Alan Van Dyne *Legislative Service Commission*

Sub. S.B. 246

126th General Assembly
(As Reported by S. Health, Human Services and Aging)

Sens. Schuring, Armbruster, Zurz, Hagan, Gardner, Clancy, Fedor, Mumper

BILL SUMMARY

- Authorizes a chiropractor to perform acupuncture by obtaining a certificate to practice acupuncture from the State Chiropractic Board.
- Requires the Board to approve courses of study in acupuncture for chiropractors that consist of at least 300 hours of instruction.
- Establishes procedures for issuing and renewing certificates to practice acupuncture, including procedures for imposing sanctions and taking other enforcement actions.
- Permits an acupuncturist who is regulated by the State Medical Board to practice under the supervision of any chiropractor who makes a written referral or prescription for acupuncture.
- Allows an acupuncturist regulated by the State Medical Board to consult with any physician, not only a supervising physician, when a patient's condition does not improve or a medical emergency exists.

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CONTENT AND OPERATION

Overview

The bill establishes a process whereby a licensed chiropractor may practice acupuncture by obtaining a certificate from the State Chiropractic Board. Under the bill, a chiropractor who receives the certificate is exempt from the requirement of obtaining a certificate as an acupuncturist from the State Medical Board. The administrative procedures and enforcement mechanisms used by the State Chiropractic Board in its regulation of the practice of chiropractic are extended by the bill to the Board's regulation of the practice of acupuncture by chiropractors.

The bill permits an acupuncturist who is regulated by the State Medical Board to practice under the supervision of any chiropractor. The supervising chiropractor must have issued a written referral or prescription for acupuncture and must provide general supervision of the acupuncturist throughout the patient's treatment. If a patient's condition does not improve or a medical emergency exists, the acupuncturist must consult with a physician.

Regulation of acupuncture through the State Chiropractic Board

(R.C. 4734.141(A), 4734.15, 4734.28, 4734.281, 4734.99, 4762.01, and 4762.02)

Under current law, acupuncture may be performed only by a physician or a person who has received a certificate of registration as an acupuncturist from the State Medical Board.[1] "Acupuncture" is defined as a form of health care performed by the insertion and removal of specialized needles, with or without the application of moxibustion or electrical stimulation, to specific areas of the human

[1] *An exemption applies to persons who are participating in acupuncture training programs (R.C. 4762.02(B)).*

body. "Moxibustion" is defined as the use of an herbal heat source on one or more acupuncture points.

The bill authorizes a chiropractor to perform acupuncture by obtaining a certificate to practice acupuncture from the State Chiropractic Board. Without the certificate, a chiropractor is prohibited from engaging in the practice of acupuncture. The prohibition does not apply to a chiropractor who receives a certificate of registration under the acupuncturist laws administered by the State Medical Board or is otherwise authorized by those laws to perform acupuncture.

A chiropractor who violates the prohibition on practicing acupuncture without a certificate from the State Chiropractic Board is guilty of a fifth degree felony on a first offense. On each subsequent offense, the chiropractor is guilty of a fourth degree felony.

Scope of acupuncture services

(R.C. 4734.141(B) and 4734.99)

The bill prohibits a chiropractor with a certificate to practice acupuncture from performing any acupuncture service that is beyond the scope of the chiropractor's education, training, and experience. Violators are subject to the same criminal penalties that apply to practicing without the certificate.

Advertising

(R.C. 4734.141(C), 4734.285, and 4734.99)

The bill prohibits a chiropractor with a certificate to practice acupuncture from advertising or otherwise representing to the public that the person is engaged in the Oriental medicine. Chiropractors who violate the prohibition are subject to the same criminal penalties that apply to practicing without the certificate.

The bill authorizes a chiropractor to represent or advertise himself or herself as a "chiropractor certified by the State Chiropractic Board to practice acupuncture." It is not permissible, however, for the chiropractor to use any of the titles that may be used by acupuncturists who hold certificates issued by the State Medical Board.[2] The bill specifies that this limitation on the use of titles does not

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[2] *A person who holds a certificate of registration to practice acupuncture from the State Medical Board is permitted to use the following titles, initials, or abbreviations, or their equivalents, to identify the person as an acupuncturist: "Acupuncturist," "Registered Acupuncturist," "R. Ac.," "Reg. Ac.," "Certified Acupuncturist," "C.A.," "C. Ac.," "Diplomate of Acupuncture (NCCAOM)," "Dipl. Ac. (NCCAOM)," or "National Board Certified in Acupuncture (NCCAOM)" (R.C. 4762.08, not in the bill).*

prohibit the chiropractor from using any of the chiropractic titles that may otherwise be used.

Courses of study in acupuncture for chiropractors

(R.C. 4734.211)

The bill requires the Board to approve a course of study in acupuncture that prepares a chiropractor to receive a certificate to practice acupuncture from the Board. To be approved, a course of study must require the successful completion of at least 300 hours of instruction. Of the 300 hours, at least 200 must consist of direct clinical instruction that covers all of the following:

- Application of acupuncture techniques;
- An introduction to traditional Chinese acupuncture;
- Acupuncture points;
- Applications of acupuncture in modern Western medicine;
- Guidelines on safety in acupuncture;
- Treatment techniques.

In determining whether to approve a course of study, the Board must take into consideration the qualifications of the entity that administers the course of study. The Board is authorized by the bill to approve a course of study that is administered by any of the following:

(1) A school or college of chiropractic that has been approved by a national entity acceptable to the Board;

(2) An institution with an acupuncture program that is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine;

(3) A school or college of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

(4) A hospital;

(5) An institution that holds a certificate of authorization from the Board of Regents;

(6) An institution that holds program authorization from the State Board of Career Colleges and Schools.

Application process

(R.C. 4734.282(A) and (C))

A licensed chiropractor seeking a certificate to practice acupuncture is required by the bill to file with the State Chiropractic Board a written application on a form prescribed and supplied by the Board. The application must include evidence satisfactory to the Board of both of the following:

(1) That the applicant's chiropractic license in Ohio is current and valid and that the applicant is in good standing with the Board;

(2) That the applicant has completed a course of study in acupuncture approved by the Board.

At the time of making application, the applicant must pay the Board a nonrefundable fee. The amount of the fee is to be determined by the Board pursuant to rules.

Application review and issuance of certificates

(R.C. 4734.282(B) and 4734.283)

The bill requires the Board to review all applications received for certificates to practice acupuncture. The Board must make a determination of whether an applicant meets the requirements to receive the certificate not later than 60 days after receiving a complete application. The affirmative vote of not fewer than three Board members is required to determine that an applicant qualifies. If the Board determines that an applicant qualifies, the bill requires the Board's executive director to issue the certificate to the applicant.

Expiration and renewal

(R.C. 4734.283 and 4734.284)

The bill provides that a chiropractor's certificate to practice acupuncture expires annually and may be renewed. A chiropractor seeking renewal must follow the standard licensing renewal procedures specified in existing law. The bill further requires the applicant to do all of the following:

(1) Furnish the Board with satisfactory evidence that the chiropractor completed, during the 24 months immediately preceding renewal, at least 12 hours

of acupuncture continuing education provided by an entity that administers a Board-approved course of study in acupuncture;

(2) Certify to the Board that the applicant is in good standing with the Board and has not engaged in any conduct for which the Board may take disciplinary actions against the applicant;

(3) Pay a renewal fee in an amount to be determined by the Board pursuant to rules.

Classification of certificates as inactive

(R.C. 4734.286(A))

The bill establishes a process for a chiropractor to have a certificate to practice acupuncture classified as inactive if the chiropractor intends not to practice acupuncture in Ohio for an extended period of time. The bill specifies that a chiropractor whose certificate is classified as inactive is not authorized to engage in the practice of acupuncture in Ohio or make any representation to the public indicating that the chiropractor is actively certified to practice acupuncture.

To have a certificate classified as inactive, the chiropractor must send to the Board a written notice on or before the certificate renewal date. If the chiropractor's certificate is in good standing and the chiropractor is not under disciplinary review by the Board, the Board must classify the certificate as inactive. The bill specifies that the chiropractor is not required to pay the certificate renewal fee.

Restoration of inactive certificates

(R.C. 4734.286(B))

The holder of an inactive certificate to practice acupuncture may apply to the Board to have the certificate restored. The Board must consider the length of inactivity, the applicant's moral character, and the applicant's activities during the inactive period. Consideration of an applicant's moral character and activities must be made in accordance with existing law's conditions for issuance of a chiropractic license and the bill's requirements for issuance of a certificate to practice acupuncture.

The bill authorizes the Board to impose terms and conditions on restoration of the certificate by doing any of the following:

(1) Requiring the applicant to obtain training, which may include requiring the applicant to pass an examination on completion of the training;

(2) Requiring the applicant to pass an oral or written examination, or both, to determine fitness to resume practice;

(3) Restricting or limiting the extent, scope, or type of practice of the applicant.

Imposition of sanctions

(R.C. 4734.31, 4734.311, 4734.34, 4734.36, 4734.37, 4734.38, and 4734.39)

The bill permits the Board to impose sanctions against a chiropractor who applies for or holds a certificate to practice acupuncture, in the same manner that the Board may impose sanctions against an individual who applies for or holds a license to practice chiropractic. Specifically, in imposing sanctions regarding a certificate to practice acupuncture, the Board may do any of the following:

(1) Refuse to issue, renew, restore, or reinstate the certificate;

(2) Reprimand or censure the chiropractor;

(3) Place limits, restrictions, or probationary conditions on the chiropractor's practice;

(4) Impose a civil fine of not more than $5,000, according to schedule of fines specified in the Board's rules;

(5) Suspend the certificate for a limited or indefinite period;

(6) Revoke the certificate.

The bill permits the Board to impose sanctions against an applicant for or holder of a certificate to practice acupuncture for the same reasons that sanctions may be imposed against an applicant for or holder of a license to practice chiropractic. Where appropriate, the bill includes references to the practice of acupuncture within the provisions describing the reasons for which sanctions may be imposed.

The procedures for imposing sanctions regarding the practice of acupuncture are the same under the bill as the procedures that exist for imposing sanctions regarding the practice of chiropractic. These procedures include (1) the conduct of hearings in accordance with the Administrative Procedure Act (R.C. Chapter 119.), (2) entering into consent agreements in lieu of a hearing as a means of resolving alleged violations, (3) summary suspension of a certificate to practice acupuncture for conviction of specified crimes or impairment due to mental illness, (4) restoring to good standing a certificate that is subject to sanctions other

than revocation, and (5) being required to submit to a mental or physical examination when directed to do so by the Board.

Extension of other chiropractic laws to acupuncture provisions

In a manner corresponding to existing laws governing the practice of chiropractic and the activities of the State Chiropractic Board, the bill provides for all of the following with regard to the practice of acupuncture by chiropractors:

Rulemaking authority: The bill authorizes the Board to adopt any rules necessary to govern the practice of acupuncture by chiropractors and to administer and enforce the applicable provisions of the bill. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). (R.C. 4734.10.)

Duties of the executive director: The Board's executive director is specified as the person who is required to enforce the laws relating to the practice of acupuncture by chiropractors (R.C. 4734.47).

Code of ethics: The bill permits the Board to establish a code of ethics for chiropractors that is applicable to their practice of acupuncture (R.C. 4734.16).

Copies of laws to be retained at practice locations: The bill requires a chiropractor to retain at the chiropractor's primary practice location a current copy of the statutes and rules governing the practice of acupuncture by chiropractors (R.C. 4734.19).

Combined businesses: The bill specifies that chiropractors who hold certificates to practice acupuncture are included within the laws that permit chiropractors to provide services through a corporation, limited liability company, partnership, or professional association that is formed for the purpose of providing services in combination with optometrists, psychologists, nurses, pharmacists, physical therapists, mechanotherapists, physicians, and podiatrists (R.C. 1701.03, 1705.03, 1705.04, 1705.53, 1785.01, 1785.02, 1785.03, 1785.08, 4723.16, 4725.33, 4729.161, 4731.226, 4731.65, 4732.28, 4734.17, and 4755.471).

Unauthorized practice: The bill provides that the practice of acupuncture by a chiropractor not at that time holding a certificate to practice acupuncture from the Board is "inimical to the public welfare and [constitutes] a public nuisance." The bill specifies that this provision does not apply to chiropractors who hold certificates of registration under the acupuncturist laws administered by the State Medical Board or are otherwise authorized by those laws to perform acupuncture. (R.C. 4734.49(C).)

Cases of minor violations: The bill provides that the State Chiropractic Board is not required to act on minor violations committed by chiropractors certified to practice acupuncture, if the Board determines that the public interest is adequately served by issuing a notice or warning to the alleged offender (R.C. 4734.50).

Duplicate certificates: The bill requires the Board to provide a duplicate certificate to practice acupuncture on payment of a fee of $45. (R.C. 4734.55.)

List of chiropractors with acupuncture certificates: On written request and payment of a fee of $95, the Board is required by the bill to provide any person a list of chiropractors holding certificates to practice acupuncture issued under the bill (R.C. 4734.55).

Certification of information: The bill requires the Board to issue certification of information regarding a certificate to practice acupuncture when requested in writing by a chiropractor holding the certificate. The fee for the Board's certification is $20. (R.C. 4734.55.)

Supervision of acupuncturists by chiropractors

(R.C. 4762.02)

Under current law, an acupuncturist who is not a physician must obtain a certificate of registration as an acupuncturist from the State Medical Board. The acupuncturist may treat a patient only if the patient has received a written referral or prescription for acupuncture from a physician. After receiving the referral or prescription, the acupuncturist must practice under the general supervision of the referring or prescribing physician.

The bill allows an acupuncturist who holds a certificate from the State Medical Board to practice under the supervision of a chiropractor. The bill does not require that the supervising chiropractor hold a certificate to practice acupuncture from the State Chiropractic Board.

Conditions on practice of acupuncturists

(R.C. 4762.10)

As when practicing under the supervision of a physician, an acupuncturist is subject to the following conditions when practicing under the supervision of a chiropractor:

(1) The acupuncturist is authorized to perform acupuncture for a chiropractor's patient only if the patient has received a written referral or

prescription from the chiropractor. In accordance with the referral or prescription, the acupuncturist must provide reports to the chiropractor on the patient's condition or progress in treatment and comply with all conditions or restrictions on the acupuncturist's course of treatment.

(2) The acupuncturist must perform acupuncture under the general supervision of the referring or prescribing chiropractor. General supervision does not require that the acupuncturist and chiropractor practice in the same office.

(3) Prior to treating a patient, the acupuncturist must advise the patient that acupuncture is not a substitute for conventional medical diagnosis and treatment.

(4) On initially meeting a patient in person, the acupuncturist must provide in writing the acupuncturist's business information and information on acupuncture, including the techniques that are used.

(5) While treating a patient, the acupuncturist cannot make a diagnosis.

(6) The acupuncturist must maintain records for each patient treated. In each patient's records, the acupuncturist must include the written referral or prescription that authorized the treatment. The records must be confidential and retained for at least three years.

Physician consultation

(R.C. 4762.10(E))

Current law requires an acupuncturist to consult promptly with the supervising physician if a patient's condition is not improving or a patient requires emergency medical treatment. Under the bill, the acupuncturist is permitted to consult with any physician. The physician consultation requirement applies to patients being treated under a chiropractor's referral or prescription.

Duties of a supervising chiropractor

(R.C. 4762.11)

In the case of chiropractors who supervise acupuncturists, the bill extends the same duties that apply to physicians who supervise acupuncturists. Specifically, a supervising chiropractor is subject to all of the following:

(1) Before making a referral or prescription for acupuncture, the chiropractor must perform a chiropractic diagnostic examination of the patient or review the results of a chiropractic diagnostic examination recently performed by another chiropractor;

(2) The referral or prescription must be made in writing and specify the patient's diagnosis, time limits for making patient progress reports, and the conditions or restrictions applicable to the acupuncturist's course of treatment;

(3) The chiropractor must place conditions or restrictions on the acupuncturist's course of treatment in compliance with accepted or prevailing standards of chiropractic care;

(4) The chiropractor must be personally available for consultation with the acupuncturist. If the chiropractor is not on the premises at which acupuncture is performed, the chiropractor must be readily available to the acupuncturist through some means of telecommunication and be in a location that under normal circumstances is not more than 60 minutes travel time away.

Sanctions for improper supervision

(R.C. 4731.22 (not in the bill) and 4735.31)

Under current law, the State Medical Board is authorized to take disciplinary actions against a physician for failing to provide proper supervision of an acupuncturist. Similarly, the bill authorizes the State Chiropractic Board to take disciplinary actions against a chiropractor for failing to provide proper supervision of an acupuncturist.

Workers' Compensation for a supervising chiropractor

(R.C. 4762.12)

Current law provides that an acupuncturist's supervising physician is eligible to be reimbursed through Workers' Compensation for acupuncture referrals and prescriptions. The reimbursement can be made only if the physician has attained knowledge in the treatment of patients with acupuncture, demonstrated by successful completion of a course of study in acupuncture administered by a college of medicine, osteopathic medicine, or podiatric medicine acceptable to the Bureau of Workers' Compensation or administered by another entity acceptable to the Bureau. The bill provides that the course of study may be completed at a college of chiropractic.

In the case of an acupuncturist who is supervised under the bill by a chiropractor, the bill provides that the supervising chiropractor is eligible to be reimbursed through Workers' Compensation for acupuncture referrals and prescription. As with physicians, the chiropractor must have attained knowledge in the treatment of patients with acupuncture, demonstrated by successful completion of a course of study in acupuncture. The course must be administered by a college of medicine, osteopathic medicine, or podiatric medicine, or

chiropractic acceptable to the Bureau of Workers' Compensation or administered by another entity acceptable to the Bureau.

Injunctions

(R.C. 4762.18)

The bill provides that an injunction proceeding pertaining to the unlawful practice of acupuncture may not be maintained against a person who is exempt from the requirement to hold a certificate of registration as an acupuncturist issued by the State Medical Board, including a chiropractor who holds a certificate to practice acupuncture from the State Chiropractic Board.

Conforming changes

(R.C. 4762.01, 4762.02, and 4762.09)

To conform with the bill's establishment of certificates to practice acupuncture by chiropractors, the bill makes changes in other statutes governing acupuncturists who are regulated by the State Medical Board. These changes include the addition of a provision specifying that acupuncturists are regulated in the performance of acupuncture procedures on the *human* body.

HISTORY

ACTION	DATE
Introduced	12-29-05
Reported, S. Health, Human Services & Aging	05-11-06

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