

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 263

DATE: 3.3.04

(Filing No. S-414)

BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT

Reported by: MAJORITY

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STATE OF MAINE SENATE 121ST LEGISLATURE SECOND SPECIAL SESSION

COMMITTEE AMENDMENT 'A' to S.P. 97, L.D. 263, Bill, "An Act to Define a Scope of Practice for Acupuncture"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 32 MRSA §12501, sub-§1, as enacted by PL 1995, c. 671, §13, is amended to read:

1. Acupuncture. "Acupuncture" means the insertion of fine metal needles through the skin at specific points on or near the surface of the body with or without the palpitation palpation of specific points on the body and with or without the application of electric current or heat to the needles or skin, or both. The practice of acupuncture is based on traditional oriental theories and serves to normalize physiological function, treat certain diseases and dysfunctions of the body, prevent or modify the perception of pain and promote health and well-being.

Sec. 2. 32 MRSA §12503, sub-§1, ¶C, as enacted by PL 1995, c. 671, §13, is repealed.

Sec. 3. 32 MRSA §12513-A is enacted to read:

§12513-A. Scope of practice

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2 1. Definitions. As used in this section, unless the
3 context otherwise indicates, the following terms have the
4 following meanings.

5 A. "Chinese patent remedies" means patent remedies used in
6 accordance with traditional Chinese, Japanese and Korean
7 herbal literature.

8 B. "Chinese premade herbal remedies" means premade herbal
9 remedies used in accordance with traditional Chinese,
10 Japanese and Korean herbal literature.

11 C. "Custom-made Chinese herbal formulations" means
12 custom-made herbal formulations used in accordance with
13 traditional Chinese, Japanese and Korean herbal literature.

14 2. Scope of practice. The scope of practice of
15 acupuncturists includes acupuncture and the allied techniques and
16 modalities of the distinct system of health care that use
17 oriental principles to diagnose and treat illness, injury, pain
18 and other conditions by regulating the flow and balance of energy
19 to restore and maintain health. These allied techniques and
20 modalities include the following, as defined by and used
21 exclusively in accordance with the traditions and formal
22 curricula taught in accredited colleges of acupuncture; oriental
23 diagnostic procedures; electrical and magnetic stimulation;
24 moxibustion and other forms of heat therapy; sound, light and
25 vibrational therapy; cupping techniques and gua sha;
26 recommendation and dispensing of Chinese patent remedies or
27 Chinese premade herbal remedies and lifestyle and dietary
28 counseling; formulation and dispensing of custom-made Chinese
29 herbal formulations, to the extent that an acupuncturist has
30 received additional certification pursuant to subsection 3;
31 sotai; shiatsu; qi gong; zero balancing; tui na; and
32 acupressure. These techniques and modalities do not include
33 manipulation or mobilization of the skeletal articulations of the
34 human body.

35 3. Additional certification. Certification is required for
36 licensed acupuncturists to practice the formulation and
37 dispensing of custom-made Chinese herbal formulations.
38 "Formulation" means the preparation of traditional combinations
39 of herbs to produce formulas from Chinese herbal literature, the
40 modification of such traditional combinations or the writing of
41 new formulas to address individual symptom presentations, through
42 addition, deletion, substitution or change in dosages of
43 ingredients and the dispensing of these herbal preparations to
44 patients.

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2 A. The board shall adopt rules specifying the training
4 required for licensed acupuncturists to obtain the
6 certification for custom-made Chinese herbal formulation.
8 These requirements must include a minimum number of hours of
10 combined classroom and clinical training or, for those
12 licensed acupuncturists practicing custom-made Chinese
14 herbal formulation prior to July 1, 2004, prior experience
16 demonstrated by evidence satisfactory to the board. Rules
18 adopted by the board in accordance with this paragraph are
20 routine technical rules pursuant to Title 5, chapter 375,
22 subchapter 2-A.

24 B. A licensed acupuncturist who can prove to the
26 satisfaction of the board that the licensed acupuncturist
28 was engaged in the practice of custom-made Chinese herbal
30 formulation prior to July 1, 2004 may continue to practice
32 that modality but must, no later than 2 years after the
34 board adopts rules providing certification requirements in
36 accordance with paragraph A, comply with those rules.

38 C. A licensed acupuncturist who can prove to the
40 satisfaction of the board that the licensed acupuncturist
42 has been duly licensed or certified to practice custom-made
44 Chinese herbal formulation by the licensing authority of
46 another state may continue to practice that modality, except
48 that the board may require that the licensee complete
50 additional training consistent with its rules within 3 years
52 if the board finds that the standards applied in the state
in which the licensed acupuncturist was certified or
licensed are less stringent than those adopted in the
board's rules.

4. Practice by other persons. The listing of allied
techniques and modalities in subsection 2, including acupressure
and qi gong, may not be construed to require any person who
practices the same or similar techniques or modalities to obtain
a license as an acupuncturist under section 12511 and may not be
construed to limit, interfere with or prevent any licensed person
from practicing the same or similar techniques and modalities
within the scope of that person's license, whether or not the
defined scope of that license contains specific lists of
techniques or modalities.

Sec. 4. 32 MRSA §12514, as amended by PL 1999, c. 386, Pt. T,
§1, is repealed.

Sec. 5. 32 MRSA §12514-A is enacted to read:

§12514-A. Fees

The Director of the Office of Licensing and Registration
within the Department of Professional and Financial Regulation

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2 may establish by rule fees for purposes authorized under this
3 subchapter in amounts that are reasonable and necessary for their
4 respective purposes, except that the fee for any application may
5 not exceed \$200, the fee for initial and renewal licensure may
6 not exceed \$675 annually and the fee for initial and renewal
7 certification in custom-made Chinese herbal formulation may not
8 exceed \$200 annually. Rules adopted pursuant to this section are
9 routine technical rules pursuant to Title 5, chapter 375,
10 subchapter 2-A.

11 **Sec. 6. 32 MRSA §12516**, as enacted by PL 1995, c. 671, §13,
12 is amended to read:

13 **§12516. Application for renewal**

14
15 **1. Requirements.** Prior to the expiration of a license, a
16 licensee may make an application for renewal upon payment of an
17 the required annual renewal fee, which may not exceed the initial
18 licensure fee, established under section 12514-A and upon
19 satisfactory demonstration of completion of continuing education
20 requirements adopted by the board as a condition of renewal. It
21 is not a condition of renewal that an applicant who qualified for
22 licensure as a licensed registered nurse continue to be licensed
23 as a registered nurse.
24

25 **2. Late renewal.** An application for renewal may be made no
26 earlier than 30 days prior to the date of expiration. An
27 application made no more than 90 days past the date of expiration
28 of a license must include a \$10 late fee in addition to the
29 renewal fee. An application received more than 90 days past the
30 expiration date is subject to all requirements covering new
31 applicants under this chapter.
32

33 **Sec. 7. 32 MRSA §12525, sub-§1, ¶E**, as enacted by PL 1995, c.
34 671, §13, is amended to read:

35 E. File an application and pay the licensing fees
36 established under section 12526.

37 **Sec. 8. 32 MRSA §12525, sub-§3, ¶A**, as enacted by PL 1995, c.
38 671, §13, is amended to read:

39 A. Submitted an application and a certification fee to be
40 determined by the board established under section 12526;

41 **Sec. 9. 32 MRSA §12526, sub-§1**, as amended by PL 1999, c. 257,
42 §7, is repealed and the following enacted in its place:

43 **1. Fees.** The Director of the Office of Licensing and
44 Registration within the Department of Professional and Financial
45 Regulation may establish by rule fees for purposes authorized
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2 under this subchapter in amounts that are reasonable and
3 necessary for their respective purposes, except that the fee for
4 any application may not exceed \$200, the fee for initial and
5 renewal licensure may not exceed \$675 annually and the fee for
6 initial and renewal specialty certification may not exceed \$50
7 annually. Rules adopted pursuant to this subsection are routine
8 technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

10 **Sec. 10. 32 MRSA §12526, sub-§2,** as enacted by PL 1995, c.
11 671, §13, is amended to read:

12 **2. Renewal.** A license to practice naturopathic medicine
13 and a specialty certification must be renewed annually and be
14 accompanied by the required renewal fee established in subsection
15 1. The annual license renewal fee established by the board in an
16 amount not to exceed the initial licensing fee must accompany the
17 application for renewal. A specialty certification must be
18 renewed annually. The specialty certification fee must accompany
19 the application for renewal.

22 **SUMMARY**

24 This amendment is the majority report of the committee. The
25 amendment limits the techniques to be added to licensed
26 acupuncturists' scope of practice to those techniques that are
27 taught in accredited colleges of acupuncture and adds and deletes
28 certain practices from the bill. The amendment also eliminates
29 the bill's provision that would have authorized the Board of
30 Complementary Health Care Providers to further define the scope
31 of practice by rule, but adds a provision providing for
32 certification in the modality of Chinese herbal formulation. The
33 amendment also clarifies that other licensed persons and
34 unlicensed persons are not prevented from using the listed
35 techniques by the techniques' inclusion within acupuncturists'
36 scope of practice. Finally, the amendment makes a technical
37 correction to the definition of "acupuncture" and amends the
38 acupuncturist and naturopathic doctor licensing fee statutes,
39 including a fee for the newly created acupuncturist certification.

42 **FISCAL NOTE REQUIRED**
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**

LD 263

An Act to Define a Scope of Practice for Acupuncture



LR 0863(03)

**Fiscal Note for Bill as Amended by Committee Amendment 'A'
Committee: Business, Research and Economic Development**

Fiscal Note Required: Yes

Minority Report

Fiscal Note

Minor cost increase - Other Special Revenue Funds
Minor revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Additional costs to the Office of Licensing and Registration within the Department of Professional and Financial Regulation associated with rulemaking can be absorbed utilizing existing budgeted resources. Establishing fees for the additional certification will result in increased dedicated revenues. The amount can not be determined at this time.