Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 251

129th General Assembly
(As Reported by H. Health & Aging)

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, eligibility for a certificate to practice, disciplinary actions, and patient records.

State Medical Board

- Makes changes to the law governing the State Medical Board regarding the Board Secretary and meetings.

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

Oriental medicine practitioners to be regulated 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 foods, herbs, vitamins, minerals, organ extracts, and homeopathy. The bill defines "homeopathy" as a noninvasive system of natural and alternative medicine that seeks to stimulate the human body's ability to heal itself through the use of small doses of highly diluted substances prepared from animal, vegetable, or mineral sources.[1]

Standards of practice – herbal therapy

The bill requires an Oriental medicine practitioner using herbal therapy in the treatment of a patient to do all of the following:

(1) Provide to the patient counseling and treatment instructions. The treatment instructions must (a) explain the need for herbal therapy, (b) instruct the patient how to take herbal therapy, (c) explain possible contraindications to the herbal therapy and provide sources of care in case of an adverse reaction, and (d) instruct the patient to inform the patient's other health care providers, including the patient's pharmacist, of the herbal therapy that has been provided to the patient;

(2) Document in the patient's record the recommended type, amount, and strength of herbal therapy, the counseling and treatment instructions provided to the patient, and any adverse reactions reported by the patient;

(3) Report to the State Medical Board any adverse reactions reported by the patient in using herbal therapy.[2]

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.[3]

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[1] R.C. 4762.01(D) and (E).

[2] R.C. 4762.10(E).

[3] R.C. 4762.02(A)(1) and 4762.99(A), not in the bill.

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 or a chiropractor holding a certificate to practice acupuncture issued by the State Chiropractic Board, but only with respect to the acupuncture component of Oriental medicine.[4]

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.[5]

Eligibility for a certificate to practice

To be eligible to receive a certificate to practice Oriental medicine, the bill requires that an individual meet all of the following conditions:

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

(2) Submit 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) Submit evidence satisfactory to the Board that the applicant has successfully completed one course approved by the NCCAOM on federal Food and Drug Administration dispensary and compounding guidelines and procedures in the two-year period immediately preceding the date of application for a certificate to practice;

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[4] R.C. 4762.02(B) and (C).

[5] R.C. 4762.02(D)(2).

(4) Demonstrate proficiency in spoken English by passing an examination required by the Board or submitting evidence satisfactory to the Board that the applicant was required to demonstrate such proficiency as a condition of obtaining the NCCAOM designation described above;

(5) Submit any other information required by the Board.[6]

Application and issuance

An applicant for a certificate to practice Oriental medicine must file with the State Medical Board a written application, pay a $100 filing fee, and submit to a background check. The Board must review all complete applications within 60 days of receipt.

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.[7]

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 as follows: (1) for Oriental medicine or acupuncture from a physician or (2) for acupuncture from a chiropractor.[8]

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.[9]

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[6] R.C. 4762.03.

[7] R.C. 4762.03, 4762.031, and 4762.04.

[8] R.C. 4762.10(A) and (B).

[9] R.C. 4762.10(A).

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.[10]

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. During the supervisory period of an Oriental medicine practitioner using herbal therapy in the treatment of a patient, the bill (1) prohibits a chiropractor from supervising the practitioner's use of herbal therapy and (2) prohibits the practitioner from providing herbal therapy under the supervision of a chiropractor.[11]

The bill 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.[12]

Patient records – referral or prescription for Oriental medicine

The bill requires an Oriental medicine practitioner to include in a patient's records any written referral or prescription for Oriental medicine received for a patient being treated, regardless of whether it is received during or after the practitioner's supervisory period.[13]

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[10] R.C. 4731.22, 4762.11, and 4762.12.

[11] R.C. 4734.11, 4762.10(B)(2), and 4762.11.

[12] R.C. 4762.12.

[13] R.C. 4761.10(D)(4).

Liability insurance

The bill requires an Oriental medicine practitioner to have professional liability insurance coverage of at least $500,000.[14]

Renewal of 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:

(1) That the practitioner has maintained a current and active designation from the NCCAOM as 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 four years immediately preceding the expiration date of the practitioner's NCCAOM designation described above.[15]

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";

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[14] R.C. 4762.22.

[15] R.C. 4762.06.

- "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)."

The bill prohibits a practitioner from using other titles, initials, or abbreviations in conjunction with the practice of oriental medicine, including the title "doctor."[16]

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 maintain the practitioner's current and active NCCAOM designation as a Diplomate in Oriental Medicine or Diplomate of Acupuncture and Chinese Herbology. The bill specifies that failure to maintain the NCCAOM designation includes revocation by the NCCAOM of the practitioner's designation. Board action also may be taken under the bill if the practitioner fails to meet the NCCAOM's requirements for redesignation or fails to notify the Board that the appropriate designation has not been maintained.[17]

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;

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

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[16] R.C. 4762.08.

[17] R.C. 4762.13(A) and (B).

--Board investigations of violations and imposition of sanctions;

--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.[18]

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 govern the practice of Oriental medicine, the supervisory relationship between Oriental medicine practitioners and supervising physicians, and the use of herbal therapy by practitioners.[19]

Acupuncturists

The bill makes changes to the existing law regulating acupuncturists relating to scope of practice, eligibility for a certificate, disciplinary actions, and patient records.

Scope of practice

The bill specifies that an acupuncturist may use "supplemental techniques." These techniques are defined as the use of general nonmedical nutritional information, traditional and modern Oriental therapeutics, heat therapy, acupressure and other forms of Chinese massage, and educational information regarding lifestyle modifications.

The bill defines "general nonmedical nutritional information" as information on any of the following: (1) principles of good nutrition and food preparation, (2) foods to be included in the normal daily diet, (3) essential nutrients needed by the human body and recommended amounts of those nutrients, (4) foods and supplements that are good

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[18] 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.

[19] R.C. 4762.19.

sources of essential nutrients, and (5) the actions of nutrients on the human body and the effects of nutrient deficiency and nutrient excess.[20]

The bill retains the existing authority of an acupuncturist to use moxibustion, which is the use of an herbal heat source on one or more acupuncture points, but includes the procedure among the other supplemental techniques that the bill permits an acupuncturist to use. The bill eliminates a provision referring to the practice of acupuncture with or without the application of electrical stimulation.[21]

Patient records – referral or prescription for acupuncture

The bill requires an acupuncturist to include in a patient's records any written referral or prescription for acupuncture received for a patient being treated after the supervisory period. Current law requires an acupuncturist to include the referral or prescription only during the acupuncturist's supervisory period.[22]

Eligibility for certificate – proficiency in spoken English

To be eligible to receive a certificate to practice as an acupuncturist, the bill requires an applicant to demonstrate proficiency in spoken English by passing an examination required by the State Medical Board or submitting evidence satisfactory to the Board that the applicant was required to demonstrate such proficiency as a condition of obtaining the applicant's NCCAOM designation as a Diplomate in Acupuncture.[23]

Disciplinary actions

The bill authorizes the State Medical Board to take disciplinary action against an acupuncturist for failure to maintain the acupuncturist's current and active NCCAOM designation as a Diplomate in Acupuncture. The bill specifies that failure to maintain the NCCAOM designation includes revocation by the NCCAOM of the acupuncturist's designation. Board action also may be taken under the bill if the acupuncturist fails to meet the NCCAOM's requirements for redesignation or fails to notify the Board that the appropriate designation has not been maintained.[24]

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[20] R.C. 4762.01(A),(C), and (I).

[21] R.C. 4762.01(F).

[22] R.C. 4762.10(D)(4).

[23] R.C. 4762.03(B)(4).

[24] R.C. 4762.13(B)(24).

State Medical Board

Board secretary

The bill clarifies that the Secretary of the State Medical Board is also a member of the Board. The bill repeals an existing provision under which the Board Secretary receives necessary expenses incurred in the performance of official duties.[25]

Meetings

The bill requires the State Medical Board to meet at least four times each year (rather than specifying in statute the specific months the Board must meet). The bill specifies that the minutes of a Board meeting are, on approval by the Board, to constitute an official record of its proceedings.[26]

HISTORY

ACTION	DATE
Introduced	06-01-11
Reported, H. Health & Aging	05-09-12

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[25] R.C. 4731.02 and 4731.04 (repealed).

[26] R.C. 4731.06 and 4731.07.