) Has completed an accredited program of at least thirty-six (36) months and not less than twenty-five hundred (2,500) nineteen hundred (1,900) hours of training and has received a certificate or diploma from an institute approved by the Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine, or equivalent according to the provisions of this chapter; provided, that this subdivision does not apply to anyone licensed to practice under chapter 37 of this title who is qualified to take and pass the test by the National Commission for the Certification of Acupuncture and Oriental Medicine National Certification Commission for Acupuncture and Oriental Medicine, or equivalent;

(6) Has completed a clinical internship training that is designated as appropriate by the National Commission for the Certification of Acupuncture and Oriental Medicine Accreditation Commission for the Schools and Colleges of Acupuncture and Oriental Medicine; and
(7) Has three (3) two (2) letters of reference from reputable individuals other than relatives and at least two (2), one of which are is from a licensed or registered doctor of acupuncture and Oriental medicine or doctor of acupuncture and East Asian medicine.

5-37.2-12.2. Reciprocal licensing requirements.

The health department may, at its discretion, issue a license without examination to as a doctor of acupuncture or doctor of acupuncture and Oriental East Asian medicine to a person who has been licensed, certified, or formally legally recognized as an acupuncturist in any state or territory, if all three (3) of the following conditions are met to its satisfaction:

1. The applicant meets the requirements of practice in the state or territory in which the applicant is licensed, certified, or registered as an acupuncturist;
2. The requirements for practice in the state or territory in which the applicant is licensed, certified, or registered as an acupuncturist are at least as stringent as those of this state; and
3. The state or territory in which the applicant is licensed, certified, or legally recognized as an acupuncturist permits a practitioner licensed in this state to practice acupuncture and Oriental medicine in that jurisdiction.

5-37.2-12.3. Continuing education for acupuncture and Oriental medicine.

The health department shall establish, by regulation, mandatory continuing education requirements for a doctor of acupuncture and Oriental East Asian medicine licensed in this state, including, but not limited to, the following:

1. Each person licensed under this chapter, whether or not residing within this state, shall complete forty (40) hours of continuing education within each biennial renewal period, except during the initial annual renewal period.
2. Continuing education hours will be accepted by the department for course work that have been presented, accepted, or approved by a nationally recognized acupuncture and Oriental medicine organization or its local chapter, or any accredited school of acupuncture and Oriental medicine.
3. At the time of license renewal, each licensee is required to attest to the fact of having complied with the requirements in this section. Course descriptions, proof of attendance, or other documentation of completion is retained by the licensee for a minimum of three (3) years and is subject to random audit by the department. Failure to produce satisfactory documentation of completion upon request by the department constitutes grounds for disciplinary action under the provisions of this chapter.
(4) Each person not obtaining the required number of hours of continuing education may have his or her license renewed for just cause, as determined by the department, so long as the department requires that the deficient hours of continuing education, and all unpaid fees, are made up during the following renewal period in addition to the current continuing education requirements for the renewal period. If any doctor of acupuncture and Oriental East Asian medicine fails to make up the deficient hours and complete the subsequent renewal period, or fails to make up unpaid fees, then his or her license shall not be renewed until all fees are paid and all the required hours are completed and documented to the department.

5-37.2-14. Recordation and display of licenses -- Annual registration fee -- Penalties

for failure to pay fee.

(a) Every person holding a license authorizing him or her to practice acupuncture and Oriental East Asian medicine in this state shall record his or her license with the city or town hall in the city or town where his or her office and residence are located. Every licensee upon a change of residence or office shall have his or her certificate recorded in the same manner in the municipality to which he or she has changed.

(b) Every license shall be displayed in the office, place of business, or place of employment of the license holder.

(c) Every person holding a license shall pay to the department, on or before February 1 of each year, the annual registration fee required pursuant to department rules and regulation. If the holder of a license fails to pay the registration fee, his or her license shall be suspended. The license may be reinstated by payment of the required fee within ninety (90) days after February 1.

(d) A license that is suspended for more than three (3) months under the provisions of subsection (c) of this section may be canceled by the board after thirty (30) days notice to the holder of the license.

(e) [Deleted by P.L. 2007, ch. 73, art. 39, § 11.]

5-37.2-15. Suspension, revocation, or refusal of license -- Grounds.

The department may either refuse to issue or may suspend or revoke any license for any one or any combination of the following causes:

(1) Conviction of a felony, conviction of any offense involving moral turpitude, or conviction of a violation of any state or federal law regulating the possession, distribution or use of any controlled substance as defined in § 21-28-1.02, as shown by a certified copy of record of the court;

(2) The obtaining of, or any attempt to obtain, a license, or to practice in the profession for money or any other thing of value, by fraudulent misrepresentations;
(3) Gross malpractice;

(4) Advertising by means of knowingly false or deceptive statement;

(5) Advertising, practicing, or attempting to practice under a name other than one's own;

(6) Habitual drunkenness or habitual addiction to the use of a controlled substance as defined in § 21-28-1.02;

(7) Using any false, fraudulent, or forged statement or document, or engaging in any fraudulent, deceitful, dishonest, immoral practice in connection with the licensing requirement of this chapter;

(8) Sustaining a physical or mental disability that renders further practice dangerous;

(9) Engaging in any dishonorable, unethical, or unprofessional conduct that may deceive, defraud, or harm the public, or that is unbecoming a person licensed to practice under this chapter;

(10) Using any false or fraudulent statement in connection with the practice of acupuncture or any branch of acupuncture;

(11) Violating, or attempting to violate, or assisting or abetting the violation of, or conspiring to violate, any provision of this chapter;

(12) Being adjudicated incompetent or insane;

(13) Advertising in an unethical or unprofessional manner;

(14) Obtaining a fee or financial benefit for any person by the use of fraudulent diagnosis, therapy, or treatment;

(15) Willfully disclosing a privileged communication;

(16) Failure of a licensee to designate his or her school of practice in the professional use of his or her name by the term "doctor of acupuncture and Oriental East Asian medicine";

(17) Willful violation of the law relating to the health, safety, or welfare of the public, or of the rules and regulations promulgated by the state board of health;

(18) Administering, dispensing, or prescribing any controlled substance as defined in § 21-28-1.02, except for the prevention, alleviation, or cure of disease or for relief from suffering;

(19) Performing, assisting, or advising in the injection of any liquid silicone substance into the human body.


Doctors of acupuncture and Oriental East Asian medicine shall observe and be subject to all state and municipal regulations relative to reporting all births and deaths in all matters pertaining to the public health.
5-37.2-19. Seminars not in accordance with department regulations prohibited --

Penalty.

(a) No seminar concerning acupuncture and Oriental East Asian medicine may be conducted in this state except in accordance with regulations prescribed by the department for bona fide educational seminars.

(b) Any person who violates subsection (a) of this section is guilty of a misdemeanor.

5-37.2-20. Practice without a license a misdemeanor.

A person who represents himself or herself as a practitioner of acupuncture and Oriental East Asian medicine, or any branch of acupuncture and Oriental East Asian medicine, and who engages in the practice of acupuncture and Oriental East Asian medicine, or any branch of acupuncture and Oriental East Asian medicine, in this state without holding a valid license issued by the department is guilty of a misdemeanor.

5-37.2-21. Injunctive relief.

(a) The department may maintain in any court of competent jurisdiction a suit for an injunction against any person or persons practicing acupuncture and Oriental East Asian medicine, or any branch of acupuncture and Oriental East Asian medicine, without a license.

(b) This injunction:

(1) May be issued without proof of actual damage sustained by any person, this provision being understood to be a preventive as well as a punitive measure.

(2) Shall not relieve the person from criminal prosecution for practicing without a license.

SECTION 3. Chapter 5-37.2 of the General Laws entitled “The Healing Art of Acupuncture and Oriental Medicine” is hereby amended by adding thereto the following section:

5-37.2-24. Meaning of terms in existing laws.

When in any law, resolution, document, record, instrument, proceeding, or other place the words “Oriental medicine” as applied in this chapter, shall be construed to mean “East Asian medicine”.

SECTION 4. This act shall take effect upon passage.
This act would change the title of chapter 5-37.2 and throughout, replacing the words "Oriental medicine" with "East Asian medicine" and would allow individuals who are otherwise certified, to practice the art of acupuncture and East Asian medicine using Chinese medical diagnostic methods.

This act would take effect upon passage.