

Original sponsor: Abood

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

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CS FOR SENATE BILL NO. 405 (L&C)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the practice of acupuncture."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. PURPOSE. The health, safety, and welfare of the people of
9 the state are best served by the establishment of an orderly system of
10 licensure for the practice of acupuncture in the state. The rapid develop-
11 ment of the profession, including the establishment of national standards
12 for the education and practice of acupuncturists, has resulted in increased
13 public interest and increased demand for access to qualified acupunc-
14 turists.

15 * Sec. 2. AS 08 is amended by adding a new chapter to read:

16

CHAPTER 06. ACUPUNCTURE.

17

ARTICLE 1. LICENSURE AND PRACTICE OF ACUPUNCTURISTS.

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Sec. 08.06.010. DUTIES OF THE DEPARTMENT. The Department of

19

Commerce and Economic Development shall

20

(1) issue licenses to practice acupuncture;

21

(2) impose disciplinary sanctions as authorized by this

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chapter;

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(3) prepare an annual report for submission to the legisla-

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ture covering activities under this chapter, including a summary of

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all complaints received, disciplinary actions taken, and prosecutions

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brought under this chapter; and

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(4) adopt regulations under the Administrative Procedure

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Act (AS 44.62) necessary to carry out the purposes of this chapter

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including

- 1 (A) standards for the practice of acupuncture;
2 (B) standards for continuing education and training;
3 (C) a code of ethics for the the practice of acupunc-
4 ture.

5 Sec. 08.06.020. PRACTICE OF ACUPUNCTURE WITHOUT LICENSE PROHIB-
6 ITED. A person may not practice acupuncture without a license.

7 Sec. 08.06.030. APPLICATION FOR LICENSE. A person desiring to
8 practice acupuncture shall apply in writing to the department.

9 Sec. 08.06.040. LICENSE TO PRACTICE ACUPUNCTURE. (a) A person
10 is qualified to receive a license to practice acupuncture if the
11 person

12 (1) is of good moral character;

13 (2) is at least 21 years of age;

14 (3) either

15 (A) has completed

16 (i) a course of study, consistent with the core
17 curriculum and guidelines of the National Commission of Acu-
18 puncture Schools and Colleges, approved by the department;
19 or

20 (ii) other training approved by the department; or

21 (B) is licensed in another state that has licensing
22 requirements approved by the department;

23 (4) is qualified for certification by the National Commis-
24 sion for the Certification of Acupuncturists as a diplomate in acu-
25 puncture;

26 (5) does not have a disciplinary proceeding or unresolved
27 complaint pending at the time of application; and

28 (6) has not had a license to practice acupuncture suspended
29 or revoked in this state or in another state, territory, or province.

1 (b) The department shall issue a license to practice acupuncture
2 to each person who is qualified and who pays the appropriate fee.

3 (c) Each person licensed to practice acupuncture under this
4 chapter shall display the license in a conspicuous place where the
5 licensee practices.

6 Sec. 08.06.050. RENEWAL OF LICENSE. A license under this chap-
7 ter may not be renewed unless the applicant

8 (1) demonstrates continued competence as an acupuncturist
9 in a manner established by the department in regulations; and

10 (2) submits proof that the applicant maintains certifica-
11 tion by the National Commission for the Certification of Acupunctur-
12 ists as a diplomate of acupuncture.

13 Sec. 08.06.060. DISCLOSURE. (a) A person who practices acu-
14 puncture shall disclose that the person's training and practice are in
15 acupuncture

16 (1) to each patient; and

17 (2) on all material used in the practice of acupuncture and
18 made available to patients or to the public.

19 (b) A person who practices acupuncture without being covered by
20 malpractice insurance shall disclose to each patient that the person
21 does not have the insurance.

22 Sec. 08.06.070. RESTRICTIONS ON PRACTICE OF ACUPUNCTURE. A
23 person who practices acupuncture may not

24 (1) give, prescribe, or recommend in the practice a

25 (A) prescription drug;

26 (B) controlled substance;

27 (C) poison;

28 (2) engage in surgery; or

29 (3) use the word "physician" in the person's title.

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ARTICLE 2. GENERAL PROVISIONS.

Sec. 08.06.110. GROUNDS FOR IMPOSITION OF DISCIPLINARY SANCTIONS. After a hearing, the department may impose a disciplinary sanction on a person licensed under this chapter when the department finds that the licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted of a felony or other crime that affects the licensee's ability to continue to practice competently and safely;

(5) intentionally or negligently engaged in or permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards regardless of whether actual injury to the patient occurred;

(6) failed to comply with this chapter, with a regulation adopted under this chapter, or with an order of the department;

(7) continued to practice after becoming unfit due to
(A) professional incompetence;
(B) failure to keep informed of current professional practices;

(C) addiction or severe dependency on alcohol or other drugs that impairs the ability to practice safely;

(D) physical or mental disability; or

(8) engaged in lewd or immoral conduct in connection with

1 the delivery of professional service to patients.

2 Sec. 08.06.120. DISCIPLINARY POWERS OF DEPARTMENT. (a) The
3 department may take the following disciplinary actions, singly or in
4 combination:

5 (1) permanently revoke a license;

6 (2) suspend a license for a specified period;

7 (3) censure or reprimand a licensee;

8 (4) impose limitations or conditions on the professional
9 practice of a licensee;

10 (5) require a licensee to submit to peer review;

11 (6) impose requirements for remedial professional education
12 to correct deficiencies in the education, training, and skill of the
13 licensee;

14 (7) impose probation requiring a licensee to report regu-
15 larly to the department on matters related to the grounds for proba-
16 tion;

17 (8) impose a civil fine not to exceed \$5,000.

18 (b) The department may withdraw probationary status if the
19 deficiencies that required the sanction are remedied.

20 (c) The department may summarily suspend a licensee from the
21 practice of the profession before a final hearing is held or during an
22 appeal if the department finds that the licensee poses a clear and
23 immediate danger to the public health and safety. A person is enti-
24 tled to a hearing before the department to appeal the summary suspen-
25 sion within seven days after the order of suspension is issued. A
26 person may appeal an adverse decision of the department on an appeal
27 of a summary suspension to a court of competent jurisdiction.

28 (d) The department may reinstate a suspended or revoked license
29 if, after a hearing, the department finds that the applicant is able

1 to practice the profession with skill and safety.

2 (e) The department may accept the voluntary surrender of a
3 license. A license may not be returned unless the department deter-
4 mines that the licensee is competent to resume practice and the li-
5 censee pays the appropriate renewal fee.

6 (f) The department shall seek consistency in the application of
7 disciplinary sanctions. The department shall explain a significant
8 departure from prior decisions involving similar facts in the order
9 imposing the sanction.

10 Sec. 08.06.130. EXEMPTION. This chapter does not apply to a
11 person who practices acupuncture under AS 08.36 or AS 08.64.

12 Sec. 08.06.140. PENALTY. A person who violates this chapter or
13 a regulation adopted under this chapter is guilty of a class B misde-
14 meanor.

15 Sec. 08.06.190. DEFINITIONS. In this chapter

16 (1) "acupuncture" means a form of healing developed from
17 traditional Chinese medical concepts that uses the stimulation of
18 certain points on or near the surface of the body by the insertion of
19 needles to prevent or modify the perception of pain or to normalize
20 physiological functions;

21 (2) "department" means the Department of Commerce and
22 Economic Development;

23 (3) "practice of acupuncture" means the insertion of acu-
24 puncture needles and the application of moxibustion to specific areas
25 of the human body based upon acupuncture diagnosis; the practice of
26 acupuncture includes adjunctive therapies involving mechanical, ther-
27 mal, electrical, and electromagnetic treatment and the recommendation
28 of dietary guidelines and therapeutic exercise.

29 * Sec. 3. AS 08.01.010 is amended by adding a new paragraph to read:

1 (28) regulation of acupuncture under AS 08.06.

2 * Sec. 4. AS 08.01.050(a)(4) is amended to read:

3 (4) notify applicants of acceptance or rejection as de-
4 termined by the board or as determined by the department under AS 08.-
5 06 for acupuncturists, under AS 08.11 for audiologists, under AS 08.40
6 for electrical administrators, under AS 08.45 for naturopaths, or
7 under AS 08.55 for hearing aid dealers;

8 * Sec. 5. AS 08.01.050(a)(9) is amended to read:

9 (9) issue licenses or temporary licenses as authorized by
10 the board or as authorized by the department under AS 08.06 for acu-
11 puncturists, under AS 08.11 for audiologists, under AS 08.40 for
12 electrical administrators, under AS 08.45 for naturopaths, or under
13 AS 08.55 for hearing aid dealers;

14 * Sec. 6. AS 08.02.010(a) is amended to read:

15 (a) An acupuncturist licensed under AS 08.06, an audiologist
16 licensed under AS 08.11, a person licensed in the state as a chiro-
17 practor under AS 08.20, a dentist under AS 08.36, a medical practi-
18 tioner or osteopath under AS 08.64, a registered nurse under AS 08.68,
19 an optometrist under AS 08.72, a registered pharmacist under AS 08.80,
20 a registered physical therapist or occupational therapist under
21 AS 08.84, or a psychologist under AS 08.86, shall use as professional
22 identification appropriate letters or a title after that person's name
23 which represents that person's specific field of practice. The let-
24 ters or title shall appear on all signs, stationery, or other adver-
25 tising in which the person offers or displays personal professional
26 services to the public. In addition, a person engaged in the practice
27 of medicine or osteopathy as defined in AS 08.64.380, or a person
28 engaged in any manner in the healing arts who diagnoses, treats,
29 tests, or counsels other persons in relation to human health or

1 disease and uses the letters "M.D." or the title "doctor" or "phy-
2 sician" or another title that tends to show that the person is willing
3 or qualified to diagnose, treat, test, or counsel another person,
4 shall clarify the letters or title by adding the appropriate special-
5 ist designation, if any, such as "dermatologist", "radiologist",
6 "audiologist", "naturopath", or the like.

7 * Sec. 7. AS 08.36 is amended by adding a new section to read:

8 Sec. 08.36.115. QUALIFICATIONS FOR ACUPUNCTURE APPLICANTS. An
9 applicant for a license to perform acupuncture in the regular practice
10 of dentistry shall satisfy the requirements of AS 08.36.100 and those
11 requirements of experience or education in the practice of acupuncture
12 as may be adopted by the board.

13 * Sec. 8. AS 08.64.170(a) is amended to read:

14 (a) A person may not practice medicine, podiatry, or osteopathy
15 [, OR ACUPUNCTURE] in the state unless the person is licensed under
16 this chapter, except that

17 (1) a physician assistant may examine, diagnose, or treat
18 persons under the supervision, control, and responsibility of either a
19 physician licensed under this chapter or a physician exempted from
20 licensing under AS 08.64.370;

21 (2) a physician-trained mobile intensive care paramedic may
22 render emergency lifesaving service; and

23 (3) [A PERSON LICENSED UNDER AS 08.36 MAY PERFORM ACUPUNC-
24 TURE IN THE REGULAR PRACTICE OF DENTISTRY, SUBJECT TO THE REGULATIONS
25 OF THE BOARD OF DENTAL EXAMINERS; AND

26 (4)] a person who is licensed or authorized under another
27 chapter of this title may engage in a practice that is authorized
28 under that chapter.

29 * Sec. 9. AS 08.64.180 is amended to read:

1 Sec. 08.64.180. APPLICATION FOR LICENSE. A person who desires
2 to practice medicine or [,] osteopathy [OR ACUPUNCTURE] in the state
3 shall apply in writing to the department for a license.

4 * Sec. 10. AS 09.55.560(1) is amended to read:

5 (1) "health care provider" means an acupuncturist licensed
6 under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor
7 licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
8 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a
9 dispensing optician licensed under AS 08.71; a naturopath licensed
10 under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist
11 licensed under AS 08.80; a physical therapist or occupational thera-
12 pist licensed under AS 08.84; a physician licensed under AS 08.64; a
13 podiatrist; a psychologist and a psychological associate licensed
14 under AS 08.86; and a hospital as defined in AS 18.20.130, including a
15 governmentally owned or operated hospital; a corporate entity covered
16 under AS 21.88.050(b)(11); and an employee of a health care provider
17 acting within the course and scope of employment;

18 * Sec. 11. AS 18.23.070(3) is amended to read:

19 (3) "health care provider" means an acupuncturist licensed
20 under AS 08.06; a chiropractor licensed under AS 08.20; a dental
21 hygienist licensed under AS 08.32; a dentist licensed under AS 08.36;
22 a nurse licensed under AS 08.68; a dispensing optician licensed under
23 AS 08.71; an optometrist licensed under AS 08.72; a pharmacist li-
24 censed under AS 08.80; a physical therapist or occupational therapist
25 licensed under AS 08.84; a physician licensed under AS 08.64; a podia-
26 trist; a psychologist and a psychological associate licensed under
27 AS 08.86; and a hospital as defined in AS 18.20.130, including a
28 governmentally owned or operated hospital; a corporate entity covered
29 under AS 21.88.050(b)(1); and an employee of a health care provider

1 acting within the course and scope of employment;

2 * Sec. 12. AS 21.36.090(d) is amended to read:

3 (d) A person may not practice or permit unfair discrimination
4 against a person who provides a service covered under a group disabili-
5 ty policy that extends coverage on an expense incurred basis, or
6 under a group service or indemnity type contract issued by a nonprofit
7 corporation, if the service is within the scope of the provider's
8 occupational license. In this subsection, "provider" means a state
9 licensed physician, dentist, osteopath, optometrist, acupuncturist,
10 chiropractor, nurse midwife, naturopath, physical therapist, or occu-
11 pational therapist.

12 * Sec. 13. AS 21.88.900(9) is amended to read:

13 (9) "health care provider" means an acupuncturist licensed
14 under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor
15 licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a
16 dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a
17 dispensing optician licensed under AS 08.71; an optometrist licensed
18 under AS 08.72; a pharmacist licensed under AS 08.80; a physical
19 therapist or occupational therapist licensed under AS 08.84; a physi-
20 cian licensed under AS 08.64; a podiatrist; a psychologist and a
21 psychological associate licensed under AS 08.86; a hospital as defined
22 in AS 18.20.130, including a governmentally owned or operated hospi-
23 tal; a corporate entity covered under AS 21.88.050(b)(11); an employee
24 of a health care provider acting within the course and scope of em-
25 ployment;

26 * Sec. 14. AS 21.88.900 is amended by adding a new paragraph to read:

27 (18) "acupuncturist" means a person licensed under AS 08.06.

28 * Sec. 15. AS 47.17.070(9) is amended to read:

29 (9) "practitioner of the healing arts" includes

1 acupuncturists, chiropractors, dental hygienists, dentists, health
2 aides, nurses, nurse practitioners, occupational therapists, occupa-
3 tional therapy assistants, optometrists, osteopaths, naturopaths,
4 physical therapists, physical therapy assistants, physicians, physi-
5 cian's assistants, psychiatrists, psychologists, psychological associ-
6 ates, audiologists licensed under AS 08.11, hearing aid dealers li-
7 censed under AS 08.55, religious healing practitioners, and surgeons;