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HOUSE BILL 576

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO LICENSING; AMENDING THE ACUPUNCTURE AND ORIENTAL
MEDICINE PRACTICE ACT; CLARIFYING THE PROCEDURES AND SUBSTANCES
THAT ARE WITHIN THE SCOPE OF ACUPUNCTURE AND ORIENTAL MEDICINE;
PROVIDING FOR LIMITED PRESCRIPTIVE AUTHORITY PRACTICE; CREATING
A LIMITED PRESCRIPTIVE AUTHORITY PRACTICE COMMITTEE OF THE
BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE; PROVIDING FOR THE
POWERS AND DUTIES OF THE LIMITED PRESCRIPTIVE AUTHORITY
PRACTICE COMMITTEE; PROVIDING FOR LIMITED PRESCRIPTIVE
AUTHORITY PRACTICE FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-14A-3 NMSA 1978 (being Laws 1993,
Chapter 158, Section 11, as amended) is amended to read:

"61-14A-3. DEFINITIONS.--As used in the Acupuncture and
Oriental Medicine Practice Act:

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1 A. "acupuncture" means the surgical use of needles
2 inserted into and removed from the body and the use of other
3 devices, modalities and procedures at specific locations on the
4 body for the prevention, cure or correction of any disease,
5 illness, injury, pain or other condition by controlling and
6 regulating the flow and balance of energy [~~and function~~] to
7 restore and maintain health;

8 B. "board" means the board of acupuncture and
9 oriental medicine;

10 C. "doctor of oriental medicine" means a person
11 licensed as a physician to practice acupuncture and oriental
12 medicine with the ability to practice independently, serve as a
13 primary care provider and as necessary collaborate with other
14 health care providers;

15 D. "moxibustion" means the use of heat on or above
16 specific locations or on acupuncture needles at specific
17 locations on the body for the prevention, cure or correction of
18 any disease, illness, injury, pain or other condition;

19 E. "oriental medicine" means the distinct system of
20 primary health care that uses all allied techniques of oriental
21 medicine, both traditional and modern, to diagnose, treat and
22 prescribe for the prevention, cure or correction of disease,
23 illness, injury, pain or other physical or mental condition by
24 controlling and regulating the flow and balance of energy [~~form~~
25 ~~and function~~] to restore and maintain health;

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1 F. "primary care provider" means a health care
2 practitioner acting within the scope of the health care
3 practitioner's license who provides the first level of basic or
4 general health care for a person's health needs, including
5 prevention, diagnostic and treatment services; initiates
6 referrals to other health care practitioners; and maintains the
7 continuity of care when appropriate;

8 G. "techniques of oriental medicine" means:

9 (1) the diagnostic and treatment techniques
10 used in oriental medicine that include diagnostic procedures;
11 acupuncture; moxibustion; ~~manual therapy, also known as tui~~
12 ~~na~~ and traditional East Asian manual therapies and massage
13 modalities, excluding chiropractic and osteopathy; other
14 physical medicine modalities and therapeutic procedures;
15 breathing and exercise techniques; and dietary, nutritional and
16 lifestyle counseling;

17 (2) the prescribing, administering, combining
18 and providing of non-injectable herbal medicines, homeopathic
19 medicines, vitamins, minerals, enzymes, glandular products,
20 ~~[natural substances]~~ food, natural medicines, protomorphogens,
21 ~~[live cell products, gerovital]~~ amino acids, dietary and
22 nutritional supplements, cosmetics as they are defined in the
23 New Mexico Drug, Device and Cosmetic Act ~~[and nonprescription~~
24 ~~drugs as they are defined in the Pharmacy Act]~~; and

25 (3) the prescribing, administering and

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1 providing of devices, restricted devices and prescription
2 devices, as those devices are defined in the New Mexico Drug,
3 Device and Cosmetic Act, [~~if the board determines by rule that~~
4 ~~the devices are necessary in the practice of oriental medicine~~
5 ~~and~~] if the prescribing doctor of oriental medicine [~~has~~
6 ~~fulfilled requirements for prescriptive authority in accordance~~
7 ~~with rules promulgated by the board for the devices enumerated~~
8 ~~in this paragraph~~] has completed and maintained all training,
9 continuing education and certification required for the safe
10 and effective use of each specific device pursuant to state and
11 federal law; and

12 H. "tutor" means a doctor of oriental medicine with
13 at least ten years of clinical experience who is a teacher of
14 acupuncture and oriental medicine."

15 SECTION 2. Section 61-14A-8 NMSA 1978 (being Laws 1993,
16 Chapter 158, Section 16, as amended) is amended to read:

17 "61-14A-8. BOARD--POWERS.--The board has the power to:

18 A. enforce the provisions of the Acupuncture and
19 Oriental Medicine Practice Act;

20 B. adopt, publish and file, in accordance with the
21 Uniform Licensing Act and the State Rules Act, all rules
22 necessary for the implementation and enforcement of the
23 provisions of the Acupuncture and Oriental Medicine Practice
24 Act; provided that a rule relating to limited prescriptive
25 authority pursuant to the provisions of Section 61-14A-8.1 NMSA

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1 1978 shall require the approval of the limited prescriptive
2 authority practice committee prior to its adoption, publication
3 or filing;

4 C. adopt a code of ethics;

5 D. adopt and use a seal;

6 E. inspect facilities of approved educational
7 programs, extern programs and the offices of licensees;

8 F. adopt rules implementing continuing education
9 requirements for the purpose of protecting the health and well-
10 being of the citizens of this state and maintaining and
11 continuing informed professional knowledge and awareness;

12 G. issue investigative subpoenas for the purpose of
13 investigating complaints against licensees prior to the
14 issuance of a notice of contemplated action;

15 H. administer oaths and take testimony on any
16 matters within the board's jurisdiction;

17 I. conduct hearings upon charges relating to the
18 discipline of licensees, including the denial, suspension or
19 revocation of a license in accordance with the Uniform
20 Licensing Act; and

21 J. grant, deny, renew, suspend or revoke licenses
22 to practice acupuncture and oriental medicine or grant, deny,
23 renew, suspend or revoke approvals of educational programs and
24 extern programs in accordance with the provisions of the
25 Uniform Licensing Act for any cause stated in the Acupuncture

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1 and Oriental Medicine Practice Act or the rules of the board."

2 SECTION 3. Section 61-14A-8.1 NMSA 1978 (being Laws 2000,
3 Chapter 53, Section 12, as amended) is amended to read:

4 "61-14A-8.1. EXPANDED PRACTICE AND PRESCRIPTIVE
5 AUTHORITY--CERTIFICATIONS.--

6 ~~[A.—The]~~ A. An applicant for limited prescriptive
7 authority practice certification shall pay the required fee and
8 furnish evidence satisfactory to the board that the applicant
9 has successfully completed all education and training required
10 by rule of the board. Applications shall be provided by the
11 board and shall include a list of the required supporting
12 documents. Complete applications shall be reviewed by the
13 limited prescriptive authority practice committee.

14 B. If an applicant has met the requirements for
15 certification in a specific module or modules, the board shall
16 issue certifications, as determined by rule of the board, for
17 expanded practice and prescriptive authority only for the
18 substances enumerated in ~~[Paragraphs (1) and (2) of]~~ Subsection
19 C of this section to a doctor of oriental medicine who has
20 submitted completed forms provided by the board, paid the
21 application fee for certification and submitted proof of
22 successful completion of additional training required by rule
23 of the board. The board shall adopt the rules determined by
24 the board of pharmacy for additional training required for the
25 prescribing, administering, compounding or dispensing of

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1 caffeine, procaine, oxygen, epinephrine and bioidentical
2 hormones. The board and the board of pharmacy shall consult as
3 appropriate. [B.] The board shall issue [~~certifications in the~~
4 ~~four expanded practices of basic injection therapy, injection~~
5 ~~therapy, intravenous therapy and bioidentical hormone therapy]~~
6 certification for limited prescriptive authority to practice in
7 a specified module only for the substances enumerated in
8 Subsection C of this section.

9 C. The [~~expanded~~] limited prescriptive authority
10 practice [~~and prescriptive authority~~] certification shall
11 include

12 [~~(1) the prescribing, administering,~~
13 ~~compounding and dispensing of herbal medicines, homeopathic~~
14 ~~medicines, vitamins, minerals, amino acids, proteins, enzymes,~~
15 ~~carbohydrates, lipids, glandular products, natural substances,~~
16 ~~natural medicines, protomorphogens, live cell products,~~
17 ~~gerovital, dietary and nutritional supplements, cosmetics as~~
18 ~~they are defined in the New Mexico Drug, Device and Cosmetic~~
19 ~~Act and nonprescription drugs as they are defined in the~~
20 ~~Pharmacy Act; and~~

21 ~~(2)]~~ the prescribing, administering,
22 compounding and dispensing of the following drugs, dangerous
23 drugs or controlled substances as [~~they~~] drugs, dangerous drugs
24 and controlled substances are defined in the New Mexico Drug,
25 Device and Cosmetic Act, the Controlled Substances Act or the

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1 Pharmacy Act [~~if the prescribing doctor of oriental medicine~~
2 ~~has fulfilled the requirements for expanded practice and~~
3 ~~prescriptive authority in accordance with the rules promulgated~~
4 ~~by the board]~~ for the substances enumerated in this [paragraph]
5 subsection:

- 6 ~~[(a)]~~ (1) sterile water;
7 ~~[(b)]~~ (2) sterile saline;
8 ~~[(c)]~~ ~~sarapin or its generic;~~
9 ~~[(d)]~~ ~~caffeine;~~
10 ~~[(e)]~~ (3) procaine;
11 ~~[(f)]~~ ~~oxygen;~~
12 ~~[(g)]~~ ~~epinephrine;~~
13 ~~[(h)]~~ ~~vapocoolants;~~
14 ~~[(i)]~~ ~~bioidentical hormones;~~
15 ~~[(j)]~~ ~~biological products, including~~
16 ~~therapeutic serum; and~~
17 ~~[(k)]~~ ~~any of the drugs or substances~~
18 ~~enumerated in Paragraph (1) of this subsection if at any time~~
19 ~~those drugs or substances are classified as dangerous drugs or~~
20 ~~controlled substances]~~
21 (4) inhaled oxygen;
22 (5) subcutaneous and intramuscular
23 epinephrine;
24 (6) topical vapocoolants;
25 (7) injectable vitamin B-12;

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1 (8) topical estradiol, estriol, progesterone,
2 testosterone and desiccated thyroid; provided that the
3 applicant has a signed collaborative practice agreement, as the
4 board defines by rule, with a New Mexico-licensed medical
5 doctor or doctor of osteopathic medicine residing in New
6 Mexico;

7 (9) intradermal and subcutaneous injection of
8 homeopathics, dextrose, minerals, sarapin, sodium chloride,
9 sterile water and vitamins; and

10 (10) intravenous administration of sterile
11 water, sterile saline, lactated ringers, water-soluble vitamins
12 and minerals.

13 D. When compounding drugs for their patients,
14 doctors of oriental medicine [~~certified for expanded practice~~
15 ~~and prescriptive authority~~] with limited prescriptive authority
16 certification shall comply with the compounding requirements
17 for licensed health care professionals in the United States
18 pharmacopeia and national formulary. A substance is only
19 authorized for use if procured, prescribed, administered,
20 compounded and dispensed in compliance with federal and state
21 law.

22 E. A doctor of oriental medicine certified to
23 practice with limited prescriptive authority pursuant to this
24 section shall not use any substance or mode of administration
25 that does not appear on a formulary of approved dangerous drugs

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1 or a formulary of approved modes of administration."

2 SECTION 4. Section 61-14A-16 NMSA 1978 (being Laws 1993,
3 Chapter 158, Section 24, as amended by Laws 2001, Chapter 263,
4 Section 1 and Laws 2001, Chapter 266, Section 2) is amended to
5 read:

6 "61-14A-16. FEES.--The board shall establish a schedule
7 of reasonable nonrefundable fees not to exceed the following
8 amounts:

- 9 A. application for licensing \$800;
- 10 B. application for reciprocal licensing 750;
- 11 C. application for temporary licensing 500;
- 12 D. examination, not including the cost of any
13 nationally recognized examination 700;
- 14 E. annual license renewal 400;
- 15 F. late license renewal 200;
- 16 G. expired license renewal 400;
- 17 H. temporary license renewal 100;
- 18 I. application for approval or renewal of approval
19 of an educational program 600;
- 20 J. late renewal of approval of an educational
21 program 200;
- 22 K. annual continuing education provider
23 registration 200;
- 24 L. application for [~~extended or expanded~~] module 1,
25 2, 3 or 4 limited prescriptive authority certification, per

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- 1 module 500;
- 2 M. renewal of application for module 1, 2, 3 or 4
- 3 limited prescriptive authority certification, per module 200;
- 4 N. application for biennial expanded practice
- 5 certification renewal 200;
- 6 O. late expanded practice certification renewal 125;
- 7 P. expired expanded practice certification
- 8 renewal 100;
- 9 [~~M-~~] Q. application for externship supervisor
- 10 registration 500;
- 11 [~~N-~~] R. application for extern certification 500;

12 and

13 [~~Ø-~~] S. any and all fees to cover reasonable and
14 necessary administrative expenses."

15 SECTION 5. Section 61-14A-17 NMSA 1978 (being Laws 1993,
16 Chapter 158, Section 25, as amended) is amended to read:

17 "61-14A-17. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--
18 APPLICATION OF UNIFORM LICENSING ACT.--

19 A. In accordance with the procedures contained in
20 the Uniform Licensing Act, the board may deny, revoke or
21 suspend [~~any~~] a limited prescriptive authority practice
22 certification and a permanent or temporary license held or
23 applied for under the Acupuncture and Oriental Medicine
24 Practice Act, upon findings by the board that the licensee or
25 applicant:

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1 (1) is guilty of fraud or deceit in procuring
2 or attempting to procure a license;

3 (2) has been convicted of a felony. A
4 certified copy of the record of conviction shall be conclusive
5 evidence of such conviction;

6 (3) is guilty of incompetence as defined by
7 board rule;

8 (4) is habitually intemperate, is addicted to
9 the use of habit-forming drugs or is addicted to ~~[any]~~ a vice
10 to such a degree as to render ~~[him]~~ the licensee or applicant
11 unfit to practice as a doctor of oriental medicine;

12 (5) is guilty of unprofessional conduct, as
13 defined by board rule;

14 (6) is guilty of ~~[any]~~ a violation of the
15 Controlled Substances Act;

16 (7) has violated ~~[any]~~ a provision of the
17 Acupuncture and Oriental Medicine Practice Act or rules
18 promulgated by the board;

19 (8) is guilty of failing to furnish the board,
20 its investigators or representatives with information requested
21 by the board;

22 (9) is guilty of willfully or negligently
23 practicing beyond the scope of acupuncture and oriental
24 medicine as defined in the Acupuncture and Oriental Medicine
25 Practice Act;

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1 (10) is guilty of failing to adequately
2 supervise a sponsored temporary licensee;

3 (11) is guilty of aiding or abetting the
4 practice of acupuncture and oriental medicine by a person not
5 licensed by the board;

6 (12) is guilty of practicing or attempting to
7 practice under an assumed name;

8 (13) advertises by means of knowingly false
9 statements;

10 (14) advertises or attempts to attract
11 patronage in any unethical manner prohibited by the Acupuncture
12 and Oriental Medicine Practice Act or the rules of the board;

13 (15) has been declared mentally incompetent by
14 regularly constituted authorities;

15 (16) has had a license, certificate or
16 registration to practice as a doctor of oriental medicine
17 revoked, suspended or denied in any jurisdiction of the United
18 States or a foreign country for actions of the licensee similar
19 to acts described in this subsection. A certified copy of the
20 record of the jurisdiction taking such disciplinary action will
21 be conclusive evidence thereof; or

22 (17) fails, when diagnosing or treating a
23 patient, to possess or apply the knowledge or to use the skill
24 and care ordinarily used by reasonably well-qualified doctors
25 of oriental medicine practicing under similar circumstances,

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1 giving due consideration to the locality involved.

2 B. Disciplinary proceedings may be instituted by
3 any person, shall be by sworn complaint and shall conform with
4 the provisions of the Uniform Licensing Act. ~~[Any]~~ A party to
5 the hearing may obtain a copy of the hearing record upon
6 payment of the costs of the copy.

7 C. ~~[Any]~~ A person filing a sworn complaint shall be
8 immune from liability arising out of civil action if the
9 complaint is filed in good faith and without actual malice.

10 D. The licensee shall bear the costs of
11 disciplinary proceedings unless exonerated.

12 E. At the request of the limited prescriptive
13 authority practice committee, the board may hire or contract
14 with investigators to investigate possible violations of the
15 Acupuncture and Oriental Medicine Practice Act."

16 SECTION 6. A new section of the Acupuncture and Oriental
17 Medicine Practice Act is enacted to read:

18 "[NEW MATERIAL] LIMITED PRESCRIPTIVE AUTHORITY PRACTICE
19 COMMITTEE--MEMBERSHIP--APPOINTMENT--DUTIES--POWERS.--

20 A. The "limited prescriptive authority practice
21 committee" of the board of acupuncture and oriental medicine is
22 created. The committee shall consist of two professional
23 members of the New Mexico medical board appointed by the
24 medical board, two professional members of the board of
25 pharmacy appointed by the board of pharmacy and two

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1 professional members of the board of acupuncture and oriental
2 medicine appointed by the board of acupuncture and oriental
3 medicine who shall have no professional or financial stake in
4 limited prescriptive authority practice. The committee shall:

5 (1) review all limited prescriptive authority
6 practice applications and report to the board in writing,
7 within forty-five days of the application being complete, that
8 the applicant has or has not met the requirements for
9 certification as established by board rules;

10 (2) develop mandatory limited prescriptive
11 authority consent forms;

12 (3) develop limited prescriptive authority
13 formularies, including specific routes of administration, for:

14 (a) module one, basic injection therapy;

15 (b) module two, injection therapy;

16 (c) module three, intravenous therapy;

17 and

18 (d) module four, non-injectable

19 bioidentical hormone therapy certification;

20 (4) review and either approve or reject the
21 rules proposed by the board for all training required for the
22 prescribing, administering, compounding or dispensing of the
23 substances listed in Subsection C of Section 61-14A-8.1 NMSA
24 1978;

25 (5) approve a formulary of drugs, dangerous

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1 drugs and controlled substances listed in Section 61-14A-8.1
2 NMSA 1978 as drugs, dangerous drugs and controlled substances
3 are defined in the New Mexico Drug, Device and Cosmetic Act and
4 the Controlled Substances Act and approve rules governing the
5 prescribing, administering, compounding and dispensing of these
6 drugs, dangerous drugs and controlled substances by certified
7 practitioners;

8 (6) review and investigate all complaints
9 against a licensee with limited prescriptive authority practice
10 certification and participate in any executive session of the
11 board in which a complaint is discussed. The committee shall
12 submit to the board of acupuncture and oriental medicine, the
13 New Mexico medical board and the board of pharmacy a report
14 that includes any possible violations of that act and a
15 recommendation to dismiss for no violation or a recommendation
16 to proceed with disciplinary proceedings pursuant to Section
17 61-14A-17 NMSA 1978;

18 (7) elect a chair and vice chair from among
19 its members; and

20 (8) meet at least once annually and at the
21 call of the chair of the board of acupuncture and oriental
22 medicine.

23 B. Committee members' terms shall correspond to
24 their individual terms on their boards of origin.

25 C. Committee members may be reimbursed by their

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1 respective boards of origin pursuant to the Per Diem and
2 Mileage Act but shall receive no other compensation, perquisite
3 or allowance for their service on the committee.

4 D. Committee members may be removed from the
5 committee by their original appointing authorities in
6 accordance to the rules or bylaws of their boards of origin."

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