

Bill No. CS for CS for SB 370

Amendment No. Barcode 072664

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Campbell moved the following **amendment to amendment**
 12 (104940):

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 14 **Senate Amendment (with title amendment)**

15 On page 97, between lines 23 and 24,
 16
 17 insert:

18 Section 80. Section 457.105, Florida Statutes, is
 19 amended to read:

20 457.105 Licensure qualifications and fees.--

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

25 (2) A person may become licensed to practice
 26 acupuncture if the person applies to the department and:

27 (a) Is 21 years of age or older, has good moral
 28 character, and has the ability to communicate in English,
 29 which is demonstrated by having passed the national written
 30 examination in English or, if such examination was passed in a
 31 foreign language, by also having passed a nationally

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1 recognized English proficiency examination;

2 (b) Has received a bachelor's degree from an
3 accredited college or university ~~completed 60 college credits~~
4 ~~from an accredited postsecondary institution~~ as a prerequisite
5 to enrollment in an authorized 3-year course of study in
6 acupuncture and oriental medicine, and has completed a 3-year
7 course of study in acupuncture and oriental medicine, and
8 effective July 31, 2001, a 4-year course of study in
9 acupuncture and oriental medicine, and effective July 31,
10 2003, a 4-year, 3200-hour course of study in acupuncture and
11 oriental medicine which meets standards established by the
12 board by rule, which standards include, but are not limited
13 to, successful completion of academic courses in western
14 anatomy, western physiology, western pathology, western
15 biomedical terminology, use of laboratory tests and imaging
16 tests, first aid, and cardiopulmonary resuscitation (CPR).
17 However, any person who enrolled in an authorized course of
18 study in acupuncture before August 1, 1997, and who applies on
19 or before July 1, 2003, must have completed only a 2-year
20 course of study which meets standards established by the board
21 by rule, which standards must include, but are not limited to,
22 successful completion of academic courses in western anatomy,
23 western physiology, and western pathology;

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

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1 shall be used in the examination. The examination shall
2 include a practical examination of the knowledge and skills
3 required to practice modern and traditional acupuncture and
4 oriental medicine, covering diagnostic and treatment
5 techniques and procedures; and

6 (d) On or after July 1, 2002, has submitted to the
7 department a set of fingerprints on a form and under
8 procedures specified by the department along with a payment in
9 an amount equal to the costs to be incurred by the Department
10 of Health for the criminal background check of an applicant.

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

13 1. Examination fee: \$500 plus the actual per applicant
14 cost to the department for purchase of the written and
15 practical portions of the examination from a national
16 organization approved by the board.

17 2. Application fee: \$300.

18 3. Reexamination fee: \$500 plus the actual per
19 applicant cost to the department for purchase of the written
20 and practical portions of the examination from a national
21 organization approved by the board.

22 4. Initial biennial licensure fee: \$400, if licensed
23 in the first half of the biennium, and \$200, if licensed in
24 the second half of the biennium.

25 (3) As prescribed by board rule, the board may reject
26 an applicant who within a 3-year period does not pass the
27 licensing examination after five attempts.

28 Section 81. Subsection (2) of section 457.107, Florida
29 Statutes, is amended to read:

30 457.107 Renewal of licenses; continuing education.--

31 (2) The department or board shall adopt rules

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1 establishing a procedure for the biennial renewal of licenses.

2 Section 82. Section 457.1085, Florida Statutes, is
3 amended to read:

4 457.1085 Infection control.--~~Prior to November 1,~~
5 ~~1986,~~The board shall adopt rules relating to the prevention
6 of infection, the safe disposal of any potentially infectious
7 materials, and other requirements to protect the health,
8 safety, and welfare of the public. ~~Beginning October 1, 1997,~~
9 All acupuncture needles that are to be used on a patient must
10 be sterile and disposable, and each needle may be used only
11 once.

12 Section 83. Subsection (1) of section 457.109, Florida
13 Statutes, is amended to read:

14 457.109 Disciplinary actions; grounds; action by the
15 board.--

16 (1) The following acts constitute grounds for denial
17 of a license or disciplinary action, as specified in s.
18 456.072(2):

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

22 (b) Having a license to practice acupuncture revoked,
23 suspended, or otherwise acted against, including the denial of
24 licensure, by the licensing authority of another state,
25 territory, or country.

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

31 (d) False, deceptive, or misleading advertising ~~or~~

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1 ~~advertising which claims that acupuncture is useful in curing~~
2 ~~any disease.~~

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

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

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

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

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

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

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

29 (l) Soliciting patients, either personally or through
30 an agent, through the use of fraud, intimidation, undue
31 influence, or a form of overreaching or vexatious conduct. A

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1 solicitation is any communication which directly or implicitly
2 requests an immediate oral response from the recipient.

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

5 (n) Exercising influence on the patient to exploit the
6 patient for the financial gain of the licensee or of a third
7 party.

8 (o) Being unable to practice acupuncture with
9 reasonable skill and safety to patients by reason of illness
10 or use of alcohol, drugs, narcotics, chemicals, or any other
11 type of material or as a result of any mental or physical
12 condition. In enforcing this paragraph, upon a finding of the
13 secretary or the secretary's designee that probable cause
14 exists to believe that the licensee is unable to serve as an
15 acupuncturist due to the reasons stated in this paragraph, the
16 department shall have the authority to issue an order to
17 compel the licensee to submit to a mental or physical
18 examination by a physician designated by the department. If
19 the licensee refuses to comply with such order, the
20 department's order directing such examination may be enforced
21 by filing a petition for enforcement in the circuit court
22 where the licensee resides or serves as an acupuncturist. The
23 licensee against whom the petition is filed shall not be named
24 or identified by initials in any public court record or
25 document, and the proceedings shall be closed to the public.
26 The department shall be entitled to the summary procedure
27 provided in s. 51.011. An acupuncturist affected under this
28 paragraph shall at reasonable intervals be afforded an
29 opportunity to demonstrate that he or she can resume the
30 competent practice of acupuncture with reasonable skill and
31 safety to patients. In any proceeding under this paragraph,

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1 neither the record of proceedings nor the orders entered by
2 the department shall be used against an acupuncturist in any
3 other proceeding.

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

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

13 (r) Delegating professional responsibilities to a
14 person when the licensee delegating such responsibilities
15 knows or has reason to know that such person is not qualified
16 by training, experience, or licensure to perform them.

17 (s) Violating any provision of this chapter or chapter
18 456, a rule of the department, or a lawful order of the board
19 previously entered in a disciplinary hearing or failing to
20 comply with a lawfully issued subpoena of the department.

21 (t) Conspiring with another to commit an act, or
22 committing an act, which would tend to coerce, intimidate, or
23 preclude another licensee from lawfully advertising his or her
24 services.

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

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

30 (w) Failing to comply with any rule of the board
31 relating to health and safety, including, but not limited to,

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1 the sterilization of needles and equipment and the disposal of
2 potentially infectious materials.

3 (x) A licensee may not use the specialty titles of
4 "Diplomat in Acupuncture" or "National Board Certified
5 Diplomat in Acupuncture" or "Board Certified Diplomat in
6 Acupuncture" in conjunction with the individual's name, place
7 of business, or acupuncture practice unless that individual
8 holds an active license under chapter 457 and is also an
9 active holder of such board certification from the nationally
10 recognized "Acupuncture Credentials Verification
11 Organization," the National Certification Commission for
12 Acupuncture and Oriental Medicine (NCCAOM). NCCAOM is a member
13 of the National Organization for Competency Assurance (NOCA)
14 and is accredited by the National Commission for Certifying
15 Agencies (NCCA).

16 (y) Practicing "acupuncture injection therapy" without
17 completing training of at least 60 hours of didactic and
18 clinical education. Subject training must be sufficiently
19 documented to the Board of Acupuncture by the acupuncture
20 physician at least 14 days prior to the administering of this
21 therapy.

22 (z)~~(x)~~ Violating any provision of this chapter or
23 chapter 456, or any rules adopted pursuant thereto.

24 Section 84. Section 457.116, Florida Statutes, is
25 amended to read:

26 457.116 Prohibited acts; penalty.--

27 (1) A person may not:

28 (a) Practice acupuncture unless the person is licensed
29 under ss. 457.101-457.118;

30 (b) Use, in connection with his or her name or place
31 of business, any title or description of services which

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1 incorporates the words "acupuncture," "acupuncturist,"
 2 "certified acupuncturist," "licensed acupuncturist,"
 3 "registered acupuncturist", "oriental medical practitioner",
 4 "herbalist," "acupuncture physician," "doctor of oriental
 5 medicine," "doctor of acupuncture," "doctor of acupuncture and
 6 oriental medicine"; the letters "C.Ac.," "L.Ac.," "R.Ac.," ,
 7 "O.M.P.," "A.P.," "D.A.O.M.," "D.Ac.," or "D.O.M."; or any
 8 other words, letters, abbreviations, or insignia indicating or
 9 implying that he or she practices acupuncture unless he or she
 10 is a holder of a valid license issued pursuant to ss.

11 457.101-457.118;

12 (c) Present as his or her own the license of another;

13 (d) Knowingly give false or forged evidence to the
 14 board or a member thereof;

15 (e) Use or attempt to use a license that has been
 16 suspended, revoked, or placed on inactive or delinquent
 17 status;

18 (f) Employ any person who is not licensed pursuant to
 19 ss. 457.101-457.118 to engage in the practice of acupuncture;
 20 or

21 (g) Conceal information relating to any violation of
 22 ss. 457.101-457.118.

23 (2) A person who violates this section commits a
 24 felony of the third degree ~~a misdemeanor of the second degree,~~
 25 punishable as provided in s. 775.082, or s. 775.083, or
 26 775.084.

27 Section 85. Section 457.1185, Florida Statutes, is
 28 created to read:

29 457.1185 Educational Programs; approval.--The board
 30 shall adopt rules regarding educational objective, faculty
 31 qualifications, curriculum guidelines, administrative

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1 procedures, and clinical training as are necessary to ensure
2 that approved programs graduate primary health care providers
3 capable of competent practice under this chapter.

4
5 (Redesignate subsequent sections.)

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7
8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 107, line 21, after the semicolon,

11
12 insert:

13 amending ss. 457.105, 457.107, 457.1085,
14 457.109, 457.116, F.S., relating to
15 acupuncture; amending licensure qualifications;
16 providing for rulemaking by the Board of
17 Acupuncture; revising grounds for disciplinary
18 actions; revising a list of prohibited acts;
19 creating s. 457.1185, F.S.; providing for the
20 approval of educational programs;

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