

# **MEDICAL BOARD LAWS**

## **AS OF THE 2019 LEGISLATIVE SESSION**

### **TITLE 37, CHAPTER 13**

### **ACUPUNCTURE PRACTICE ACT**

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## CHAPTER 13

# ACUPUNCTURE PRACTICE ACT

### Chapter Compiler's Comments

*Severability Clause:* Section 17, Ch. 317, L. 1974, was a severability clause.

### Chapter Administrative Rules

Title 24, chapter 156, subchapter 14, ARM Acupuncture.

### Chapter Attorney General's Opinions

*Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities:* No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, *materia medica*, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under this chapter. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under this chapter. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

### Chapter Law Review Articles

Defining a Standard of Care in the Practice of Acupuncture, Kung, 31 Am. J.L. & Med. 117 (2005).

Alternative Medicine's Roadmap to the Mainstream, Josefek, 26 Am. J.L. & Med. 295 (2000).

A Critical Overview of U.S. Acupuncture Regulation, McRae, 7 J. Health Pol., Pol'y & L. 163 (1982).

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## Part 1

### General

**37-13-101. Citation of chapter.** This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

**History:** En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

**37-13-102. Legislative finding and purpose.** The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

**History:** En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

### Attorney General's Opinions

*Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities:* No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, *materia medica*, and other subjects required by the existing

physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

**37-13-103. Definitions.** As used in this chapter, the following definitions apply:

- (1) "Acupuncture" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs.
- (2) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.
- (3) "Board" means the Montana state board of medical examiners.
- (4) "School of acupuncture" means a school in which acupuncture is taught that has been recognized and designated by the board of medical examiners.

**History:** En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403; amd. Sec. 1, Ch. 340, L. 1995.

**Compiler's Comments**

**1995 Amendment:** Chapter 340 in definition of acupuncture substituted "means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities" for "means the treatment of the human body" and at end inserted last sentence relating to acupressure, food remedies, and herbs; and made minor changes in style.

**Administrative Rules**

ARM 24.156.1401 Definitions.

**37-13-104. Partial exemptions.** (1) (a) This chapter may not be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, *materia medica*, or other subjects that are or may be required for licensure in their respective professions.

(b) A doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry may not practice acupuncture in this state unless that doctor has completed a course and passed an examination in acupuncture as required by this chapter.

(2) Except as provided in 37-13-301 and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license.

(3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

**History:** En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415; amd. Sec. 2, Ch. 340, L. 1995.

**Compiler's Comments**

**1995 Amendment:** Chapter 340 inserted (2) relating to practice within the scope of a health professional's license; inserted (3) relating to practice of an occupation by person not licensed under this chapter; and made minor changes in style.

**Attorney General's Opinions**

*Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities:* No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, *materia medica*, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture

under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

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## Part 2

### Board of Medical Examiners

#### **Part Cross-References**

Oath defined, 1-1-201.  
Seal defined, 1-4-201.  
Proof of execution, Title 1, ch. 5, part 3.  
Power of notary to take acknowledgments, 1-5-603, 1-5-604.  
Oaths, Title 1, ch. 6.  
Power of agencies to issue subpoenas, 2-4-104.  
Adoption and publication of rules, Title 2, ch. 4, part 3.  
Allocation of boards for administrative purposes, 2-15-121.  
Quasi-judicial boards, 2-15-124.  
Board established, 2-15-1731.  
Affidavits, Title 26, ch. 1, part 10.  
Subpoenas, Title 26, ch. 2, part 1.  
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.  
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.  
Perjury, 45-7-201.  
False swearing, 45-7-202.

#### **Part Administrative Rules**

Title 24, chapter 156, subchapter 1, ARM Organizational rule.  
Title 24, chapter 156, subchapter 2, ARM Procedural rules.

**37-13-201. Powers and duties.** In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

- (1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;
- (2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;
- (3) to prescribe forms for application for examination and license;
- (4) to prepare and supervise examination of applicants for license to practice acupuncture;
- (5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;
- (6) to issue, revoke, and suspend licenses as hereinafter provided;
- (7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;
- (8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and
- (9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

**History:** En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

#### **Administrative Rules**

Title 24, chapter 156, subchapter 14, ARM Acupuncture.

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## Part 3 Licensing

### Part Cross-References

- Licensing to follow contested case procedure, 2-4-631.
- Standardized forms, 37-1-104.
- Reporting disciplinary actions against licensees, 37-1-105.
- Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
- Licensing boards to establish fees commensurate with costs, 37-1-134.
- Licensing investigation and review — record access, 37-1-135.
- Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
- Licensure of criminal offenders, Title 37, ch. 1, part 2.
- Nondiscrimination in licensing, 49-3-204.

**37-13-301. License required for practice.** (1) A person may not engage in the practice of acupuncture in this state unless the person is licensed under the provisions of this chapter. (2) A person may not purport to practice acupuncture or use the title "acupuncturist" or any similar title unless the person is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404; amd. Sec. 3, Ch. 340, L. 1995.

### Compiler's Comments

1995 Amendment: Chapter 340 inserted (2) prohibiting the purporting to practice acupuncture and the use of certain titles without license; and made minor changes in style.

### Administrative Rules

ARM 24.156.1403 Requirements for licensure.

### Attorney General's Opinions

*Acupuncturist License Required of Licensed Physician Who Wishes to Advertise the Practice of Acupuncture — Use of Solid Needles by Licensed Physician Allowed in Performance of Therapeutic Modalities:* No exception to either the education or examination requirement for the practice of acupuncture exists in law or rule for a licensed physician who wishes to practice acupuncture, although a licensed physician is relieved from taking additional examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, *materia medica*, and other subjects required by the existing physician's license. Therefore, if a licensed physician wishes to represent to the public that that physician is also licensed to practice acupuncture, the physician must acquire a license to practice acupuncture under Title 37, ch. 13. However, a physician who is licensed under Title 37, ch. 3, may, as part of the practice of medicine, use solid needles to perform therapeutic modalities without first acquiring a license to practice acupuncture under Title 37, ch. 13. A physician who performs solid needle treatment without proper training or who exceeds the scope of the physician's license is subject to the disciplinary jurisdiction of the Board of Medical Examiners. 48 A.G. Op. 7 (1999).

**37-13-302. Application for licensure — fee — qualifications.** (1) Each person desiring to practice acupuncture in this state shall apply to the board for licensure. A fee prescribed by the board must accompany the application.

- (2) An applicant shall furnish to the board evidence that the applicant is:
  - (a) at least 18 years of age;
  - (b) of good moral character as determined by the board;
  - (c) a graduate of a school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the national commission for the certification of acupuncturists or its successor.

**History:** En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981; amd. Sec. 1, Ch. 307, L. 1987; amd. Sec. 1, Ch. 327, L. 1989; amd. Sec. 53, Ch. 467, L. 2005.

#### **Compiler's Comments**

**2005 Amendment:** Chapter 467 in (1) in first sentence after "shall" substituted "apply to the board for licensure" for "make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board"; in (2)(d) after "examination" deleted "prepared and administered by the board or an examination" and at end after "acupuncturists" inserted "or its successor"; and made minor changes in style. Amendment effective July 1, 2005.

**1989 Amendment:** In (2)(c) substituted "national accreditation commission for schools and colleges of acupuncture and oriental medicine" for "American medical association".

**1987 Amendment:** In (1), after "application for", substituted "licensure" for "examination", at end of first sentence after "board", deleted "at least 30 days before the date set by the board for the commencement of the examination", and at beginning of second sentence substituted "A fee" for "An examination fee"; in (2)(c), after "acupuncture", substituted language stating school requirements for "or has completed a course in acupuncture approved by the board"; and inserted (2)(d) requiring applicant to pass an examination.

**Applicability:** Section 3, Ch. 307, L. 1987, provided: "This act applies to applications for a license to practice acupuncture received by the board of medical examiners after September 30, 1987."

**1981 Amendments:** Chapter 341 deleted former subsection (2)(b) requiring U.S. citizenship.

Chapter 345 substituted "An examination fee prescribed by the board" for "An examination fee of \$50" in the last sentence of (1).

**Fees Prescribed by Board — Statement of Intent and Preamble:** Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

**Citizenship Qualifications — Preamble:** The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

#### **Administrative Rules**

ARM 24.156.1402 Fees.

ARM 24.156.1403 Requirements for licensure.

ARM 24.156.1404 Application for licensure.

ARM 24.156.1406 Curriculum.

ARM 24.156.1412 Unprofessional conduct.

#### **37-13-303. Repealed.** Sec. 2, Ch. 307, L. 1987.

**History:** En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

**37-13-304. Issuance of certificate of license — license fee.** All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

**History:** En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.

#### **Compiler's Comments**

**1981 Amendment:** Substituted "upon the payment of a license fee prescribed by the board" for "upon the payment of a \$20 license fee" in the middle of the section.

**Fees Prescribed by Board — Statement of Intent and Preamble:** Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

**37-13-305. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.

**37-13-306. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981; amd. Sec. 4, Ch. 540, L. 1991; amd. Sec. 55, Ch. 429, L. 1995; amd. Sec. 20, Ch. 492, L. 1997; amd. Sec. 33, Ch. 224, L. 2003; amd. Sec. 20, Ch. 271, L. 2003.

**37-13-307. Repealed.** Sec. 127, Ch. 467, L. 2005.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

**37-13-308 through 37-13-310 reserved.**

**37-13-311. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

**37-13-312. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

**37-13-313. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

**37-13-314. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

**37-13-315. Enjoining unlawful practice.** The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In the proceeding, it is not necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have practiced improperly, the court shall enjoin the respondent from practicing until the respondent has been licensed. Procedure in these cases is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414; amd. Sec. 1375, Ch. 56, L. 2009.

**Compiler's Comments**

*2009 Amendment:* Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

**Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

Disciplinary authority of boards — injunctions, 37-1-136.

**37-13-316. Penalty.** A person who violates any of the provisions of this chapter or the rules of the Montana state board of medical examiners is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding \$500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416; amd. Sec. 71, Ch. 51, L. 1999.

**Compiler's Comments**

*1999 Amendment:* Chapter 51 near middle substituted reference to Montana state board of medical examiners for reference to state board of acupuncture; and made minor changes in style. Amendment effective March 15, 1999.

**Cross-References**

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.