

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1398

54th Legislature
1995 Regular Session

Passed by the House April 20, 1995
Yeas 96 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate April 12, 1995
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1398** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1398

AS AMENDED BY THE SENATE

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Dyer, Dellwo, Backlund, Quall, Conway, Cody, Morris and Casada)

Read first time 02/14/95.

1 AN ACT Relating to acupuncture; amending RCW 4.24.240, 4.24.290,
2 7.70.020, 18.06.010, 18.06.020, 18.06.045, 18.06.080, 18.06.090,
3 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.190, 18.06.200, and
4 18.120.020; and reenacting and amending RCW 18.130.040.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 4.24.240 and 1985 c 326 s 25 are each amended to read
7 as follows:

8 (1)(a) A person licensed by this state to provide health care or
9 related services, including, but not limited to, a ((certified))
10 licensed acupuncturist, a physician, osteopathic physician, dentist,
11 nurse, optometrist, ((podiatrist)) podiatric physician and surgeon,
12 chiropractor, physical therapist, psychologist, pharmacist, optician,
13 physician's assistant, osteopathic physician's assistant, nurse
14 practitioner, including, in the event such person is deceased, his or
15 her estate or personal representative;

16 (b) An employee or agent of a person described in subparagraph (a)
17 of this subsection, acting in the course and scope of his or her
18 employment, including, in the event such employee or agent is deceased,
19 his or her estate or personal representative; or

1 (c) An entity, whether or not incorporated, facility, or
2 institution employing one or more persons described in subparagraph (a)
3 of this subsection, including, but not limited to, a hospital, clinic,
4 health maintenance organization, or nursing home; or an officer,
5 director, trustee, employee, or agent thereof acting in the course and
6 scope of his or her employment, including in the event such officer,
7 director, employee, or agent is deceased, his or her estate or personal
8 representative;
9 shall be immune from civil action for damages arising out of the good
10 faith performance of their duties on such committees, where such
11 actions are being brought by or on behalf of the person who is being
12 evaluated.

13 (2) No member, employee, staff person, or investigator of a
14 professional review committee shall be liable in a civil action as a
15 result of acts or omissions made in good faith on behalf of the
16 committee; nor shall any person be so liable for filing charges with or
17 supplying information or testimony in good faith to any professional
18 review committee; nor shall a member, employee, staff person, or
19 investigator of a professional society, of a professional examining or
20 licensing board, of a professional disciplinary board, of a governing
21 board of any institution, or of any employer of professionals be so
22 liable for good faith acts or omissions made in full or partial
23 reliance on recommendations or decisions of a professional review
24 committee or examining board.

25 **Sec. 2.** RCW 4.24.290 and 1994 sp.s. c 9 s 702 are each amended to
26 read as follows:

27 In any civil action for damages based on professional negligence
28 against a hospital which is licensed by the state of Washington or
29 against the personnel of any such hospital, or against a member of the
30 healing arts including, but not limited to, an acupuncturist
31 (~~certified~~) licensed under chapter 18.06 RCW, a physician licensed
32 under chapter 18.71 RCW, an osteopathic physician licensed under
33 chapter 18.57 RCW, a chiropractor licensed under chapter 18.25 RCW, a
34 dentist licensed under chapter 18.32 RCW, a podiatric physician and
35 surgeon licensed under chapter 18.22 RCW, or a nurse licensed under
36 chapter 18.79 RCW, the plaintiff in order to prevail shall be required
37 to prove by a preponderance of the evidence that the defendant or
38 defendants failed to exercise that degree of skill, care, and learning

1 possessed at that time by other persons in the same profession, and
2 that as a proximate result of such failure the plaintiff suffered
3 damages, but in no event shall the provisions of this section apply to
4 an action based on the failure to obtain the informed consent of a
5 patient.

6 **Sec. 3.** RCW 7.70.020 and 1985 c 326 s 27 are each amended to read
7 as follows:

8 As used in this chapter "health care provider" means either:

9 (1) A person licensed by this state to provide health care or
10 related services, including, but not limited to, a (~~certified~~)
11 licensed acupuncturist, a physician, osteopathic physician, dentist,
12 nurse, optometrist, (~~podiatrist~~) podiatric physician and surgeon,
13 chiropractor, physical therapist, psychologist, pharmacist, optician,
14 physician's assistant, midwife, osteopathic physician's assistant,
15 nurse practitioner, or physician's trained mobile intensive care
16 paramedic, including, in the event such person is deceased, his or her
17 estate or personal representative;

18 (2) An employee or agent of a person described in part (1) above,
19 acting in the course and scope of his employment, including, in the
20 event such employee or agent is deceased, his or her estate or personal
21 representative; or

22 (3) An entity, whether or not incorporated, facility, or
23 institution employing one or more persons described in part (1) above,
24 including, but not limited to, a hospital, clinic, health maintenance
25 organization, or nursing home; or an officer, director, employee, or
26 agent thereof acting in the course and scope of his or her employment,
27 including in the event such officer, director, employee, or agent is
28 deceased, his or her estate or personal representative.

29 **Sec. 4.** RCW 18.06.010 and 1992 c 110 s 1 are each amended to read
30 as follows:

31 The following terms in this chapter shall have the meanings set
32 forth in this section unless the context clearly indicates otherwise:

33 (1) "Acupuncture" means a health care service based on (~~a~~
34 ~~traditional~~) an Oriental system of medical theory utilizing Oriental
35 diagnosis and treatment to promote health and treat organic or
36 functional disorders by treating specific acupuncture points or

1 meridians. Acupuncture includes (~~but is not necessarily limited to~~)
2 the following techniques:

3 (a) Use of acupuncture needles to stimulate acupuncture points and
4 meridians;

5 (b) Use of electrical, mechanical, or magnetic devices to stimulate
6 acupuncture points and meridians;

7 (c) Moxibustion;

8 (d) Acupressure;

9 (e) Cupping;

10 (f) Dermal friction technique;

11 (g) Infra-red;

12 (h) Sonopuncture;

13 (i) Laserpuncture;

14 (j) (~~Dietary advice based on traditional Oriental medical theory;~~
15 ~~and~~

16 ~~(k))~~ Point injection therapy (aquapuncture); and

17 (k) Dietary advice based on Oriental medical theory provided in
18 conjunction with techniques under (a) through (j) of this subsection.

19 (2) "Acupuncturist" means a person (~~certified~~) licensed under
20 this chapter.

21 (3) "Department" means the department of health.

22 (4) "Secretary" means the secretary of health or the secretary's
23 designee.

24 **Sec. 5.** RCW 18.06.020 and 1991 c 3 s 5 are each amended to read as
25 follows:

26 (1) No one may hold themselves out to the public as an
27 acupuncturist or (~~certified~~) licensed acupuncturist or any derivative
28 thereof which is intended to or is likely to lead the public to believe
29 such a person is an acupuncturist or (~~certified~~) licensed
30 acupuncturist unless (~~certified~~) licensed as provided for in this
31 chapter.

32 (2) A person may not practice acupuncture if the person is not
33 licensed under this chapter.

34 (3) No one may use any configuration of letters after their name
35 (including Ac.) which indicates a degree or formal training in
36 acupuncture unless (~~certified~~) licensed as provided for in this
37 chapter.

1 (~~(3)~~) (4) The secretary may by rule proscribe or regulate
2 advertising and other forms of patient solicitation which are likely to
3 mislead or deceive the public as to whether someone is (~~certified~~)
4 licensed under this chapter.

5 **Sec. 6.** RCW 18.06.045 and 1992 c 110 s 2 are each amended to read
6 as follows:

7 Nothing in this chapter shall be construed to prohibit or restrict:

8 (1) The practice (~~([by an individual] licensed, certified, or~~
9 ~~registered)) by an individual credentialed under the laws of this state
10 and performing services within such individual's authorized scope of
11 practice;~~

12 (2) The practice by an individual employed by the government of the
13 United States while engaged in the performance of duties prescribed by
14 the laws of the United States;

15 (3) The practice by a person who is a regular student in an
16 educational program approved by the secretary, and whose performance of
17 services is pursuant to a regular course of instruction or assignments
18 from an instructor and under the general supervision of the instructor;

19 (4) The practice of acupuncture by any person (~~licensed or~~
20 ~~certified~~) credentialed to perform acupuncture in any other
21 jurisdiction where such person is doing so in the course of regular
22 instruction of a school of acupuncture approved by the secretary or in
23 an educational seminar by a professional organization of acupuncture,
24 provided that in the latter case, the practice is supervised directly
25 by a person (~~certified pursuant to~~) licensed under this chapter or
26 licensed under any other healing art whose scope of practice includes
27 acupuncture.

28 **Sec. 7.** RCW 18.06.080 and 1994 sp.s. c 9 s 502 are each amended to
29 read as follows:

30 (1) The secretary is hereby authorized and empowered to execute the
31 provisions of this chapter and shall offer examinations in acupuncture
32 at least twice a year at such times and places as the secretary may
33 select. The examination shall be a written examination and may include
34 a practical examination.

35 (2) The secretary shall develop or approve a (~~certification~~)
36 licensure examination in the subjects that the secretary determines are
37 within the scope of and commensurate with the work performed by

1 ((certified)) licensed acupuncturists and shall include but not
2 necessarily be limited to anatomy, physiology, microbiology,
3 biochemistry, pathology, hygiene, and acupuncture. All application
4 papers shall be deposited with the secretary and there retained for at
5 least one year, when they may be destroyed.

6 (3) If the examination is successfully passed, the secretary shall
7 confer on such candidate the title of ((Certified)) Licensed
8 Acupuncturist.

9 (4) The secretary may appoint members of the profession to serve in
10 an ad hoc advisory capacity to the secretary in carrying out this
11 chapter. The members will serve for designated times and provide
12 advice on matters specifically identified and requested by the
13 secretary. The members shall be compensated in accordance with RCW
14 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and
15 43.03.060.

16 (5) The secretary, ad hoc committee members, or individuals acting
17 in their behalf are immune from suit in a civil action based on any
18 certification or disciplinary proceedings or other official acts
19 performed in the course of their duties.

20 **Sec. 8.** RCW 18.06.090 and 1985 c 326 s 9 are each amended to read
21 as follows:

22 Before ((certification)) licensure, each applicant shall
23 demonstrate sufficient fluency in reading, speaking, and understanding
24 the English language to enable the applicant to communicate with other
25 health care providers and patients concerning health care problems and
26 treatment.

27 **Sec. 9.** RCW 18.06.110 and 1991 c 3 s 11 are each amended to read
28 as follows:

29 The uniform disciplinary act, chapter 18.130 RCW, governs
30 uncertified practice, the issuance and denial of ((certificates))
31 licenses, and the disciplining of ((certificate)) license holders under
32 this chapter. The secretary shall be the disciplining authority under
33 this chapter.

34 **Sec. 10.** RCW 18.06.120 and 1992 c 110 s 4 are each amended to read
35 as follows:

1 (1) Every person ((certified)) licensed in acupuncture shall
2 register with the secretary annually and pay an annual renewal
3 ((registration)) fee determined by the secretary as provided in RCW
4 43.70.250 on or before the ((certificate)) license holder's birth
5 anniversary date. The ((certificate)) license of the person shall be
6 renewed for a period of one year or longer in the discretion of the
7 secretary. A person whose practice is exclusively out-of-state or who
8 is on sabbatical shall be granted an inactive ((certification))
9 licensure status and pay a reduced ((registration)) fee. The reduced
10 fee shall be set by the secretary under RCW 43.70.250.

11 (2) Any failure to register and pay the annual renewal
12 ((registration)) fee shall render the ((certificate)) license invalid.
13 The ((certificate)) license shall be reinstated upon: (a) Written
14 application to the secretary; (b) payment to the state of a penalty fee
15 determined by the secretary as provided in RCW 43.70.250; and (c)
16 payment to the state of all delinquent annual ((certificate)) license
17 renewal fees.

18 (3) Any person who fails to renew his or her ((certification))
19 license for a period of three years shall not be entitled to renew
20 ((such certification)) the licensure under this section. Such person,
21 in order to obtain a ((certification)) licensure in acupuncture in this
22 state, shall file a new application under this chapter, along with the
23 required fee, and shall meet examination or continuing education
24 requirements as the secretary, by rule, provides.

25 (4) All fees collected under this section and RCW 18.06.070 shall
26 be credited to the health professions account as required under RCW
27 43.70.320.

28 **Sec. 11.** RCW 18.06.130 and 1991 c 3 s 13 are each amended to read
29 as follows:

30 The secretary shall develop a form to be used by an acupuncturist
31 to inform the patient of the acupuncturist's scope of practice and
32 qualifications. All ((certificate)) license holders shall bring the
33 form to the attention of the patients in whatever manner the secretary,
34 by rule, provides.

35 **Sec. 12.** RCW 18.06.140 and 1991 c 3 s 14 are each amended to read
36 as follows:

1 Every ((certified)) licensed acupuncturist shall develop a written
2 plan for consultation, emergency transfer, and referral to other health
3 care practitioners operating within the scope of their authorized
4 practices. The written plan shall be submitted with the initial
5 application for ((certification)) licensure as well as annually
6 thereafter with the ((certificate)) license renewal fee to the
7 department. The department may withhold ((certification)) licensure or
8 renewal of ((certification)) licensure if the plan fails to meet the
9 standards contained in rules ((promulgated)) adopted by the secretary.

10 When the acupuncturist sees patients with potentially serious
11 disorders such as cardiac conditions, acute abdominal symptoms, and
12 such other conditions, the acupuncturist shall immediately request a
13 consultation or recent written diagnosis from a physician licensed
14 under chapter 18.71 or 18.57 RCW. In the event that the patient with
15 the disorder refuses to authorize such consultation or provide a recent
16 diagnosis from such physician, acupuncture treatment shall not be
17 continued.

18 **Sec. 13.** RCW 18.06.190 and 1991 c 3 s 18 are each amended to read
19 as follows:

20 The secretary may ((certify)) license a person without examination
21 if such person is ((~~licensed or certified~~)) credentialed as an
22 acupuncturist in another jurisdiction if, in the secretary's judgment,
23 the requirements of that jurisdiction are equivalent to or greater than
24 those of Washington state.

25 **Sec. 14.** RCW 18.06.200 and 1985 c 326 s 20 are each amended to
26 read as follows:

27 Nothing in this chapter may be construed to require that individual
28 or group policies or contracts of an insurance carrier, health care
29 service contractor, or health maintenance organization provide benefits
30 or coverage for services and supplies provided by a person ((~~registered~~
31 ~~or certified~~)) licensed under this chapter.

32 **Sec. 15.** RCW 18.120.020 and 1994 sp.s. c 9 s 718 are each amended
33 to read as follows:

34 The definitions contained in this section shall apply throughout
35 this chapter unless the context clearly requires otherwise.

1 (1) "Applicant group" includes any health professional group or
2 organization, any individual, or any other interested party which
3 proposes that any health professional group not presently regulated be
4 regulated or which proposes to substantially increase the scope of
5 practice of the profession.

6 (2) "Certificate" and "certification" mean a voluntary process by
7 which a statutory regulatory entity grants recognition to an individual
8 who (a) has met certain prerequisite qualifications specified by that
9 regulatory entity, and (b) may assume or use "certified" in the title
10 or designation to perform prescribed health professional tasks.

11 (3) "Grandfather clause" means a provision in a regulatory statute
12 applicable to practitioners actively engaged in the regulated health
13 profession prior to the effective date of the regulatory statute which
14 exempts the practitioners from meeting the prerequisite qualifications
15 set forth in the regulatory statute to perform prescribed occupational
16 tasks.

17 (4) "Health professions" means and includes the following health
18 and health-related licensed or regulated professions and occupations:
19 Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic
20 under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW;
21 dentistry under chapter 18.32 RCW; dispensing opticians under chapter
22 18.34 RCW; hearing aids under chapter 18.35 RCW; naturopaths under
23 chapter 18.36A RCW; embalming and funeral directing under chapter 18.39
24 RCW; midwifery under chapter 18.50 RCW; nursing home administration
25 under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW;
26 ocularists under chapter 18.55 RCW; osteopathy and osteopathic medicine
27 and surgery under chapters 18.57 and 18.57A RCW; pharmacy under
28 chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A
29 RCW; emergency medicine under chapter 18.73 RCW; physical therapy under
30 chapter 18.74 RCW; practical nurses under chapter 18.79 RCW;
31 psychologists under chapter 18.83 RCW; registered nurses under chapter
32 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW;
33 respiratory care practitioners certified under chapter 18.89 RCW;
34 veterinarians and animal technicians under chapter 18.92 RCW; health
35 care assistants under chapter 18.135 RCW; massage practitioners under
36 chapter 18.108 RCW; acupuncturists (~~(certified)~~) licensed under chapter
37 18.06 RCW; persons registered or certified under chapter 18.19 RCW;
38 dietitians and nutritionists certified by chapter 18.138 RCW;

1 radiologic technicians under chapter 18.84 RCW; and nursing assistants
2 registered or certified under chapter 18.88A RCW.

3 (5) "Inspection" means the periodic examination of practitioners by
4 a state agency in order to ascertain whether the practitioners'
5 occupation is being carried out in a fashion consistent with the public
6 health, safety, and welfare.

7 (6) "Legislative committees of reference" means the standing
8 legislative committees designated by the respective rules committees of
9 the senate and house of representatives to consider proposed
10 legislation to regulate health professions not previously regulated.

11 (7) "License," "licensing," and "licensure" mean permission to
12 engage in a health profession which would otherwise be unlawful in the
13 state in the absence of the permission. A license is granted to those
14 individuals who meet prerequisite qualifications to perform prescribed
15 health professional tasks and for the use of a particular title.

16 (8) "Professional license" means an individual, nontransferable
17 authorization to carry on a health activity based on qualifications
18 which include: (a) Graduation from an accredited or approved program,
19 and (b) acceptable performance on a qualifying examination or series of
20 examinations.

21 (9) "Practitioner" means an individual who (a) has achieved
22 knowledge and skill by practice, and (b) is actively engaged in a
23 specified health profession.

24 (10) "Public member" means an individual who is not, and never was,
25 a member of the health profession being regulated or the spouse of a
26 member, or an individual who does not have and never has had a material
27 financial interest in either the rendering of the health professional
28 service being regulated or an activity directly related to the
29 profession being regulated.

30 (11) "Registration" means the formal notification which, prior to
31 rendering services, a practitioner shall submit to a state agency
32 setting forth the name and address of the practitioner; the location,
33 nature and operation of the health activity to be practiced; and, if
34 required by the regulatory entity, a description of the service to be
35 provided.

36 (12) "Regulatory entity" means any board, commission, agency,
37 division, or other unit or subunit of state government which regulates
38 one or more professions, occupations, industries, businesses, or other
39 endeavors in this state.

1 (13) "State agency" includes every state office, department, board,
2 commission, regulatory entity, and agency of the state, and, where
3 provided by law, programs and activities involving less than the full
4 responsibility of a state agency.

5 **Sec. 16.** RCW 18.130.040 and 1994 sp.s. c 9 s 603 and 1994 c 17 s
6 19 are each reenacted and amended to read as follows:

7 (1) This chapter applies only to the secretary and the boards and
8 commissions having jurisdiction in relation to the professions licensed
9 under the chapters specified in this section. This chapter does not
10 apply to any business or profession not licensed under the chapters
11 specified in this section.

12 (2)(a) The secretary has authority under this chapter in relation
13 to the following professions:

14 (i) Dispensing opticians licensed under chapter 18.34 RCW;

15 (ii) Naturopaths licensed under chapter 18.36A RCW;

16 (iii) Midwives licensed under chapter 18.50 RCW;

17 (iv) Ocularists licensed under chapter 18.55 RCW;

18 (v) Massage operators and businesses licensed under chapter 18.108
19 RCW;

20 (vi) Dental hygienists licensed under chapter 18.29 RCW;

21 (vii) Acupuncturists (~~certified~~) licensed under chapter 18.06
22 RCW;

23 (viii) Radiologic technologists certified and x-ray technicians
24 registered under chapter 18.84 RCW;

25 (ix) Respiratory care practitioners certified under chapter 18.89
26 RCW;

27 (x) Persons registered or certified under chapter 18.19 RCW;

28 (xi) Persons registered as nursing pool operators under chapter
29 18.52C RCW;

30 (xii) Nursing assistants registered or certified under chapter
31 18.79 RCW;

32 (xiii) Health care assistants certified under chapter 18.135 RCW;

33 (xiv) Dietitians and nutritionists certified under chapter 18.138
34 RCW;

35 (xv) Sex offender treatment providers certified under chapter
36 18.155 RCW; and

37 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW
38 18.71.205.

1 (b) The boards and commissions having authority under this chapter
2 are as follows:

3 (i) The podiatric medical board as established in chapter 18.22
4 RCW;

5 (ii) The chiropractic quality assurance commission as established
6 in chapter 18.25 RCW;

7 (iii) The dental quality assurance commission as established in
8 chapter 18.32 RCW;

9 (iv) The board on fitting and dispensing of hearing aids as
10 established in chapter 18.35 RCW;

11 (v) The board of examiners for nursing home administrators as
12 established in chapter 18.52 RCW;

13 (vi) The optometry board as established in chapter 18.54 RCW
14 governing licenses issued under chapter 18.53 RCW;

15 (vii) The board of osteopathic medicine and surgery as established
16 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
17 18.57A RCW;

18 (viii) The board of pharmacy as established in chapter 18.64 RCW
19 governing licenses issued under chapters 18.64 and 18.64A RCW;

20 (ix) The medical quality assurance commission as established in
21 chapter 18.71 RCW governing licenses and registrations issued under
22 chapters 18.71 and 18.71A RCW;

23 (x) The board of physical therapy as established in chapter 18.74
24 RCW;

25 (xi) The board of occupational therapy practice as established in
26 chapter 18.59 RCW;

27 (xii) The nursing care quality assurance commission as established
28 in chapter 18.79 RCW governing licenses issued under that chapter;

29 (xiii) The examining board of psychology and its disciplinary
30 committee as established in chapter 18.83 RCW;

31 (xiv) The veterinary board of governors as established in chapter
32 18.92 RCW.

33 (3) In addition to the authority to discipline license holders, the
34 disciplining authority has the authority to grant or deny licenses
35 based on the conditions and criteria established in this chapter and
36 the chapters specified in subsection (2) of this section. This chapter
37 also governs any investigation, hearing, or proceeding relating to
38 denial of licensure or issuance of a license conditioned on the

1 applicant's compliance with an order entered pursuant to RCW 18.130.160
2 by the disciplining authority.

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