

2019 -- S 0215 SUBSTITUTE A

LC001123/SUB A/3

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - THE HEALING ART OF ACUPUNCTURE AND ORIENTAL MEDICINE

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:

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

3 ~~CHAPTER 37.2~~

4 ~~The Healing Art of Acupuncture and Oriental Medicine~~

5 CHAPTER 37.2

6 THE PRACTICE OF ACUPUNCTURE AND CHINESE MEDICINE

7 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-
8 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-
9 37.2-19, 5-37.2-20 and 5-37.2-21 of the General Laws in Chapter 5-37.2 entitled "The Healing
10 Art of Acupuncture and Oriental Medicine" are hereby amended to read as follows:

11 ~~5-37.2-1. Legislative declaration -- Acupuncture and Oriental Medicine. Legislative~~
12 ~~declaration -- Acupuncture and Chinese Medicine.~~

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

17 ~~5-37.2-1.1. Board of acupuncture and Oriental medicine. Board of acupuncture and~~
18 ~~Chinese medicine.~~

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

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

14 **5-37.2-2. Definitions.**

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

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

20 (2) "Acupuncture and Chinese medicine" means a form of health care, with a foundation
21 in classical and modern Chinese medical concepts and theory, that employs Chinese medical
22 diagnostic methods such as pulse, tongue, palpation and observational diagnosis, as well as
23 diagnostic techniques based on newer scientific models. "Acupuncture and Chinese medicine"
24 includes acupuncture and adjunct therapies for the promotion, maintenance, or restoration of
25 health, and the treatment, or prevention, of any ailment. The techniques and adjunct therapies of
26 "Acupuncture and Chinese medicine" may include acupuncture, electro-acupuncture, laser
27 acupuncture, moxibustion (heat therapy), cupping, TDP and infrared lamps, manual therapies
28 such as gua sha, cupping and tui na, corrective exercises such as Qi Gong, Chinese herbal
29 medicine, dietary therapy, breathing exercises, and life-style change consultations.

30 (3) "Auricular acudetox", also known as "5 Needle Protocol", "5NP", or "NADA
31 protocol" means a standardized point auricular acupuncture protocol, consisting of five (5) points:
32 Sympathetic, Shen Men, Liver, Kidney, and Lung, and was developed by the National
33 Acupuncture Detox Association (NADA) as an adjunct therapy for the treatment of addiction,
34 substance use disorder, mental and behavioral health, trauma, and for relief in disaster settings.

1 (4) "Auricular acupuncture technician (AAT)" means a qualified individual, as defined in
2 this section, with auricular acupuncture technician training based on the program developed by
3 NADA, and is delivered by NADA, or equivalent.

4 (5) "Chinese herbal medicine" means traditional combinations of raw, granular
5 preparations of herbs to produce formulas from Chinese herbal literature, the modification of
6 those traditional combinations, or the writing of new formulas to address individual symptom
7 presentations, through addition, deletion, substitution or change in dosages of ingredients and the
8 dispensing of these herbal preparations to patients, including in pill, tablet, capsule or liquid form.

9 ~~(2)~~(6) "Department" means the state department of health.

10 (7) "Doctor of acupuncture" means a person licensed under the provisions of this chapter
11 to practice acupuncture and Chinese medicine.

12 ~~(3)~~(8) "Doctor of Acupuncture and Oriental Chinese Medicine" means a person licensed
13 under the provisions of this chapter to practice the art of healing known as acupuncture and
14 Oriental Chinese medicine, and who has additional training, experience or certification to practice
15 Chinese herbal medicine.

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

25 (9) "General supervision" means, but is not limited to, availability by telephone or other
26 electronic means during business hours.

27 (10) "National Acupuncture Detoxification Association" or "NADA" means a not-for-
28 profit organization that provides a certificate of acudetox training.

29 (11) "Qualified individual" means a licensed physician, physician's assistant, nurse, nurse
30 practitioner, clinical social worker, mental health counselor, certified peer recovery specialist, or
31 certified alcohol or chemical dependency professional, trained and certified in auricular acudetox.
32 A qualified individual is required to be under general supervision of a licensed acupuncturist
33 pursuant to chapter 37.2 of this title.

34 **5-37.2-7. Powers of department.**

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

2 (1) Engage persons of established reputation and known ability in acupuncture ~~and~~ [or](#)
3 ~~Oriental~~ [Chinese](#) medicine as consultants to the department; the Rhode Island Society of
4 Acupuncture ~~and Oriental Medicine~~ and any other professional association of acupuncture ~~and~~ [or](#)
5 ~~Oriental~~ [Chinese](#) medicine are designated as appropriate bodies with which the department shall
6 consult for referral of consultants and other assistance to the department.

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

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

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

13 **5-37.2-8.1. License required.**

14 (a) Unless licensed as a doctor of acupuncture ~~and Oriental~~ [or Chinese](#) medicine under
15 this chapter, or exempt from licensure under the provisions of this chapter, no person shall
16 practice or hold himself or herself out as practicing, or engaging in the practice of, acupuncture
17 and ~~Oriental~~ [Chinese](#) medicine, either for compensation or gratuitously.

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

21 **5-37.2-9. Special licensing.**

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

28 (b) [An acupuncturist, licensed and in good standing to practice acupuncture in another](#)
29 [jurisdiction, may perform acupuncture or acupuncture and Chinese medicine while teaching or](#)
30 [demonstrating or providing acupuncture in connection with teaching or participating in an](#)
31 [educational seminar in Rhode Island.](#)

32 (c) [An auricular acupuncture technician, qualified and trained to perform 5NP, may](#)
33 [perform the procedure within that individual's current scope of practice; provided, that the](#)
34 [individual obtains a certificate of training from a recognized organization or agency that meets or](#)

1 exceeds NADA training.

2 (d) Acudetox may be performed by auricular acupuncture technicians working in, or in
3 collaboration with, behavioral health and health care agencies, or other state-approved programs
4 or agencies.

5 (e) Any complaints filed against an auricular acupuncture technician relating to the
6 performance of any 5NP procedure shall be handled by the licensing board or department in
7 conformance with the requirements of that individual's health care license or certification.

8 (f) Any individual performing 5NP shall not use the title "acupuncturist" or "doctor of
9 acupuncture" or "doctor of acupuncture and Chinese medicine," as defined in § 5-37.2-2, or
10 otherwise represent himself or herself as an acupuncture professional and shall not perform
11 acupuncture outside of the scope of the auricular acudetox procedure.

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

14 **5-37.2-10. Application for licenses -- Fees.**

15 An applicant for examination for a license to practice acupuncture and ~~Oriental~~ Chinese
16 medicine or any branch of acupuncture and ~~Oriental~~ Chinese medicine shall:

- 17 (1) Submit an application to the department on forms provided by the department;
18 (2) Submit satisfactory evidence that he or she is twenty-one (21) years or older and
19 meets the appropriate education requirements;
20 (3) Pay a fee as set forth in § 23-1-54; and
21 (4) Pay any fees required by the department for an investigation of the applicant or for the
22 services of a translator, if required, to enable the applicant to take the examination.

23 **5-37.2-12. Issuance of licenses to practice acupuncture.**

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

26 **5-37.2-12.1. Examination requirements and issuance of license.**

27 (a) No person shall be licensed as a doctor of acupuncture ~~and Oriental~~ or doctor of
28 acupuncture and Chinese medicine unless he or she has passed the examination by the National
29 Certification Commission for Acupuncture and Oriental Medicine or ~~successor entity~~ a
30 credentialing body approved by the department.

31 (b) Before any applicant is eligible for licensure, he or she shall furnish satisfactory proof
32 that he or she:

- 33 (1) Is a United States citizen or legal alien;
34 (2) Has demonstrated proficiency in the English language;

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

2 (4) Is of good moral character;

3 (5) Has completed an accredited program of ~~at least thirty six (36) months and not less~~
4 ~~than twenty five hundred (2,500)~~ one thousand nine hundred five (1,905) hours of training and
5 has received a certificate or diploma from an institute approved by the Accreditation Commission
6 for ~~Schools and Colleges of~~ Acupuncture and Oriental Medicine, or any accrediting body
7 approved by the department, according to the provisions of this chapter; provided, that this
8 subdivision does not apply to anyone licensed to practice under chapter 37 of this title who is
9 qualified to take and pass the test by the ~~National Commission for the Certification of~~
10 ~~Acupuncture and Oriental Medicine~~ National Certification Commission for Acupuncture and
11 Oriental Medicine, or any credentialing body meeting the standards for professional certification
12 programs approved by the department;

13 (6) Has completed a clinical internship training that is designated as appropriate by the
14 ~~National Commission for the Certification of Acupuncture and Oriental Medicine~~ Accreditation
15 Commission for the Schools and Colleges of Acupuncture and Oriental Medicine (ACAOM) or
16 any credentialing body meeting the standards for professional certification programs approved by
17 the department; and

18 (7) Has ~~three (3)~~ two (2) letters of reference from reputable individuals other than
19 relatives ~~and at least two (2)~~, one of which ~~are~~ is from a licensed or registered ~~doctors~~ doctor of
20 acupuncture ~~and Oriental medicine~~ or doctor of acupuncture and Chinese medicine.

21 (c) Additional certification for the practice of Chinese herbal medicine.

22 (1) A licensed acupuncturist is required to demonstrate that he or she is qualified by
23 training, experience or certification to practice Chinese herbal medicine. The department shall
24 adopt rules specifying the training required for licensed acupuncturists to obtain the certification
25 to practice Chinese herbal medicine.

26 (2) Licensees who obtained licensure prior to January 1, 2020, and employ herbal
27 therapy, including herbal formulations, and who submitted evidence of herbal training that the
28 department has determined was substantially equivalent or exceeded the ACAOM curricular
29 requirements regarding Chinese herbal medicine may continue to employ herbal therapy and may
30 be granted a doctor of acupuncture and Chinese medicine license by the department.

31 (3) A licensee who is licensed on or after January 1, 2020 and who completed an
32 ACAOM accredited or candidate status Oriental medicine program, or Traditional Chinese
33 medicine program, or who completed an herbal medicine program that the department determined
34 was substantially equivalent or exceeded the ACAOM curriculum requirements regarding herbal

1 medicine, or who has passed the Chinese herbal medicine examination by the National
2 Certification Commission for Acupuncture and Oriental Medicine or a credentialing body
3 approved the department, may continue to employ Chinese herbal medicine therapy, during the
4 course of treatment if the licensee has obtained department approval to employ herbal therapy,
5 and shall be granted a doctor of acupuncture and Chinese medicine license.

6 (d) All licensees pursuant to this chapter shall adhere to procedures that employ the use
7 of disposable, single-use, sterile needles, with proper handling and disposal, and that follow the
8 provisions of universal precautions.

9 **5-37.2-12.2. Reciprocal licensing requirements.**

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

14 (1) The applicant meets the requirements of practice in the state or territory in which the
15 applicant is licensed, certified, or registered as an acupuncturist; and

16 (2) The requirements for practice in the state or territory in which the applicant is
17 licensed, certified, or registered as an acupuncturist are at least as stringent as those of this state;
18 and

19 ~~(3) The state or territory in which the applicant is licensed, certified, or legally recognized~~
20 ~~as an acupuncturist permits a practitioner licensed in this state to practice acupuncture and~~
21 ~~Oriental medicine in that jurisdiction.~~

22 **5-37.2-12.3. Continuing education for acupuncture and Oriental medicine.**

23 **Continuing education for acupuncture and Chinese medicine.**

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

27 (1) Each person licensed under this chapter, whether or not residing within this state,
28 shall complete forty (40) hours of continuing education within each biennial renewal period,
29 except during the initial annual renewal period.

30 (2) Continuing education hours will be accepted by the department for course work that
31 have been presented, accepted, or approved by a nationally recognized acupuncture and ~~Oriental~~
32 Chinese medicine organization or its local chapter, or any accredited school of acupuncture and
33 ~~Oriental~~ Chinese medicine.

34 (3) At the time of license renewal, each licensee is required to attest to the fact of having

1 complied with the requirements in this section. Course descriptions, proof of attendance, or other
2 documentation of completion is retained by the licensee for a minimum of three (3) years and is
3 subject to random audit by the department. Failure to produce satisfactory documentation of
4 completion upon request by the department constitutes grounds for disciplinary action under the
5 provisions of this chapter.

6 (4) Each person not obtaining the required number of hours of continuing education may
7 have his or her license renewed for just cause, as determined by the department, so long as the
8 department requires that the deficient hours of continuing education, and all unpaid fees, are
9 made up during the following renewal period in addition to the current continuing education
10 requirements for the renewal period. If any doctor of acupuncture ~~and Oriental~~ or doctor of
11 acupuncture and Chinese medicine fails to make up the deficient hours and complete the
12 subsequent renewal period, or fails to make up unpaid fees, then his or her license shall not be
13 renewed until all fees are paid and all the required hours are completed and documented to the
14 department.

15 **5-37.2-14. Recordation and display of licenses -- Annual registration fee -- Penalties**
16 **for failure to pay fee.**

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

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

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

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

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

32 **5-37.2-15. Suspension, revocation, or refusal of license -- Grounds.**

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

- 1 (1) Conviction of a felony, conviction of any offense involving moral turpitude, or
2 conviction of a violation of any state or federal law regulating the possession, distribution or use
3 of any controlled substance as defined in § 21-28-1.02, as shown by a certified copy of record of
4 the court;
- 5 (2) The obtaining of, or any attempt to obtain, a license, or to practice in the profession
6 for money or any other thing of value, by fraudulent misrepresentations;
- 7 (3) Gross malpractice;
- 8 (4) Advertising by means of knowingly false or deceptive statement;
- 9 (5) Advertising, practicing, or attempting to practice under a name other than one's own;
- 10 (6) Habitual drunkenness or habitual addiction to the use of a controlled substance as
11 defined in § 21-28-1.02;
- 12 (7) Using any false, fraudulent, or forged statement or document, or engaging in any
13 fraudulent, deceitful, dishonest, immoral practice in connection with the licensing requirement of
14 this chapter;
- 15 (8) Sustaining a physical or mental disability that renders further practice dangerous;
- 16 (9) Engaging in any dishonorable, unethical, or unprofessional conduct that may deceive,
17 defraud, or harm the public, or that is unbecoming a person licensed to practice under this
18 chapter;
- 19 (10) Using any false or fraudulent statement in connection with the practice of
20 acupuncture or any branch of acupuncture;
- 21 (11) Violating, or attempting to violate, or assisting or abetting the violation of, or
22 conspiring to violate, any provision of this chapter;
- 23 (12) Being adjudicated incompetent or insane;
- 24 (13) Advertising in an unethical or unprofessional manner;
- 25 (14) Obtaining a fee or financial benefit for any person by the use of fraudulent diagnosis,
26 therapy, or treatment;
- 27 (15) Willfully disclosing a privileged communication;
- 28 (16) Failure of a licensee to designate his or her school of practice in the professional use
29 of his or her name by the term "doctor of acupuncture and ~~Oriental~~ Chinese medicine";
- 30 (17) Willful violation of the law relating to the health, safety, or welfare of the public, or
31 of the rules and regulations promulgated by the state board of health;
- 32 (18) Administering, dispensing, or prescribing any controlled substance as defined in §
33 21-28-1.02, except for the prevention, alleviation, or cure of disease or for relief from suffering;
34 and

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

3 **5-37.2-18. Reporting vital statistics.**

4 Doctors of acupuncture and ~~Oriental~~ Chinese medicine shall observe and be subject to all
5 state and municipal regulations relative to reporting all births and deaths in all matters pertaining
6 to the public health.

7 **5-37.2-19. Seminars not in accordance with department regulations prohibited --**

8 **Penalty.**

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

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

13 **5-37.2-20. Practice without a license a misdemeanor.**

14 A person who represents himself or herself as a practitioner of acupuncture and ~~Oriental~~
15 Chinese medicine, or any branch of acupuncture and ~~Oriental~~ Chinese medicine, and who
16 engages in the practice of acupuncture and ~~Oriental~~ Chinese medicine, or any branch of
17 acupuncture and ~~Oriental~~ Chinese medicine, in this state without holding a valid license issued by
18 the department is guilty of a misdemeanor.

19 **5-37.2-21. Injunctive relief.**

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

23 (b) This injunction:

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

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

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

29 **5-37.2-24. Meaning of terms in existing laws.**

30 When in any law, resolution, document, record, instrument, proceeding, or other place the
31 words "Oriental medicine" as applied in this chapter appear, they shall be construed to mean
32 "Chinese medicine".

33

1 SECTION 4. This act shall take effect upon passage.

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LC001123/SUB A/3
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - THE HEALING ART OF
ACUPUNCTURE AND ORIENTAL MEDICINE

1 This act would change the title of chapter 37.2 of title 5 and throughout, replacing the
2 words "Oriental medicine" with "Chinese medicine" and would allow individuals who are
3 otherwise certified, to practice acupuncture and Chinese medicine using Chinese medical
4 diagnostic methods.

5 This act would take effect upon passage.

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - THE HEALING ART OF ACUPUNCTURE AND
ORIENTAL MEDICINE

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Presented by