

CHAPTER 457

ACUPUNCTURE

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457.101 Legislative intent.—The Legislature finds that the interests of the public health require the regulation of the practice of acupuncture in this state for the purpose of protecting the health, safety, and welfare of our citizens while making this healing art available to those who seek it.

History.—ss. 1, 2, ch. 80-375; ss. 2, 3, ch. 81-318; ss. 1, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.
Note.—Former s. 468.321.

457.102 Definitions.—As used in this chapter:

(1) "Acupuncture" means a form of primary health care, based on traditional Chinese medical concepts, that employs acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture shall include, but not be limited to, the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body.

(2) "Acupuncturist" means any person certified as provided in this chapter to practice acupuncture as a primary health care provider.

(3) "Board" means the Board of Acupuncture.

(4) "Certificate" means the document of authorization issued by the department for a person to engage in the practice of acupuncture.

(5) "Department" means the Department of Business and Professional Regulation.

History.—ss. 1, 2, ch. 80-375; ss. 2, 3, ch. 81-318; s. 38, ch. 83-329; ss. 2, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429; s. 101, ch. 94-218.

Note.—Former s. 468.322.

457.103 Board of Acupuncture; membership; appointment and terms.—

(1) The Board of Acupuncture is created within the department and shall consist of five members, to be appointed by the Governor and confirmed by the Senate. Three members of the board must be certified Florida acupuncturists. Two members must be laypersons who are not and who have never been acupuncturists or members of any closely related profession. Members shall be appointed for 4-year terms or for the remainder of the unexpired term of a vacancy.

(2) All provisions of chapter 455 relating to the board shall apply.

History.—ss. 39, 118, ch. 83-329; ss. 3, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429; s. 1, ch. 92-28; s. 102, ch. 94-218.

457.104 Authority to make rules.—The board is authorized to make rules not inconsistent with law which are necessary to carry out the duties and authority conferred upon the board by this chapter.

History.—ss. 40, 118, ch. 83-329; ss. 4, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.

457.105 Certification qualifications and fees.—

(1) It is unlawful for any person to practice acupuncture in this state unless such person has been certified by the board, is in a board-approved tutorial program or course of study, or is otherwise exempted by this chapter.

(2) A person may become certified to practice acupuncture if the applicant:

(a) Is 18 years of age or older and meets one of the following criteria:

- 1. He is a citizen of the United States;
- 2. He is a permanent resident of the United States;

or

3. He is a legal alien who has resided in the United States for 6 months immediately prior to qualifying for examination;

(b) Has completed the following:

1. A 2-year course of study which meets standards established by the board by rule, which standards shall include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology;

2. A 2-year tutorial program which meets standards established by the board by rule, which standards shall include, but are not limited to, successful completion of academic courses in western anatomy, western physiology, and western pathology. Prior to entrance in a tutorial program, an individual shall have been approved by the board, registered with the department, and paid a registration fee not to exceed \$200 as set by rule of the board. Such tutorial program shall be of a continuous nature for not less than 2 years under the supervision of an acupuncturist certified under this chapter and shall have commenced after October 1, 1986. A person enrolled in a tutorial program approved by the board prior to October 1, 1986, may complete that program to meet the requirement for such training; or

3. At least 5 years of experience as an acupuncturist pursuant to standards and criteria established by board rule;

(c) Has successfully completed a board-approved national certification process, is actively licensed in a state which has examination requirements that are substantially equivalent to or more stringent than those of this state, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture. At the request of any applicant, oriental nomenclature

ture for the points shall be used in the examination. The examination shall include a practical examination of the knowledge and skills required to practice acupuncture, covering diagnostic and treatment techniques and procedures; and

(d) Pays the required fees set by the board by rule not to exceed the following amounts:

1. Examination fee: \$1,000 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from the National Commission for the Certification of Acupuncturists or a similar national organization.

2. Application fee: \$750.

3. Reexamination fee: \$1,000 plus the actual per applicant cost to the department for purchase of the written and practical portions of the examination from the National Commission for the Certification of Acupuncturists or a similar national organization.

4. Initial biennial certification fee: \$2,000.

History.—ss. 1, 2, ch. 80-375; ss. 1, 6, ch. 81-227; s. 334, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 1, 6, ch. 82-172; s. 41, ch. 83-329; ss. 5, 13, 14, ch. 86-265; s. 2, ch. 88-205; s. 16, ch. 89-162; s. 1, ch. 89-318; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.

Note.—Former s. 468.323.

457.107 Renewal of certificates; continuing education.—

(1) The department shall renew a certificate upon receipt of the renewal application and the fee set by the board by rule, not to exceed \$1,000.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of certificates.

(3) The board shall by rule prescribe continuing education requirements, not to exceed 30 hours biennially, as a condition for renewal of a certificate. The criteria for such programs or courses shall be approved by the board. In order to meet continuing education requirements, prior approval by the board of such programs or courses is required. All education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profitmaking entity, are eligible for approval. The board shall have the authority to set a fee, not to exceed \$100, for each continuing education provider or program submitted for approval.

History.—ss. 1, 2, ch. 80-375; ss. 2, 6, ch. 81-227; ss. 2, 3, ch. 81-318; s. 42, ch. 83-329; ss. 6, 13, 14, ch. 86-265; s. 3, ch. 88-205; s. 17, ch. 89-162; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429; s. 161, ch. 94-119.

Note.—Former s. 468.324.

457.108 Inactive status; expiration; reactivation of certificates.—

(1) A certificate that has become inactive may be reactivated under this section upon application to the department. The board shall prescribe by rule continuing education requirements as a condition of reactivating a certificate. The continuing education requirements for reactivating a certificate must not exceed 10 classroom hours for each year the certificate was inactive, in addition to completion of the number of hours required for renewal on the date the certificate became inactive.

(2) The board shall adopt rules relating to application procedures for inactive status, renewal of inactive certificates, and reactivation of certificates. The board

shall prescribe by rule an application fee for inactive status, a renewal fee for inactive status, a delinquency fee, and a fee for the reactivation of a certificate. None of these fees may exceed the biennial renewal fee established by the board for an active certificate.

(3) The department shall not reactivate a certificate unless the inactive or delinquent certificateholder has paid any applicable biennial renewal or delinquency fee, or both, and a reactivation fee.

History.—ss. 7, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429; s. 162, ch. 94-119.

457.1085 Infection control.—Prior to November 1, 1986, the board shall adopt rules relating to the prevention of infection, the sterilization of needles and other equipment or materials capable of transmitting possible infection, the safe disposal of any potentially infectious materials, and other requirements to protect the health, safety, and welfare of the public. Acupuncture needles shall be thoroughly cleansed with an antiseptic solution and hot water prior to sterilization by autoclave. Presterilized, prewrapped, disposable needles may be used.

History.—ss. 8, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.

457.109 Disciplinary actions; grounds; action by the board.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Attempting to obtain, obtaining, or renewing a certificate to practice acupuncture by bribery, by fraudulent misrepresentations, or through an error of the department.

(b) Having a certificate to practice acupuncture revoked, suspended, or otherwise acted against, including the denial of certification, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty, regardless of adjudication, in any jurisdiction of a crime which directly relates to the practice of acupuncture or to the ability to practice acupuncture. Any plea of nolo contendere shall be considered a conviction for purposes of this chapter.

(d) False, deceptive, or misleading advertising or advertising which claims that acupuncture is useful in curing any disease.

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

(f) Failing to report to the department any person who the certificateholder knows is in violation of this chapter or of the rules of the department.

(g) Aiding, assisting, procuring, employing, or advising any uncertified person to practice acupuncture contrary to this chapter or to a rule of the department.

(h) Failing to perform any statutory or legal obligation placed upon a certified acupuncturist.

(i) Making or filing a report which the certificateholder knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a certified acupuncturist.

(j) Exercising influence within a patient-acupuncturist relationship for purposes of engaging a patient in sexual activity. A patient shall be presumed to be incapable of giving free, full, and informed consent to sexual activity with his acupuncturist.

(k) Making deceptive, untrue, or fraudulent representations in the practice of acupuncture or employing a trick or scheme in the practice of acupuncture when such scheme or trick fails to conform to the generally prevailing standards of treatment in the community.

(l) Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, undue influence, or a form of overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate oral response from the recipient.

(m) Failing to keep written medical records justifying the course of treatment of the patient.

(n) Exercising influence on the patient to exploit the patient for the financial gain of the certificateholder or of a third party.

(o) Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, upon a finding of the secretary or his designee that probable cause exists to believe that the certificateholder is unable to serve as an acupuncturist due to the reasons stated in this paragraph, the department shall have the authority to issue an order to compel the certificateholder to submit to a mental or physical examination by a physician designated by the department. If the certificateholder refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the certificateholder resides or serves as an acupuncturist. The certificateholder against whom the petition is filed shall not be named or identified by initials in any public court record or document, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. An acupuncturist affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of acupuncture with reasonable skill and safety to patients. In any proceeding under this paragraph, neither the record of proceedings nor the orders entered by the department shall be used against an acupuncturist in any other proceeding.

(p) Gross or repeated malpractice or the failure to practice acupuncture with that level of care, skill, and treatment which is recognized by a reasonably prudent similar acupuncturist as being acceptable under similar conditions and circumstances.

(q) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the certificateholder knows or has reason to know that he is not competent to perform.

(r) Delegating professional responsibilities to a person when the certificateholder delegating such responsibilities knows or has reason to know that such person

is not qualified by training, experience, or certification to perform them.

(s) Violating any provision of this chapter, a rule of the department, or a lawful order of the department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(t) Conspiring with another to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another certificateholder from lawfully advertising his services.

(u) Fraud or deceit or gross negligence, incompetence, or misconduct in the operation of a tutorial program or a course of study.

(v) Failing to comply with state, county, or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious diseases.

(w) Failing to comply with any rule of the board relating to health and safety, including, but not limited to, the sterilization of needles and equipment and the disposal of potentially infectious materials.

(2) When the board finds any person guilty of any of the acts set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a certificate.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the acupuncturist on probation for a period of time and subject to such conditions as the board may specify.

(3) The department shall not reinstate the certificate of an acupuncturist, or cause a certificate to be issued to a person it has deemed to be unqualified, until such time as the board is satisfied that he has complied with all the terms and conditions set forth in the final order and that he is capable of safely engaging in the practice of acupuncture.

History.—ss. 1, 2, ch. 80-375; ss. 4, 6, ch. 81-227; ss. 2, 3, ch. 81-318; s. 43, ch. 83-329; ss. 9, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.

Note.—Former s. 468.325.

457.116 Prohibited acts; penalty.—

(1) It is unlawful for any person to:

(a) Hold himself out as a certified or licensed acupuncturist unless certified as provided herein.

(b) Practice acupuncture or attempt to practice acupuncture without an active certificate or as otherwise permitted by board rule established under the authority of s. 457.105(2)(b) or as otherwise provided by this chapter.

(c) Attempt to obtain or obtain a certificate to practice acupuncture by fraudulent misrepresentation.

(d) Permit an employed person to engage in the practice of acupuncture unless such person holds an active certificate as an acupuncturist, except as otherwise provided by this chapter.

(2) Any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 2, ch. 80-375; ss. 2, 3, ch. 81-318; ss. 10, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 85, ch. 91-224; s. 4, ch. 91-429.

Note.—Former s. 468.328.

457.118 Effect of chapter on other health care practices.—This chapter shall not be construed to expand or limit the scope of practice authorized for any health care professional licensed under chapter 458, chapter 459, chapter 460, chapter 461, chapter 466,

chapter 474, or chapter 486, as such scope of practice is defined by statute or rule.

History.—ss. 1, 2, ch. 80-375; s. 335, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 4, 6, ch. 82-172; ss. 11, 13, 14, ch. 86-265; s. 57, ch. 91-137; s. 4, ch. 91-156; s. 4, ch. 91-429.

Note.—Former s. 468.329.