

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 586

SPONSOR: Senator Jones

SUBJECT: Practice of Acupuncture

DATE: January 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	Pre-meeting
2.	_____	_____	HA	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill eliminates the definition of “oriental medicine” from the acupuncture practice act (ch. 457, F.S.). To conform to this change, the definitions of “acupuncture,” “acupuncturist,” “board” and “license” are revised to include “acupuncture and oriental medicine.”

The “Board of Acupuncture” is renamed the “Board of Acupuncture and Oriental Medicine.” The term “acupuncturist” is changed to “acupuncture physician,” to mean any person licensed as provided in the acupuncture practice act to practice acupuncture and oriental medicine as a primary health care provider.

The bill deletes the Board of Acupuncture’s authority to set a fee not to exceed \$100 for each continuing education provider. The bill provides that, notwithstanding any provision of ch. 457, F.S., or ch. 456, F.S., to the contrary, the Board of Acupuncture may require a provider of continuing education to obtain the board’s approval of *programs and instructors* before offering continuing education programs for purposes of licensure renewal. The provider is required to pay a fee for program approval and renewal, as authorized in s. 456.025, F.S., and determined by board rule. The Board of Acupuncture is granted rulemaking authority to administer its duties relating to continuing education, including rules for determining the criteria for approving provider qualifications and programs in accordance with s. 457.107(3), F.S.

This bill amends sections 457.102 and 457.107, Florida Statutes.

II. Present Situation:

Acupuncture

Chapter 457, F.S., governs the practice of acupuncture. The chapter defines “acupuncture” to mean a form of primary health care, based on traditional Chinese medical concepts and modern oriental medical techniques, that employs acupuncture diagnosis and treatment, as well as adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease. Acupuncture includes the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body and the use of electroacupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies as defined by board rule. “Acupuncturist” is defined to mean any person licensed as provided in ch. 457, F.S., to practice acupuncture as a primary health care provider. “Oriental medicine” is defined to mean the use of acupuncture, eletroacupuncture, Qi Gong, oriental massage, herbal therapy, dietary guidelines, and other adjunctive therapies. The Board of Acupuncture has defined by rule “acupuncture physician” to mean any person certified as provided in ch. 457, F.S., to practice acupuncture as a primary health care provider.¹

Section 457.116(1)(a), F.S., prohibits a person from practicing acupuncture in Florida unless that person is licensed under ch. 457, F.S. Under s. 457.116(1)(b), F.S., a person may not use, in connection with his or her name or place of business, any title or description of services which incorporates the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “oriental medical practitioner”; the letters “L.Ac.,” “R.Ac.,” “A.P.,” or “D.O.M.”; or any other words, letters, abbreviations, or insignia indicating or implying that he or she practices acupuncture unless he or she is a holder of valid license issued pursuant to ch. 457, F.S. The Board of Acupuncture has defined by rule that as used in s. 457.116(1)(b), F.S., the following terms shall mean:

- L.Ac. – Licensed Acupuncturist;
- R.Ac. – Registered Acupuncturist;
- A.P. – Acupuncture Physician; and
- D.O.M. – Doctor of Oriental Medicine.²

A person who violates s. 457.116, F.S., commits a second degree misdemeanor punishable by jail time of up to 60 days and the imposition of fine of up to \$500.

The chapter provides two basic ways for a person to become an acupuncturist. There is a grandfathering provision allowing persons to complete a two-year course of study if the licensure applicant enrolled in the program before August 1, 1997. Otherwise, the licensure applicant must have completed a four-year course of study. Applicants for licensure to practice acupuncture must be at least 21 years of age and complete 60 college credits from an accredited postsecondary institution as a prerequisite to a four-year course of study that meets standards established by the Board of Acupuncture by rule, including successful completion of courses in western anatomy, western physiology, and western pathology. The applicant must also pass an

¹ See Rule 64B1-3.001(6), Florida Administrative Code.

² See Rule 64B1-9.005, Florida Administrative Code.

examination administered by the Department of Health (DOH), successfully complete a board-approved national certification process, or be actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those in Florida.

The chapter authorizes the Board of Acupuncture to require up to 30 hours of continuing education as a condition of license renewal every 2 years. The board has the authority to set a fee, not to exceed \$100, for each continuing education provider. All national and state acupuncture and oriental medicine organizations and acupuncture and oriental medicine schools are approved to provide continuing professional education in accordance with the acupuncture practice act.

Continuing Education

Chapter 456, F.S., provides the general regulatory provisions for health care professions regulated under DOH Section 456.013(9), F.S., requires any board that currently requires continuing education (CE) for license renewal to adopt rules to establish criteria for continuing education. Section 456.025(7), F.S., requires each board or DOH if there is no board, to establish by rule, a fee not to exceed \$250 for anyone seeking approval to provide CE courses or programs and to establish by rule a biennial renewal fee no greater than \$250 for the renewal of providership of such courses. The fees collected from CE providers must be used for the purposes of reviewing course provider applications, monitoring the integrity of the courses provided, covering legal expenses incurred as a result of not granting or renewing a providership, and developing and maintaining an electronic tracking system for each biennial renewal cycle for which electronic renewals are implemented.

The practice act for each health care profession may specify the number of hours of continuing education that must be completed to satisfy the license renewal requirements, the approval of the CE provider or programs, and the exceptions to satisfying the CE requirement. Under ch. 456, F.S., boards have express authority to adopt rules to assess a fee from providers of CE courses and programs seeking approval and express authority to establish criteria for CE courses. Some boards have not expressly approved CE providers, although they may have approved courses offered by CE providers or adopted rules specifying the criteria that such providers must meet.

In *Freiberg v. Department of Health, Board of Acupuncture*, the administrative law judge found that the Board of Acupuncture did not have statutory authority to approve the provider of CE courses or programs.³ The Division of Administrative Hearings issued a final order in the *Freiberg* case in which existing rules of the Board of Acupuncture requiring board approval of CE providers were declared an invalid exercise of delegated legislative authority. In *Freiberg*, the administrative law judge found that s. 456.025(7), F.S., authorizes boards to impose a fee of up to \$250 on “anyone seeking approval to provide continuing education courses or programs” and requires boards to establish by rule a “biennial renewal fee” for the “renewal of providership” of CE courses. Although this fee relates to obtaining the board’s approval of the provider and the board may adopt a rule imposing the fee under s. 456.025(7), F.S., it may not be inferred that the board has statutory authority to approve the CE provider. The administrative law

³ See *Freiberg v. Department of Health, Board of Acupuncture*, DOAH Case No. 03-2964RX (November 26, 2003).

judge found that the challenged portion of the Board of Acupuncture rule enlarges, modifies, or contravenes the statutes purportedly implemented.

III. Effect of Proposed Changes:

Section 1. Amends s. 457.102, F.S., relating to definitions, to eliminate the definition of “oriental medicine.” To conform to this change, the definitions of “acupuncture,” “acupuncturist,” “board” and “license” are revised to include “acupuncture and oriental medicine.”

The “Board of Acupuncture” is renamed the “Board of Acupuncture and Oriental Medicine.” The term “acupuncturist” is changed to “acupuncture physician,” to mean any person licensed as provided in the acupuncture practice act to practice acupuncture and oriental medicine as a primary health care provider.

Section 2. Amends s. 457.107(3), F.S., relating to renewal of licenses and continuing education, to delete the Board of Acupuncture’s authority to set a fee not to exceed \$100 for each continuing education provider. This authority is inconsistent with the requirements of s. 456.025(7), F.S., which requires each board or DOH if there is no board, to establish by rule, a fee not to exceed \$250 for anyone seeking approval to provide CE courses or programs and to establish by rule a biennial renewal fee no greater than \$250 for the renewal of providership of such courses.

Section 457.107(3), F.S., is amended to provide that, notwithstanding any provision of ch. 457, F.S., or ch. 456, F.S., to the contrary, the Board of Acupuncture may require a provider of continuing education to obtain the board’s approval of programs and instructors before offering continuing education programs for purposes of licensure renewal. The provider is required to pay a fee for program approval and renewal, as authorized in s. 456.025, F.S., and determined by board rule. The Board of Acupuncture is granted rulemaking authority to administer its duties relating to continuing education, including rules for determining the criteria for approving provider qualifications and programs in accordance with s. 457.107, F.S.

Section 3. Provides an effective date of July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Health notes that the bill does not have any fiscal impact on the department.

VI. Technical Deficiencies:

Under the bill, the “Board of Acupuncture” is renamed the “Board of Acupuncture and Oriental Medicine.” To conform, references to the “Board of Acupuncture” within other sections of the Florida Statutes need to be revised to “Board of Acupuncture and Oriental Medicine.”

VII. Related Issues:

In *Freiberg v. Department of Health, Board of Acupuncture*, the administrative law judge found that the Board of Acupuncture did not have statutory authority to approve the provider of CE courses or programs.⁴ The Division of Administrative Hearings issued a final order in the *Freiberg* case in which existing rules of the Board of Acupuncture requiring board approval of CE providers were declared an invalid exercise of delegated legislative authority. In *Freiberg*, the administrative law judge found that s. 456.025(7), F.S., authorizes boards to impose a fee of up to \$250 on “anyone seeking approval to provide continuing education courses or programs” and requires boards to establish by rule a “biennial renewal fee” for the “renewal of providership” of CE courses. Although this fee relates to obtaining the board’s approval of the provider and the board may adopt a rule imposing the fee under s. 456.025(7), F.S., it may not be inferred that the board has statutory authority to approve the CE provider. The administrative law judge found that the challenged portion of the Board of Acupuncture rule enlarges, modifies, or contravenes the statutes purportedly implemented.

The bill does not expressly give the Board of Acupuncture the statutory authority to approve continuing education providers and does not specify any criteria or procedures for such approval by the board. The bill provides for a fee for program approval and renewal which appears to be inconsistent with the statutory authority granted to all boards and DOH to adopt by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses or

⁴ See *Freiberg v. Department of Health, Board of Acupuncture*, DOAH Case No. 03-2964RX (November 26, 2003).

programs and to establish by rule a biennial renewal fee no greater than \$250 for the renewal of providership of such courses.

In Rule 64B1-3.001(6), F. A. C., the Board of Acupuncture has defined “acupuncture physician” to mean any person certified as provided in ch. 457, F.S., to practice acupuncture as a primary health care provider. In Rule 64B1-9.005, F. A. C., the Board of Acupuncture has defined that as used in s. 457.116(1)(b), F.S., the following terms shall mean:

- L.Ac. – Licensed Acupuncturist;
- R.Ac. – Registered Acupuncturist;
- A.P. – Acupuncture Physician; and
- D.O.M. – Doctor of Oriental Medicine.

The Board of Acupuncture does not have specific statutory authority to adopt a rule defining the letters “L.Ac.,” “R.Ac.,” “A.P.,” and “D.O.M.” or the term “acupuncture physician.” Rules 64B1-3.001 and 64B1-9.005, F.A.C., appear to enlarge, modify, or contravene the specific provisions of law implemented.⁵

The designation of the title Acupuncture Physician or Doctor of Oriental Medicine to persons who are licensed under ch. 457, F.S., appears to be inconsistent with existing criminal provisions in s. 817.567, F.S. Section 817.567, F.S., prohibits any person in the state from claiming either orally or in writing that she or he possesses an academic, educational, or professional program of study beyond the level of a specialized associate degree, or title associated with the credential unless the person has, in fact, been awarded the degree from an accredited institution; a state or federal government supported institution; a school or institution chartered outside the United States, the academic degree from which has been validated by an accrediting agency approved by the U.S. Department of Education as equivalent to the baccalaureate or postbaccalaureate degree conferred by a regionally accredited college in the U.S.; an institution licensed by the Commission for Independent Education; or religious seminary. Section 817.567, F.S., provides that no person awarded a doctorate degree from an institution not listed above may use the title “Dr.” or any letters which purport to signify satisfactory completion of the requirements of a doctorate degree, after the person’s name. A person who violates s. 817.567, F.S., is liable for a first degree misdemeanor punishable by up to 1 year of imprisonment and a fine up to \$1,000.

“Doctor of Oriental Medicine” is not an academic title according to officials at the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The ACAOM is a private, not-for-profit organization founded in 1982 by the Council of Colleges of Acupuncture and Oriental Medicine and the American Association of Oriental Medicine. The ACAOM is recognized by the United States Department of Education (USDE) as a specialized and professional accrediting agency. The ACAOM’s primary purposes are to establish comprehensive educational and institutional requirements for acupuncture and oriental medicine programs, and to accredit programs and institutions that meet these requirements.⁶

⁵ See *Ortiz v. Florida Department of Health, Board of Medicine*, 882 So.2d 402, 20004 West Law 1621440 (Fla. App. 4 Dist), rev. denied, ___ So.2d ___, (Fla. Supreme Court Case No. SC04-2042, December 21, 2004).

⁶ See the Accreditation Commission for Acupuncture and Oriental Medicine’s website at: <http://www.acaom.org/index.htm>.

The ACAOM, was first recognized by the USDE in 1988 for the accreditation of Masters degree and Masters level acupuncture only programs. In 1992, ACAOM was granted an expansion of scope by the USDE to include the accreditation of programs in oriental medicine. In January 2001, the USDE renewed ACAOM's recognition for the USDE's maximum five year period.

The ACAOM has established accreditation standards for postgraduate doctoral programs. Persons who successfully complete the clinical doctoral program at an ACAOM-accredited clinical doctoral program are awarded the degree Doctor of Acupuncture "D.Ac." for an acupuncture only program and the degree Doctor of Acupuncture and Oriental Medicine "DAOM" for a combined program.⁷ According to the officials at the ACAOM, the agency has approved some doctorate postgraduate programs to move forward including: Oregon College of Oriental Medicine, Emperor's College of Traditional Chinese Medicine, Pacific College of Oriental Medicine, American College of Traditional Chinese Medicine, Bastyr University, and South Baylo University.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

⁷ See the Accreditation Commission for Acupuncture and Oriental Medicine's handbook, pp. 42-62, at p. 55.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
