



Ohio Legislative Service Commission

Bill Analysis

Laura Gengo

H.B. 251

129th General Assembly
(As Introduced)

Reps. Schuring, J. Adams, Murray, Fedor, Phillips, Fende, Yuko, R. Hagan, Letson

BILL SUMMARY

Regulation of Oriental medicine

- Requires the State Medical Board to regulate the practice of Oriental medicine, which includes the currently regulated practice of acupuncture, and may also include the use of herbal therapy.
- Provides for the regulation of Oriental medicine practitioners in generally the same way as acupuncturists by creating prohibitions against unauthorized practice and extending the existing certificate application process, supervisory period requirements, and certificate renewal process to Oriental medicine practitioners.

Regulation of acupuncture

- Makes changes to existing regulation of acupuncturists relating to scope of practice, continuing education, and revocation of a certificate to practice.
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CONTENT AND OPERATION

Oriental medicine practitioners

The bill requires the State Medical Board to regulate the practice of Oriental medicine in addition to the current regulation of the practice of acupuncture. The bill permits an individual who receives a certificate to practice Oriental medicine to practice both acupuncture and, if the practitioner chooses, herbal therapy. The bill provides for the regulation of Oriental medicine practitioners in generally the same way as acupuncturists are regulated under current law (see "**Acupuncturists**," below).

A practitioner of Oriental medicine choosing to include herbal therapy in his or her practice under the bill may use herbs, vitamins, minerals, organ extracts, homeopathics, or physiologic materials for energetic or physiologic therapy. During the use of herbal therapy, the practitioner may administer or dispense therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients found in a drug approved by the federal Food and Drug Administration.¹

Prohibition

The bill prohibits a person from engaging in the practice of Oriental medicine unless the person holds a valid certificate to practice as an Oriental medicine practitioner issued by the State Medical Board. A person who violates this prohibition commits the same crime as in existing law regarding practicing acupuncture without a certificate issued by the Board: a first-degree misdemeanor on a first offense and a fourth-degree felony on each subsequent offense.²

The bill specifies that the prohibition on engaging in the practice of Oriental medicine without a certificate does not apply to the following:

(1) A physician;

(2) A participant in an Oriental medicine training program who engages in activities included in the practice of Oriental medicine, but only if (a) the training program is operated by an educational institution that holds an effective certificate of authorization issued by the Ohio Board of Regents or a school that holds an effective certificate of registration issued by the State Board of Career Colleges and Schools, and (b) the person engages in the activities under the general supervision of a certified Oriental medicine practitioner who is not practicing within a supervisory period;

(3) A certified acupuncturist, but only with respect to the acupuncture component of Oriental medicine – thus, if an acupuncturist practices the herbal therapy component of Oriental medicine, the prohibition and penalties apply.³

The bill exempts an Oriental medicine practitioner from the existing prohibition on engaging in the practice of acupuncture without a certificate to practice acupuncture issued by the Board.⁴

¹ R.C. 4762.01(C) and (E) and 4762.10(E)(6).

² R.C. 4762.02(A)(1) and 4762.99(A), not in the bill.

³ R.C. 4762.02(B) and (C).

⁴ R.C. 4762.02(D)(2).

Application

An applicant for a certificate to practice Oriental medicine must file with the Board a written application, pay a \$100 filing fee, and submit to a background check. The application must include all of the following:

(1) Evidence satisfactory to the Board that the applicant is at least 18 years old and of good moral character;

(2) Evidence satisfactory to the Board that the applicant holds a current and active designation from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) as either a Diplomate in Oriental Medicine or a Diplomate of Acupuncture and Chinese Herbology;

(3) Any other information required by the Board.⁵

If at least six Board members determine that the applicant meets the requirements for a certificate to practice Oriental medicine, the Board's secretary must register the applicant as an Oriental medicine practitioner and issue a certificate to practice. The certificate is valid for two years and may be renewed.⁶

Supervisory period

Like an acupuncturist, an Oriental medicine practitioner is subject to a one-year supervisory period following the date of initial certification. During that year, a practitioner may perform Oriental medicine or acupuncture under the general supervision of a physician, or only acupuncture under the general supervision of a chiropractor, and report to the physician or chiropractor the patient's condition or progress and compliance with the course of treatment. The patient must have received a written referral or prescription for Oriental medicine or acupuncture from a physician or acupuncture from a chiropractor.⁷

If the Oriental medicine practitioner is subject to disciplinary action during the supervisory period, the supervision is to continue until the practitioner completes one year without any additional disciplinary actions.⁸

⁵ R.C. 4762.03 and 4762.031.

⁶ R.C. 4762.03(B) and 4762.04.

⁷ R.C. 4762.10(B)(2) and (C).

⁸ R.C. 4762.10(B)(2).

Supervising physician

The bill extends the existing authority and duties of a physician supervising an acupuncturist to the supervision of an Oriental medicine practitioner and makes the physician subject to disciplinary action by the State Medical Board for failing to supervise a practitioner in accordance with the law governing Oriental medicine practitioners. The bill permits a supervising physician to be reimbursed under the law governing workers' compensation for referring a patient to a practitioner in the same manner the supervising physician is currently eligible for reimbursement with respect to an acupuncture referral.⁹

Supervising chiropractor

The bill extends the existing authority and duties of a chiropractor supervising an acupuncturist to the supervision of an Oriental medicine practitioner, but only with respect to the acupuncture portion of the practice of Oriental medicine, and makes the chiropractor subject to disciplinary action by the State Chiropractic Board for failing to supervise a practitioner in accordance with the law governing Oriental medicine practitioners. The bill also permits a supervising chiropractor to be reimbursed under the law governing workers' compensation for referring a patient to a practitioner in the same manner the supervising chiropractor is currently eligible for reimbursement with respect to an acupuncture referral.¹⁰

Liability insurance

The bill requires an Oriental medicine practitioner to have professional liability insurance coverage of at least \$500,000.¹¹

Renewal of Oriental medicine certificate

On or before January 31 of each even numbered year, an Oriental medicine practitioner may apply to the State Medical Board for certificate renewal. With the application the practitioner must pay a \$100 renewal fee and report involvement in any criminal offenses occurring since the original certificate application. To be eligible for renewal, the practitioner must certify both of the following to the Board:

⁹ R.C. 4731.22, 4762.11, and 4762.12.

¹⁰ R.C. 4734.31, 4762.11, and 4762.12.

¹¹ R.C. 4762.22.

(1) That the practitioner holds a current and active designation from the NCCAOM as either a Diplomate in Oriental Medicine or a Diplomate of Acupuncture and Chinese Herbology;

(2) That the practitioner has successfully completed one six-hour course in herb and drug interaction approved by the NCCAOM in the six years immediately preceding the certificate's expiration date.

For initial renewal, the practitioner must also certify to the Board that the practitioner has successfully completed one course on federal Food and Drug Administration dispensary and compounding guidelines and procedures.¹²

Use of titles

The bill permits an Oriental medicine practitioner to use the following titles, initials, or abbreviations, or the equivalent of such titles, initials, or abbreviations, to identify the person as such:

- "Oriental Medicine Practitioner";
- "Licensed Oriental Medicine Practitioner";
- "L.O.M.";
- "Diplomate in Oriental Medicine (NCCAOM)";
- "Dipl. O.M. (NCCAOM)";
- "National Board Certified in Oriental Medicine (NCCAOM)";
- "Acupuncturist";
- "Licensed Acupuncturist";
- "L.Ac. and L.C.H.";
- "Diplomate of Acupuncture and Chinese Herbology (NCCAOM)";
- "Dipl. Ac. and Dipl. C.H. (NCCAOM)";
- "National Board Certified in Acupuncture and Chinese Herbology (NCCAOM)."

¹² R.C. 4762.06.

The bill prohibits a practitioner from using other titles, initials, or abbreviations in conjunction with the practice of oriental medicine, including the title "doctor."¹³

Disciplinary actions

Generally, the bill authorizes the State Medical Board to take disciplinary action against an Oriental medicine practitioner in the same manner, and for the same reasons, as the Board is currently authorized to take action against an acupuncturist. In addition, the Board may take action if an Oriental medicine practitioner fails to use herbal therapy in accordance with traditional or modern Oriental medical theory and NCCAOM certification standards.¹⁴

The bill permits the Board, by an affirmative vote of at least six members, to (1) permanently revoke a certificate to practice Oriental medicine if the practitioner's designation as a Diplomate in Oriental Medicine or Diplomate of Acupuncture and Chinese Herbology is revoked by the NCCAOM for a violation of professional ethics, and (2) revoke a certificate to practice Oriental medicine if the Board determines a professional ethics violation exists but the violation is not covered by the NCCAOM standards for professional ethics. If the Board takes this action, the bill permits it to determine whether the practitioner is eligible to apply for a certificate to practice acupuncture.¹⁵

Existing law applicable to Oriental medicine practitioners

The bill otherwise provides for the regulation of Oriental medicine practitioners in the same way as acupuncturists are currently regulated. The issues addressed in the laws made applicable to Oriental medicine practitioners include the following:

--Confirmation of a patient's diagnostic examination by a physician or chiropractor conducted within the previous six months prior to providing treatment;

--Provision of information to a patient prior to treatment and maintenance of patient records;

--Display of the Oriental medicine certificate and State Medical Board contact information at the primary place of business;

--Board investigations of violations and imposition of sanctions;

¹³ R.C. 4762.08.

¹⁴ R.C. 4762.13(A) and (B) and 4762.17.

¹⁵ R.C. 4762.13(C).

--Notifications to be provided to the Board by prosecutors, health care facilities, professional associations or societies, and professional liability insurance insurers regarding actions taken against Oriental medicine practitioners;

--Injunctions against a person engaging in the practice of Oriental medicine without a certificate;

--Exemption from the laws governing the practice of medicine if the practitioner is in compliance with the law governing Oriental medicine;

--Issuance of duplicate certificates.¹⁶

Rule-making authority

The bill permits the State Medical Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) necessary to carry out the bill's provisions regarding Oriental medicine practitioners.¹⁷

Acupuncturists

The bill makes changes to the existing law regulating acupuncturists relating to scope of practice, continuing education, and the revocation of a certificate to practice.

Scope of practice

The bill specifies that an acupuncturist may use "supplemental techniques," defined as the use of traditional and modern Oriental therapeutics, heat therapy, acupressure and other forms of Chinese massage, and counseling. Counseling may include the provision of information regarding lifestyle modifications and the therapeutic use of foods and supplements, including homeopathics, glandulars, vitamins, and minerals. The bill retains the existing authority of an acupuncturist to use moxibustion – the use of an herbal heat source on one or more acupuncture points. The bill removes the specific reference to the use of electrical stimulation. The bill expressly prohibits a person practicing pursuant to a certificate to practice as an acupuncturist from using herbal therapy in the performance of acupuncture.¹⁸

¹⁶ R.C. 4731.36, 4762.05, 4762.09, 4762.10(D) and (E), 4762.131, 4762.132, 4762.14, 4762.15, 4762.16, and 4762.18.

¹⁷ R.C. 4762.19.

¹⁸ R.C. 4762.01(A), (D), and (F) and 4762.10(E)(5).

Continuing education

The bill requires an acupuncturist, as a condition of certificate renewal, to certify to the State Medical Board successful completion of one six-hour course in herb and drug interaction approved by NCCAOM in the six years immediately preceding the certificate's expiration date. For initial renewal, the acupuncturist must also certify successful completion of one course on federal Food and Drug Administration dispensary and compounding guidelines and procedures.¹⁹

The bill requires an acupuncturist who seeks to renew a certificate on or before January 31, 2012, to certify completion of the courses to the Board on or before January 31, 2014.²⁰

Revocation of a certificate to practice acupuncture

The bill permits the State Medical Board to permanently revoke a certificate to practice as an acupuncturist if the acupuncturist's designation as a Diplomate in Acupuncture is revoked by the NCCAOM for a violation of professional ethics.²¹

HISTORY

ACTION	DATE
Introduced	06-01-11

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¹⁹ R.C. 4762.06(B)(1).

²⁰ R.C. 4762.06(B)(2).

²¹ R.C. 4762.13(C).