

**Assembly Bill No. 1117**

\_\_\_\_\_

Passed the Assembly August 30, 2005

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate August 25, 2005

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2005, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 2075, 3642, 4926, 4935, 4937, and 4939 of the Business and Professions Code, relating to medicine.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1117, Yee. Asian medicine.

(1) Existing law provides for the licensing and regulation of the practice of oriental medicine and acupuncture. An acupuncturist's license authorizes the holder to perform or prescribe, among other things, oriental massage.

This bill would change the term "oriental medicine" to "Asian medicine" and would change the term "oriental massage" to "Asian massage." The bill would state the intent of the Legislature that this change not affect any previous interpretations or judicial decisions.

(2) This bill would incorporate additional changes in Section 4935 of the Business and Professions Code, to become operative only if AB 1116 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.

(3) This bill would also incorporate additional changes in Section 4937 of the Business and Professions Code, to become operative only if AB 1113 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. It is the intent of the Legislature that the provisions of this act changing the word "oriental" to "Asian" shall not affect any previous interpretations or judicial decisions insofar as they analyze or use the term "oriental."

SEC. 2. Section 2075 of the Business and Professions Code is amended to read:

2075. The performance of acupuncture by a certified acupuncturist or other licentiate legally authorized to practice acupuncture within his or her scope of practice or a person licensed or certified in another state to perform acupuncture or

other forms of traditional Asian medicine, alone or in conjunction with other forms of traditional Asian medicine, when carried on in a program affiliated with and under the jurisdiction of an approved medical school or approved acupuncture school, for the primary purpose of scientific investigation of acupuncture, shall not be in violation of this chapter, but those procedures shall be carried on only under the supervision of a licensed physician and surgeon.

Any medical school or approved acupuncture school conducting research into acupuncture under this section shall report to the Legislature annually on the fifth legislative day of the regular session of the Legislature concerning the results of that research, the suitability of acupuncture as a therapeutic technique, and performance standards for persons who perform acupuncture.

SEC. 3. Section 3642 of the Business and Professions Code is amended to read:

3642. A naturopathic doctor may not perform any of the following functions:

(a) Prescribe, dispense, or administer a controlled substance or device identified in Sections 801 to 971, inclusive, of Title 21 of the United States Code, except as authorized by this chapter.

(b) Administer therapeutic ionizing radiation or radioactive substances.

(c) Practice or claim to practice any other system or method of treatment beyond that authorized by this chapter, for which licensure is required, unless otherwise licensed to do so.

(d) Administer general or spinal anesthesia.

(e) Perform an abortion.

(f) Perform any surgical procedure.

(g) Perform acupuncture or traditional Chinese and Asian medicine, including Chinese herbal medicine, unless licensed as an acupuncturist as defined in subdivision (c) of Section 4927.

SEC. 4. Section 4926 of the Business and Professions Code is amended to read:

4926. In its concern with the need to eliminate the fundamental causes of illness, not simply to remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of Asian medicine through acupuncture.

The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health and to remove the existing legal constraints which are an unnecessary hindrance to the more effective provision of health care services. Also, as it effects the public health, safety, and welfare, there is a necessity that individuals practicing acupuncture be subject to regulation and control as a primary health care profession.

SEC. 5. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by

representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 5.5. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,”

“certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she meets one of the following requirements:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter.

(2) Is a graduate of a school of acupuncture approved by the board and participating in either of the following:

(A) A postgraduate review course that does not exceed one year in duration at a school approved by the board.

(B) A postgraduate internship pursuant to subdivision (f) of Section 4938.

SEC. 6. Section 4937 of the Business and Professions Code is amended to read:

4937. An acupuncturist’s license authorizes the holder thereof:

(a) To engage in the practice of acupuncture.

(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(c) For purposes of this section, a “magnet” means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section, “plant, animal, and mineral products” means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(e) For purposes of this section, “dietary supplement” has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 6.5. Section 4937 of the Business and Professions Code is amended to read:

4937. An acupuncturist’s license authorizes the holder thereof:

(a) To diagnose within his or her scope of practice.

(b) To engage in the practice of acupuncture.

(c) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(d) For purposes of this section, a “magnet” means a mineral or metal that produces a magnetic field without the application of an electric current.

(e) For purposes of this section, “plant, animal, and mineral products” means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(f) For purposes of this section, “dietary supplement” has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

SEC. 7. Section 4939 of the Business and Professions Code is amended to read:

4939. (a) On or before January 1, 2004, the board shall establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, including standards for the faculty in those schools and colleges and tutorial programs, completion of which will satisfy the requirements of Section 4938.

(b) Standards for the approval of training programs shall include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist. This subdivision shall apply to all students entering programs on or after January 1, 2005.

(c) Within three years of initial approval by the board, each program so approved by the board shall receive full institutional approval under Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 3.5 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code, or the board's approval of the program shall automatically lapse.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 4935 of the Business and Professions Code proposed by this bill and AB 1116. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4935 of the Business and Professions Code, and (3) this bill is enacted after AB 1116, in which case Section 5 of this bill shall not become operative.

SEC. 9. Section 6.5 of this bill incorporates amendments to Section 4937 of the Business and Professions Code proposed by this bill and AB 1113. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2006, (2) each bill amends Section 4937 of the Business and Professions Code, and (3) this bill is enacted after AB 1113, in which case Section 6 of this bill shall not become operative.















Approved \_\_\_\_\_, 2005

---

*Governor*