

CHAPTER.....

AN ACT relating to Oriental medicine; revising the provisions relating to the issuance of a license to practice as a doctor of Oriental medicine; abolishing the license to practice as a doctor of acupuncture and the license for an assistant in acupuncture; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 634A of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a written complaint regarding a licensee is filed with the board, the board shall review the complaint. If, from the complaint or from other records, it appears that the complaint is not frivolous, the board shall transmit the original complaint and any facts or information obtained from the review to the attorney general.

2. The attorney general shall conduct an investigation of the complaint to determine whether it warrants proceedings for the modification, suspension or revocation of the license. If the attorney general determines that further proceedings are warranted, he shall report the results of his investigation and his recommendation to the board.

3. The board shall promptly make a determination with respect to each complaint reported to it by the attorney general. The board shall:

(a) Dismiss the complaint; or

(b) Proceed with appropriate disciplinary action.

Sec. 2. NRS 634A.020 is hereby amended to read as follows:

634A.020 As used in this chapter, unless the context otherwise requires:

1. “Acupuncture” means the insertion of needles into the human body by piercing the skin of the body to control and regulate the flow and balance of energy in the body and to cure, relieve or palliate:

(a) Any ailment or disease of the mind or body; or

(b) Any wound, bodily injury or deformity.

2. “Board” means the state board of Oriental medicine.

~~3. “Doctor of acupuncture” means a person licensed under the provisions of this chapter to practice acupuncture.~~

~~4.~~ “Doctor of Oriental medicine” means a person who is licensed under the provisions of this chapter to practice *as a doctor of* Oriental medicine.

~~5.~~ 4. “Herbal medicine” and “practice of herbal medicine” mean suggesting, recommending, prescribing or directing the use of herbs for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, bodily injury or deformity.

~~6.~~ 5. “Herbs” means plants or parts of plants valued for medicinal qualities.

~~7. “Licensed assistant in acupuncture” means a person who assists in the practice of acupuncture under the direct supervision of a person licensed under the provisions of this chapter to practice Oriental medicine or acupuncture.~~

~~8.1~~ 6. "Oriental medicine" means that system of the healing art which places the chief emphasis on the flow and balance of energy in the body mechanism as being the most important single factor in maintaining the well-being of the organism in health and disease. The term includes the practice of acupuncture and herbal medicine and other services approved by the board.

Sec. 3. NRS 634A.080 is hereby amended to read as follows:
634A.080 The board shall:

1. Hold meetings at least once a year and at any other time at the request of the president or the majority of the members;

2. Have and use a common seal;

3. Deposit in interest-bearing accounts in the State of Nevada all ~~{moneys}~~ *money* received under the provisions of this chapter, which ~~{shall}~~ *must* be used to defray the expenses of the board;

4. *Establish and maintain a list of accredited schools and colleges of Oriental medicine that are approved by the board;*

5. Operate on the basis of the fiscal year beginning July 1, and ending June 30; and

~~5.1~~ 6. Keep a record of its proceedings which ~~{shall}~~ *must* be open to the public at all times and which ~~{shall also}~~ *must* contain the name and business address of every registered licensee in this state.

Sec. 4. NRS 634A.090 is hereby amended to read as follows:

634A.090 1. A school or college of Oriental medicine may be established and maintained in this state only if:

(a) Its establishment is approved by the board; and

(b) Its curriculum is approved annually by the board for content and quality of instruction in accordance with the requirements of this chapter.

2. The board may prescribe the ~~{courses}~~ *course* of study required for the ~~{respective degrees of doctor of acupuncture and}~~ *degree of* doctor of Oriental medicine.

Sec. 5. NRS 634A.120 is hereby amended to read as follows:

634A.120 1. ~~{Examinations must be given at least once a year at a time and place fixed by the board.}~~

~~2. Applicants for licenses to practice acupuncture or Oriental medicine or to practice as an assistant in acupuncture must be examined in the appropriate subjects as determined by the board. Each applicant for a license to practice as a doctor of Oriental medicine must pass:~~

(a) An examination in Oriental medicine that is administered by a national organization approved by the board; and

(b) A practical examination approved by the board that tests the applicant's knowledge and understanding of the laws and regulations of this state relating to health and safety in the practice of Oriental medicine. The board shall contract for the preparation, administration and grading of the practical examination.

2. Except as otherwise provided in subsection 3, the board shall offer the practical examination at least two times each year at a time and place established by the board.

3. The board may cancel a scheduled practical examination if, within 60 days before the examination, the board has not received a request to take the examination.

4. A person who fails the practical examination may retake the examination.

Sec. 6. NRS 634A.140 is hereby amended to read as follows:

634A.140 The board shall issue ~~{separate licenses}~~ *a license* to practice ~~{respectively}~~ *as a doctor of* Oriental medicine ~~{or acupuncture, as appropriate, where the applicant:~~

- ~~1. Has successfully completed a course of study of:~~
 - ~~(a) Four years in Oriental medicine; or~~
 - ~~(b) Three years in acupuncture,~~
- ~~at any college or school approved by the board which is located in any country, territory, province or state or has qualifications considered equivalent by the board;~~
- ~~2. Has practiced Oriental medicine, including acupuncture and herbal medicine for 6 years; and~~
- ~~3. Passes the examination of the board.}~~ *to an applicant who:*

- 1. Has:*
 - (a) Successfully completed an accredited 4-year program of study, or its equivalent, in Oriental medicine that is approved by the board; and*
 - (b) Passed the examinations required by NRS 634A.120; or*
- 2. Has:*
 - (a) Successfully completed a 4-year program, or its equivalent, in Oriental medicine at a school or college of Oriental medicine that is approved by the board;*
 - (b) Lawfully practiced Oriental medicine in another state or foreign country for at least 4 years;*
 - (c) Passed an investigation of his background and personal history conducted by the board; and*
 - (d) Passed the examinations required by NRS 634A.120.*

Sec. 7. NRS 634A.160 is hereby amended to read as follows:

634A.160 1. Every license must be displayed in the office, place of business or place of employment of the holder thereof.

2. Every person holding a license shall pay to the board on or before February 1 of each year, the annual ~~{registration}~~ *fee for a license* required pursuant to subsection 4. The holder of a license shall submit with the ~~{registration}~~ fee the statement required pursuant to NRS 634A.115. If the holder of a license fails to pay the ~~{registration}~~ fee or submit the statement, his license must be suspended. The license may be reinstated by payment of the required fee and submission of the statement within 90 days after February 1.

3. A license which is suspended for more than 3 months under the provisions of subsection 2 may be canceled by the board after 30 days' notice to the holder of the license.

4. The annual ~~{registration fees}~~ *fee for a license* must be prescribed annually by the board and must not exceed \$1,000.

Sec. 8. NRS 634A.167 is hereby amended to read as follows:

634A.167 1. To renew a license issued pursuant to this chapter, each person must, on or before February 1 of each year:

- (a) Apply to the board for renewal;
- (b) Submit the statement required pursuant to NRS 634A.115;

(c) Pay the annual fee for ~~registration~~ *a license* prescribed by the board; and

(d) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal or reinstatement of a license, require each holder of a license to comply with the requirements for continuing education adopted by the board.

Sec. 9. NRS 634A.170 is hereby amended to read as follows:

634A.170 The board may refuse to issue or may suspend or revoke any license for any one or any combination of the following causes:

1. Conviction of:

(a) A felony;

(b) Any offense involving moral turpitude;

(c) A violation of any state or federal law regulating the possession, distribution or use of any controlled substance, as shown by a certified copy of the record of the court; or

(d) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

2. The obtaining of or any attempt to obtain a license or practice in the profession for money or any other thing of value, by fraudulent misrepresentations;

3. Gross or repeated malpractice, which may be evidenced by claims of malpractice settled against a practitioner;

4. Advertising by means of a knowingly false or deceptive statement;

5. Advertising, practicing or attempting to practice under a name other than one's own;

6. Habitual drunkenness or habitual addiction to the use of a controlled substance;

7. Using any false, fraudulent or forged statement or document, or engaging in any fraudulent, deceitful, dishonest or immoral practice in connection with the licensing requirements of this chapter;

8. Sustaining a physical or mental disability which renders further practice dangerous;

9. Engaging in any dishonorable, unethical or unprofessional conduct which may deceive, defraud or harm the public, or which is unbecoming a person licensed to practice under this chapter;

10. Using any false or fraudulent statement in connection with the practice of Oriental medicine or any branch thereof;

11. Violating or attempting to violate, or assisting or abetting the violation of, or conspiring to violate any provision of this chapter;

12. Being adjudicated incompetent or insane;

13. Advertising in an unethical or unprofessional manner;

14. Obtaining a fee or financial benefit for any person by the use of fraudulent diagnosis, therapy or treatment;

15. Willful disclosure of a privileged communication;

16. Failure of a licensee to designate the nature of his practice in the professional use of his name by the term doctor of Oriental medicine ; ~~to doctor of acupuncture or acupuncture assistant, as the case may be;~~

17. Willful violation of the law relating to the health, safety or welfare of the public or of the regulations adopted by the state board of health;

18. Administering, dispensing or prescribing any controlled substance, except for the prevention, alleviation or cure of disease or for relief from suffering; and

19. Performing, assisting or advising in the injection of any liquid silicone substance into the human body.

Sec. 10. NRS 634A.190 is hereby amended to read as follows:

634A.190 1. Persons licensed pursuant to this chapter are not subject to the provisions of chapter 630 of NRS.

2. A person who is licensed pursuant to this chapter to practice *as a doctor of* Oriental medicine may refer to himself as a physician of Oriental medicine.

Sec. 11. NRS 634A.210 is hereby amended to read as follows:

634A.210 Doctors of Oriental medicine ~~and doctors of acupuncture~~ shall observe and are subject to all state and municipal regulations relative to reporting all births and deaths in all matters pertaining to the public health.

Sec. 12. NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection 2, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person from error or omission in practice by the provider of health care.

2. This time limitation is tolled:

(a) For any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

(b) In any action governed by the provisions of NRS 41A.003 to 41A.069, inclusive, from the date a claimant files a complaint for review by a screening panel until 30 days after the date the panel notifies the claimant, in writing, of its findings. The provisions of this paragraph apply to an action against the provider of health care and to an action against any person, government or political subdivision of a government who is alleged by the claimant to be liable vicariously for the medical or dental malpractice of the provider of health care, if the provider, person, government or political subdivision has received notice of the filing of a complaint for review by a screening panel within the limitation of time provided in subsection 1.

3. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against

any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

4. As used in this section, “provider of health care” means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, ~~doctor of acupuncture,~~ medical laboratory director or technician, or a licensed hospital as the employer of any such person.

Sec. 13. NRS 202.2491 is hereby amended to read as follows:

202.2491 1. Except as otherwise provided in subsections 5 and 6 and NRS 202.24915, the smoking of tobacco in any form is prohibited if done in any:

(a) Public elevator.

(b) Public building.

(c) Public waiting room, lobby or hallway of any:

(1) Medical facility or facility for the dependent as defined in chapter 449 of NRS; or

(2) Office of any chiropractor, dentist, physical therapist, physician, podiatric physician, psychologist, optician, optometrist ~~or~~ **or** doctor of Oriental medicine. ~~for doctor of acupuncture.~~

(d) Hotel or motel when so designated by the operator thereof.

(e) Public area of a store principally devoted to the sale of food for human consumption off the premises.

(f) Child care facility.

(g) Bus used by the general public, other than a chartered bus, or in any maintenance facility or office associated with a bus system operated by any regional transportation commission.

(h) School bus.

2. The person in control of an area listed in paragraph (c), (d), (e), (f) or (g) of subsection 1:

(a) Shall post in the area signs prohibiting smoking in any place not designated for that purpose as provided in paragraph (b).

(b) May designate separate rooms or portions of the area which may be used for smoking, except for a room or portion of the area of a store described in paragraph (e) of subsection 1 if the room or portion of the area:

(1) Is leased to or operated by a person licensed pursuant to NRS 463.160; and

(2) Does not otherwise qualify for an exemption set forth in NRS 202.24915.

3. The person in control of a public building:

(a) Shall post in the area signs prohibiting smoking in any place not designated for that purpose as provided in paragraph (b).

(b) Shall, except as otherwise provided in this subsection, designate a separate area which may be used for smoking.

A school district which prohibits the use of tobacco by pupils need not designate an area which may be used by the pupils to smoke.

4. The operator of a restaurant with a seating capacity of 50 or more shall maintain a flexible nonsmoking area within the restaurant and offer each patron the opportunity to be seated in a smoking or nonsmoking area.

5. A business which derives more than 50 percent of its gross receipts from the sale of alcoholic beverages or 50 percent of its gross receipts from gaming operations may be designated as a smoking area in its entirety by the operator of the business.

6. The smoking of tobacco is not prohibited in:

(a) Any room or area designated for smoking pursuant to paragraph (b) of subsection 2 or paragraph (b) of subsection 3.

(b) A licensed gaming establishment. A licensed gaming establishment may designate separate rooms or areas within the establishment which may or may not be used for smoking.

7. The person in control of a child care facility shall not allow children in any room or area he designates for smoking pursuant to paragraph (b) of subsection 2. Any such room or area must be sufficiently separate or ventilated so that there are no irritating or toxic effects of smoke in the other areas of the facility.

8. As used in this section:

(a) "Child care facility" means an establishment licensed pursuant to chapter 432A of NRS to provide care for 13 or more children.

(b) "Licensed gaming establishment" has the meaning ascribed to it in NRS 463.0169.

(c) "Public building" means any building or office space owned or occupied by:

(1) Any component of the University and Community College System of Nevada and used for any purpose related to the system.

(2) The State of Nevada and used for any public purpose, other than that used by the department of prisons to house or provide other services to offenders.

(3) Any county, city, school district or other political subdivision of the state and used for any public purpose.

If only part of a building is owned or occupied by an entity described in this paragraph, the term means only that portion of the building which is so owned or occupied.

(d) "School bus" has the meaning ascribed to it in NRS 483.160.

Sec. 14. NRS 634A.150 is hereby repealed.

Sec. 15. A person who submits an application to the state board of Oriental medicine for a license to practice as a doctor of Oriental medicine before January 1, 2002, is not required to comply with the requirement set forth in paragraph (a) of subsection 1 of NRS 634A.120 if he has passed an examination in Oriental medicine administered by a national organization after June 30, 1999, and before the effective date of this act.

Sec. 16. Notwithstanding the provisions of NRS 634A.140, the state board of Oriental medicine shall issue a license to practice as a doctor of Oriental medicine to any person who, on the effective date of this act, holds a license as an assistant in acupuncture or a license to practice as a

doctor of acupuncture issued by the board if he submits an application and the fee for the issuance of the license to the board before January 1, 2002.

Sec. 17. This act becomes effective upon passage and approval.