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SENATE BILL 5949

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Prentice, Franklin, Wojahn, Erwin and Hargrove

Read first time 03/03/93. Referred to Committee on Health & Human Services.

1 AN ACT Relating to acupuncture; and amending RCW 4.24.240,  
2 4.24.290, 7.70.020, 18.06.010, 18.06.020, 18.06.045, 18.06.080,  
3 18.06.090, 18.06.110, 18.06.120, 18.06.130, 18.06.140, 18.06.170,  
4 18.06.190, 18.06.200, 18.120.020, and 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 1985 c 326 s 26 are each amended to read  
26 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 (~~podiatrist~~) podiatric  
35 physician and surgeon licensed under chapter 18.22 RCW, or a nurse  
36 licensed under chapters 18.78 or 18.88 RCW, the plaintiff in order to  
37 prevail shall be required to prove by a preponderance of the evidence  
38 that the defendant or defendants failed to exercise that degree of

1 skill, care, and learning possessed at that time by other persons in  
2 the same profession, and that as a proximate result of such failure the  
3 plaintiff suffered damages, but in no event shall the provisions of  
4 this section apply to an action based on the failure to obtain the  
5 informed consent of a 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}~~) by an individual  
9 licensed(~~(, certified, or registered)~~) under the laws of this state and  
10 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 1992 c 110 s 3 are each amended to read  
29 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 **Sec. 8.** RCW 18.06.090 and 1985 c 326 s 9 are each amended to read  
10 as follows:

11 Before ((certification)) licensure, each applicant shall  
12 demonstrate sufficient fluency in reading, speaking, and understanding  
13 the English language to enable the applicant to communicate with other  
14 health care providers and patients concerning health care problems and  
15 treatment.

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

18 The uniform disciplinary act, chapter 18.130 RCW, governs  
19 uncertified practice, the issuance and denial of ((certificates))  
20 licenses, and the disciplining of ((certificate)) license holders under  
21 this chapter. The secretary shall be the disciplining authority under  
22 this chapter.

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

25 (1) Every person ((certified)) licensed in acupuncture shall  
26 register with the secretary annually and pay an annual renewal  
27 registration fee determined by the secretary as provided in RCW  
28 43.70.250 on or before the ((certificate)) license holder's birth  
29 anniversary date. The ((certificate)) license of the person shall be  
30 renewed for a period of one year or longer in the discretion of the  
31 secretary. A person whose practice is exclusively out-of-state or who  
32 is on sabbatical shall be granted an inactive ((certification))  
33 licensure status and pay a reduced registration fee. The reduced fee  
34 shall be set by the secretary under RCW 43.70.250.

35 (2) Any failure to register and pay the annual renewal registration  
36 fee shall render the ((certificate)) license invalid. The

1 ((certificate)) license shall be reinstated upon: (a) Written  
2 application to the secretary; (b) payment to the state of a penalty fee  
3 determined by the secretary as provided in RCW 43.70.250; and (c)  
4 payment to the state of all delinquent annual ((certificate)) license  
5 renewal fees.

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

13 (4) All fees collected under this section and RCW 18.06.070 shall  
14 be credited to the health professions account as required under RCW  
15 43.70.320.

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

18 The secretary shall develop a form to be used by an acupuncturist  
19 to inform the patient of the acupuncturist's scope of practice and  
20 qualifications. All ((certificate)) license holders shall bring the  
21 form to the attention of the patients in whatever manner the secretary,  
22 by rule, provides.

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

25 Every ((certified)) licensed acupuncturist shall develop a written  
26 plan for consultation, emergency transfer, and referral to other health  
27 care practitioners operating within the scope of their authorized  
28 practices. The written plan shall be submitted with the initial  
29 application for ((certification)) licensure as well as annually  
30 thereafter with the ((certificate)) license renewal fee to the  
31 department. The department may withhold ((certification)) licensure or  
32 renewal of ((certification)) licensure if the plan fails to meet the  
33 standards contained in rules ((promulgated)) adopted by the secretary.

34 When the acupuncturist sees patients with potentially serious  
35 disorders such as cardiac conditions, acute abdominal symptoms, and  
36 such other conditions, the acupuncturist shall immediately request a  
37 consultation or recent written diagnosis from a physician licensed

1 under chapter 18.71 or 18.57 RCW. In the event that the patient with  
2 the disorder refuses to authorize such consultation or provide a recent  
3 diagnosis from such physician, acupuncture treatment shall not be  
4 continued.

5 **Sec. 13.** RCW 18.06.170 and 1991 c 3 s 16 are each amended to read  
6 as follows:

7 (1) The acupuncture advisory committee is created. The committee  
8 shall be composed of one physician licensed under chapter 18.71 or  
9 18.57 RCW, three acupuncturists (~~(certified)~~) licensed under this  
10 chapter, and one public member, who does not have any financial  
11 interest in the rendering of health services.

12 (2) The secretary shall appoint members to staggered terms so as to  
13 provide continuity in membership. Members shall serve at the pleasure  
14 of the secretary but may not serve more than five years total. Members  
15 of the committee shall be reimbursed for travel expenses as provided in  
16 RCW 43.03.050 and 43.03.060.

17 (3) Each member of the committee shall receive fifty dollars for  
18 each day the member attends an official meeting of the group or  
19 performs statutorily prescribed duties approved by the secretary.

20 (4) The committee shall meet only on the request of the secretary  
21 and consider only those matters referred to it by the secretary.

22 **Sec. 14.** RCW 18.06.190 and 1991 c 3 s 18 are each amended to read  
23 as follows:

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

29 **Sec. 15.** RCW 18.06.200 and 1985 c 326 s 20 are each amended to  
30 read as follows:

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



1       **Sec. 16.** RCW 18.120.020 and 1989 c 300 s 14 are each amended to  
2 read as follows:

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

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

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

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

21       (4) "Health professions" means and includes the following health  
22 and health-related licensed or regulated professions and occupations:  
23 (~~Podiatry~~) Podiatric medicine and surgery under chapter 18.22 RCW;  
24 chiropractic under chapters 18.25 and 18.26 RCW; dental hygiene under  
25 chapter 18.29 RCW; dentistry under chapter 18.32 RCW; dispensing  
26 opticians under chapter 18.34 RCW; hearing aids under chapter 18.35  
27 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral  
28 directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW;  
29 nursing home administration under chapter 18.52 RCW; optometry under  
30 chapters 18.53 and 18.54 RCW; ocularists under chapter 18.55 RCW;  
31 osteopathy and osteopathic medicine and surgery under chapters 18.57  
32 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine  
33 under chapters 18.71, 18.71A, and 18.72 RCW; emergency medicine under  
34 chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical  
35 nurses under chapter 18.78 RCW; psychologists under chapter 18.83 RCW;  
36 registered nurses under chapter 18.88 RCW; occupational therapists  
37 licensed pursuant to chapter 18.59 RCW; respiratory care practitioners  
38 certified under chapter 18.89 RCW; veterinarians and animal technicians  
39 under chapter 18.92 RCW; health care assistants under chapter 18.135

1 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists  
2 ((certified)) licensed under chapter 18.06 RCW; persons registered or  
3 certified under chapter 18.19 RCW; dietitians and nutritionists  
4 certified by chapter 18.138 RCW; radiologic technicians under chapter  
5 18.84 RCW; and nursing assistants registered or certified under chapter  
6 18.88A RCW.

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

11 (6) "Legislative committees of reference" means the standing  
12 legislative committees designated by the respective rules committees of  
13 the senate and house of representatives to consider proposed  
14 legislation to regulate health professions not previously regulated.

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

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

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

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

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

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

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

9 **Sec. 17.** RCW 18.130.040 and 1992 c 128 s 6 are each amended to  
10 read as follows:

11 (1) This chapter applies only to the secretary and the boards  
12 having jurisdiction in relation to the professions licensed under the  
13 chapters specified in this section. This chapter does not apply to any  
14 business or profession not licensed under the chapters specified in  
15 this section.

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

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

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

20 (iii) Midwives licensed under chapter 18.50 RCW;

21 (iv) Ocularists licensed under chapter 18.55 RCW;

22 (v) Massage operators and businesses licensed under chapter 18.108  
23 RCW;

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

25 (vii) Acupuncturists (~~certified~~) licensed under chapter 18.06  
26 RCW;

27 (viii) Radiologic technologists certified under chapter 18.84 RCW;

28 (ix) Respiratory care practitioners certified under chapter 18.89  
29 RCW;

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

31 (xi) Persons registered as nursing pool operators;

32 (xii) Nursing assistants registered or certified under chapter  
33 (~~18.52B~~) 18.88A RCW;

34 (xiii) Dietitians and nutritionists certified under chapter 18.138  
35 RCW;

36 (xiv) Sex offender treatment providers certified under chapter  
37 18.155 RCW; and

1 (xv) Persons licensed and certified under chapter 18.73 RCW or RCW  
2 18.71.205.

3 (b) The boards having authority under this chapter are as follows:

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

6 (ii) The chiropractic disciplinary board as established in chapter  
7 18.26 RCW governing licenses issued under chapter 18.25 RCW;

8 (iii) The dental disciplinary board as established in chapter 18.32  
9 RCW;

10 (iv) The council on hearing aids as established in chapter 18.35  
11 RCW;

12 (v) The board of funeral directors and embalmers as established in  
13 chapter 18.39 RCW;

14 (vi) The board of examiners for nursing home administrators as  
15 established in chapter 18.52 RCW;

16 (vii) The optometry board as established in chapter 18.54 RCW  
17 governing licenses issued under chapter 18.53 RCW;

18 (viii) The board of osteopathic medicine and surgery as established  
19 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
20 18.57A RCW;

21 (ix) The medical disciplinary board as established in chapter 18.72  
22 RCW governing licenses and registrations issued under chapters 18.71  
23 and 18.71A RCW;

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

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

28 (xii) The board of practical nursing as established in chapter  
29 18.78 RCW;

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

32 (xiv) The board of nursing as established in chapter 18.88 RCW; and

33 (xv) The veterinary board of governors as established in chapter  
34 18.92 RCW.

35 (3) In addition to the authority to discipline license holders, the  
36 disciplining authority has the authority to grant or deny licenses  
37 based on the conditions and criteria established in this chapter and  
38 the chapters specified in subsection (2) of this section. However, the  
39 board of chiropractic examiners has authority over issuance and denial

1 of licenses provided for in chapter 18.25 RCW, the board of dental  
2 examiners has authority over issuance and denial of licenses provided  
3 for in RCW 18.32.040, and the board of medical examiners has authority  
4 over issuance and denial of licenses and registrations provided for in  
5 chapters 18.71 and 18.71A RCW. This chapter also governs any  
6 investigation, hearing, or proceeding relating to denial of licensure  
7 or issuance of a license conditioned on the applicant's compliance with  
8 an order entered pursuant to RCW 18.130.160 by the disciplining  
9 authority.

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