

ASSEMBLY BILL NO. 339—COMMITTEE ON COMMERCE AND LABOR

MARCH 13, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to practice of Oriental medicine. (BDR 54-295)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to Oriental medicine; revising the provisions relating to the issuance of a license to practice acupuncture and Oriental medicine; authorizing the practice of herbal medicine under certain circumstances; restricting the use of the title “acupuncturist” without a license; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 634A of NRS is hereby amended by adding
- 2 thereto a new section to read as follows:
- 3 *A person who has been issued a license to practice acupuncture and*
- 4 *Oriental medicine pursuant to NRS 634A.140 may practice herbal*
- 5 *medicine and use the designation “certified in Chinese herbology” if he*
- 6 *has submitted proof to the board that he has:*
- 7 *1. Successfully completed a program of study in Chinese herbology*
- 8 *approved by the Accreditation Commission for Acupuncture and*
- 9 *Oriental Medicine; or*
- 10 *2. Been certified in Chinese herbology by the National Certification*
- 11 *Commission for Acupuncture and Oriental Medicine.*
- 12 **Sec. 2.** NRS 634A.020 is hereby amended to read as follows:
- 13 634A.020 As used in this chapter, unless the context otherwise
- 14 requires:
- 15 1. “Acupuncture” means the insertion of needles into the human body
- 16 by piercing the skin of the body to control and regulate the flow and
- 17 balance of energy in the body and to  ~~cure, relieve or palliate:~~
- 18 ~~—(a) Any~~ *treat any* ailment or disease of the mind or body ~~;~~ *or*
- 19 ~~—(b) Any~~ *, or any* wound, bodily injury or deformity. *The term includes*
- 20 *the use of any therapy that uses manual, mechanical, thermal, electrical*
- 21 *or electromagnetic treatment based on the principles of Oriental*
- 22 *medicine.*



2. *"Acupuncturist" means a person who is licensed pursuant to the provisions of this chapter to practice acupuncture and Oriental medicine.*

3. "Board" means the state board of Oriental medicine.

~~4. "Doctor of acupuncture" means a person licensed under the provisions of this chapter to practice acupuncture.~~

~~5. "Doctor of Oriental medicine" means a person who is licensed under the provisions of this chapter to practice Oriental medicine.~~

~~6. "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. "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. "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.070 is hereby amended to read as follows:

634A.070 The board may:

1. Employ attorneys, investigators and other professional consultants and clerical personnel necessary to discharge its duties. ~~To conduct its examinations, the board may call to its aid persons of established reputation and known ability in Oriental medicine.~~

~~2. Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.~~

~~3. 2.~~ Adopt regulations not inconsistent with the provisions of this chapter. The regulations may include a code of ethics regulating the professional conduct of licensees.

~~4. 3.~~ Compel the attendance of witnesses and the production of evidence by subpoena.

**Sec. 4.** NRS 634A.110 is hereby amended to read as follows:

634A.110 1. An applicant for ~~examination for~~ a license to practice Oriental medicine or any branch thereof, shall:

(a) Submit an application to the board on forms provided by the board;

(b) Submit satisfactory evidence that he is 21 years *of age* or older and ~~meets~~ *complies with* the appropriate ~~educational requirements;~~ *requirements set forth in NRS 634A.140; and*

(c) Pay a fee established by the board of not more than \$1,000. ~~and~~

~~(d) Pay any fees required by the board for an investigation of the applicant or for the services of a translator, if the translator is required to enable the applicant to take the examination.~~



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2. An application submitted to the board pursuant to subsection 1 must include the social security number of the applicant.

**Sec. 5.** NRS 634A.140 is hereby amended to read as follows:

634A.140 *1.* The board shall issue ~~separate licenses to practice respectively 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.} a license to practice acupuncture and Oriental medicine to an applicant who:~~

*(a) Has:*

*(1) Successfully completed a program of acupuncture or Oriental medicine in:*

*(I) The United States that is accredited or provisionally accredited by the Accreditation Commission for Acupuncture and Oriental Medicine; or*

*(II) A foreign country that has been approved by the department of education;*

*(2) Been certified in acupuncture by the National Certification Commission for Acupuncture and Oriental Medicine; and*

*(3) Provided proof satisfactory to the board of his proficiency in the oral and written expression of English; or*

*(b) Has:*

*(1) Successfully completed a 3-year program of acupuncture and Oriental medicine before July 1, 1998;*

*(2) Been certified in acupuncture by the National Certification Commission for Acupuncture and Oriental Medicine; and*

*(3) Provided proof satisfactory to the board of his proficiency in the oral and written expression of English.*

*2. For the purposes of subparagraph (3) of paragraph (a) or (b) of subsection 1, a passing score on:*

*(a) The Test of English as a Foreign Language administered by the Educational Testing Service;*

*(b) The Test of Spoken English administered by the Educational Testing Service; or*

*(c) The written examination for certification as an acupuncturist administered in English by the National Certification Commission for Acupuncture and Oriental Medicine, constitutes satisfactory proof of the applicant's proficiency in the oral and written expression of English.*

**Sec. 6.** 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.



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

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

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

14 **Sec. 7.** NRS 634A.165 is hereby amended to read as follows:

15 634A.165 1. The board may adopt regulations for the issuance of  
16 temporary certificates to persons *who are* not licensed pursuant to this  
17 chapter. A temporary certificate may be issued:

18 (a) In connection with a bona fide educational seminar concerning  
19 Oriental medicine or acupuncture; or

20 (b) ~~For the purpose of authorizing~~ *To authorize* a person to engage in  
21 lecturing on or teaching Oriental medicine or acupuncture in this state ~~on a~~  
22 ~~short-term basis.~~ *for not more than 6 months.*

23 2. The board may charge a fee for the issuance of a temporary  
24 certificate. ~~The fee must not exceed an amount which adequately~~  
25 ~~reimburses the board for costs incurred in:~~

26 ~~— (a) Investigating an applicant under this section; and~~

27 ~~— (b) Monitoring a seminar, if the board deems that action necessary.~~

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

29 634A.167 1. To renew a license issued pursuant to this chapter, each  
30 person must, on or before February 1 of each year:

31 (a) Apply to the board for renewal;

32 (b) Submit the statement required pursuant to NRS 634A.115;

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

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

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

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

41 634A.170 The board may refuse to issue or may suspend or revoke  
42 any license for any one or any combination of the following causes:

43 1. Conviction of:

44 (a) A felony;

45 (b) Any offense involving moral turpitude;

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



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- 1 (d) A violation of any of the provisions of NRS 616D.200, 616D.220,  
2 616D.240 or 616D.300 to 616D.440, inclusive;
- 3 2. ~~[(The obtaining of or any attempt)]~~ *Obtaining or attempting* to obtain  
4 a license, or ~~[(practice)]~~ *practicing* in the profession for money or any other  
5 thing of value, by fraudulent misrepresentations;
- 6 3. Gross or repeated malpractice, which may be evidenced by claims  
7 of malpractice settled against a practitioner;
- 8 4. Advertising by means of a knowingly false or deceptive statement;
- 9 5. Advertising, practicing or attempting to practice under a name other  
10 than one's own;
- 11 6. Habitual drunkenness or habitual addiction to the use of a controlled  
12 substance;
- 13 7. Using any false, fraudulent or forged statement or document, or  
14 engaging in any fraudulent, deceitful, dishonest or immoral practice in  
15 connection with the licensing requirements of this chapter;
- 16 8. Sustaining a physical or mental disability which renders further  
17 practice dangerous;
- 18 9. Engaging in any dishonorable, unethical or unprofessional conduct  
19 which may deceive, defraud or harm the public, or which is unbecoming a  
20 person licensed to practice under this chapter;
- 21 10. Using any false or fraudulent statement in connection with the  
22 practice of Oriental medicine or any branch thereof ~~[( )]~~, *including, without*  
23 *limitation, advertising or claiming to cure any condition;*
- 24 11. Violating or attempting to violate, or assisting or abetting the  
25 violation of, or conspiring to violate any provision of this chapter;
- 26 12. Being adjudicated incompetent or insane;
- 27 13. Advertising in an unethical or unprofessional manner;
- 28 14. Obtaining a fee or financial benefit for any person by the use of  
29 fraudulent diagnosis, therapy or treatment;
- 30 15. Willful disclosure of a privileged communication;
- 31 16. Failure of a licensee to designate the nature of his practice in the  
32 professional use of his name by the term "doctor of Oriental medicine, "  
33 "doctor of acupuncture, " *"acupuncturist"* or "acupuncture assistant, " as  
34 the case may be;
- 35 17. Willful violation of the law relating to the health, safety or welfare  
36 of the public or of the regulations adopted by the state board of health;
- 37 18. Administering, dispensing or prescribing any controlled substance  
38 ~~[(, except for the prevention, alleviation or cure of disease or for relief from~~  
39 ~~suffering; and)] ; or~~
- 40 19. Performing, assisting or advising in the injection of any liquid  
41 silicone substance into the human body.
- 42 **Sec. 10.** NRS 634A.190 is hereby amended to read as follows:
- 43 634A.190 1. Persons licensed pursuant to this chapter are not subject  
44 to the provisions of chapter 630 of NRS.
- 45 2. A person who is licensed pursuant to this chapter ~~[(to practice)]~~ *as a*  
46 *doctor of Oriental medicine or doctor of acupuncture* may refer to himself  
47 as a ~~[(physician)]~~ *doctor* of Oriental medicine ~~[( )]~~ *or doctor of acupuncture if*  
48 *he has successfully completed a doctorate program in acupuncture or*



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*Oriental medicine, respectively, that has been approved by the Accreditation Commission for Acupuncture and Oriental Medicine.*

**Sec. 11.** NRS 634A.200 is hereby amended to read as follows:

634A.200 1. This chapter does not apply to ~~Oriental physicians who are called into this state for consultation.~~ a person who:

(a) *Has successfully completed a course in auricular acupuncture for the treatment of the abuse of alcohol or drugs that is approved by the National Acupuncture Detoxification Association;*

(b) *Uses auricular acupuncture in a program for alcohol and drug abuse approved by the bureau of alcohol and drug abuse in the department of human resources or the board; and*

(c) *Is under the supervision of a doctor of Oriental medicine, doctor of acupuncture or acupuncturist licensed pursuant to the provisions of this chapter or a physician licensed pursuant to the provisions of chapter 630 of NRS.*

2. This chapter does not prohibit:

(a) Gratuitous services of druggists or other persons in cases of emergency.

(b) The domestic administration of family remedies.

(c) Any person from assisting any person in the practice of the healing arts licensed under this chapter, except that such person may not insert needles into the skin or prescribe herbal medicine.

**Sec. 12.** NRS 634A.210 is hereby amended to read as follows:

634A.210 Doctors of Oriental medicine, ~~and~~ doctors of acupuncture *and acupuncturists* 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. 13.** NRS 634A.230 is hereby amended to read as follows:

634A.230 Any person who represents himself as ~~an~~ *an acupuncturist*, practitioner of Oriental medicine, or any branch thereof, or who engages in the practice of Oriental medicine, or any branch thereof, in this state without holding a ~~valid~~ license issued by the board is guilty of a gross misdemeanor.

**Sec. 14.** 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



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1 which is known or through the use of reasonable diligence should have  
2 been known to him.

3 (b) In any action governed by the provisions of NRS 41A.003 to  
4 41A.069, inclusive, from the date a claimant files a complaint for review  
5 by a screening panel until 30 days after the date the panel notifies the  
6 claimant, in writing, of its findings. The provisions of this paragraph apply  
7 to an action against the provider of health care and to an action against any  
8 person, government or political subdivision of a government who is alleged  
9 by the claimant to be liable vicariously for the medical or dental  
10 malpractice of the provider of health care, if the provider, person,  
11 government or political subdivision has received notice of the filing of a  
12 complaint for review by a screening panel within the limitation of time  
13 provided in subsection 1.

14 3. For the purposes of this section, the parent, guardian or legal  
15 custodian of any minor child is responsible for exercising reasonable  
16 judgment in determining whether to prosecute any cause of action limited  
17 by subsection 1. If the parent, guardian or custodian fails to commence an  
18 action on behalf of that child within the prescribed period of limitations,  
19 the child may not bring an action based on the same alleged injury against  
20 any provider of health care upon the removal of his disability, except that  
21 in the case of:

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

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

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

32 **Sec. 15.** NRS 202.2491 is hereby amended to read as follows:

33 202.2491 1. Except as otherwise provided in subsections 5 and 6 and  
34 NRS 202.24915, the smoking of tobacco in any form is prohibited if done  
35 in any:

36 (a) Public elevator.

37 (b) Public building.

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

39 (1) Medical facility or facility for the dependent as defined in chapter  
40 449 of NRS; or

41 (2) Office of any chiropractor, dentist, physical therapist, physician,  
42 podiatric physician, psychologist, optician, optometrist, **acupuncturist**,  
43 doctor of Oriental medicine or doctor of acupuncture.

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

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

47 (f) Child care facility.



- 1 (g) Bus used by the general public, other than a chartered bus, or in any  
2 maintenance facility or office associated with a bus system operated by any  
3 regional transportation commission.
- 4 (h) School bus.
- 5 2. The person in control of an area listed in paragraph (c), (d), (e), (f)  
6 or (g) of subsection 1:
- 7 (a) Shall post in the area signs prohibiting smoking in any place not  
8 designated for that purpose as provided in paragraph (b).
- 9 (b) May designate separate rooms or portions of the area which may be  
10 used for smoking, except for a room or portion of the area of a store  
11 described in paragraph (e) of subsection 1 if the room or portion of the  
12 area:
- 13 (1) Is leased to or operated by a person licensed pursuant to NRS  
14 463.160; and
- 15 (2) Does not otherwise qualify for an exemption set forth in NRS  
16 202.24915.
- 17 3. The person in control of a public building:
- 18 (a) Shall post in the area signs prohibiting smoking in any place not  
19 designated for that purpose as provided in paragraph (b).
- 20 (b) Shall, except as otherwise provided in this subsection, designate a  
21 separate area which may be used for smoking.
- 22 A school district which prohibits the use of tobacco by pupils need not  
23 designate an area which may be used by the pupils to smoke.
- 24 4. The operator of a restaurant with a seating capacity of 50 or more  
25 shall maintain a flexible nonsmoking area within the restaurant and offer  
26 each patron the opportunity to be seated in a smoking or nonsmoking area.
- 27 5. A business which derives more than 50 percent of its gross receipts  
28 from the sale of alcoholic beverages or 50 percent of its gross receipts from  
29 gaming operations may be designated as a smoking area in its entirety by  
30 the operator of the business.
- 31 6. The smoking of tobacco is not prohibited in:
- 32 (a) Any room or area designated for smoking pursuant to paragraph (b)  
33 of subsection 2 or paragraph (b) of subsection 3.
- 34 (b) A licensed gaming establishment. A licensed gaming establishment  
35 may designate separate rooms or areas within the establishment which may  
36 or may not be used for smoking.
- 37 7. The person in control of a child care facility shall not allow children  
38 in any room or area he designates for smoking pursuant to paragraph (b) of  
39 subsection 2. Any such room or area must be sufficiently separate or  
40 ventilated so that there are no irritating or toxic effects of smoke in the  
41 other areas of the facility.
- 42 8. As used in this section:
- 43 (a) "Child care facility" means an establishment licensed pursuant to  
44 chapter 432A of NRS to provide care for 13 or more children.
- 45 (b) "Licensed gaming establishment" has the meaning ascribed to it in  
46 NRS 463.0169.
- 47 (c) "Public building" means any building or office space owned or  
48 occupied by:



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- 1 (1) Any component of the University and Community College  
2 System of Nevada and used for any purpose related to the system.  
3 (2) The State of Nevada and used for any public purpose, other than  
4 that used by the department of prisons to house or provide other services to  
5 offenders.  
6 (3) Any county, city, school district or other political subdivision of  
7 the state and used for any public purpose.  
8 If only part of a building is owned or occupied by an entity described in  
9 this paragraph, the term means only that portion of the building which is so  
10 owned or occupied.  
11 (d) "School bus" has the meaning ascribed to it in NRS 483.160.  
12 **Sec. 16.** Notwithstanding the provisions of NRS 634A.190, a person  
13 who is licensed to practice as a doctor of Oriental medicine or doctor of  
14 acupuncture by the state board of Oriental medicine on October 1, 2001,  
15 may refer to himself as a doctor of Oriental medicine or doctor of  
16 acupuncture, respectively.  
17 **Sec. 17.** NRS 634A.090, 634A.120 and 634A.225 are hereby  
18 repealed.  
19 **Sec. 18.** The amendatory provisions of this act do not apply to  
20 offenses committed before October 1, 2001.

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### TEXT OF REPEALED SECTIONS

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#### **634A.090 Approval of schools of Oriental medicine.**

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 of study required for the respective degrees of doctor of acupuncture and doctor of Oriental medicine.

#### **634A.120 Examinations: Times; subjects covered.**

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.

#### **634A.225 Seminars not in accordance with board's regulations prohibited; penalty.**

1. No seminar concerning Oriental medicine or acupuncture may be conducted in this state except in accordance with regulations prescribed by the board for bona fide educational seminars.

2. Any person who violates subsection 1 is guilty of a misdemeanor.

