

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 13-172

BY SENATOR(S) Newell, Giron, Guzman, Jones, Kefalas, Schwartz, Tochtrop;
also REPRESENTATIVE(S) Ginal, Hullinghorst, Labuda, Mitsch Bush, Primavera, Singer.

CONCERNING THE CONTINUATION OF THE REGULATION OF ACUPUNCTURISTS,
AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 12-29.5-116 as follows:

12-29.5-116. Repeal of article - termination of functions. (1) This article is repealed, effective ~~July 1, 2013~~ SEPTEMBER 1, 2022.

(2) The licensing functions of the director of the division of professions and occupations as set forth in this article are terminated on ~~July 1, 2013~~ SEPTEMBER 1, 2022. Prior to such termination, the licensing functions shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 2. In Colorado Revised Statutes, 24-34-104, **amend** (44) introductory portion and (53.5) introductory portion; **repeal** (44) (a); and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

add (53.5) (d) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (44) The following agencies, functions, or both, ~~shall~~ terminate on July 1, 2013:

(a) ~~The licensing of persons who practice acupuncture with the director of the division of professions and occupations in accordance with article 29.5 of title 12, C.R.S.;~~

(53.5) The following agencies, functions, or both, ~~shall~~ terminate on September 1, 2022:

(d) THE LICENSING OF PERSONS WHO PRACTICE ACUPUNCTURE WITH THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN ACCORDANCE WITH ARTICLE 29.5 OF TITLE 12, C.R.S.

SECTION 3. In Colorado Revised Statutes, 12-29.5-102, **amend** (1) and (3.5) as follows:

12-29.5-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means a system of health care based upon traditional AND MODERN oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(3.5) (a) "Practice of acupuncture" means the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and ~~traditional oriental~~ adjunctive therapies. ~~Traditional oriental~~ Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment; the recommendation of ~~oriental~~ therapeutic exercises; and, subject to federal law, the recommendation of herbs and dietary guidelines. The "practice of acupuncture" ~~shall be defined by~~ IS BASED UPON traditional AND MODERN oriental medical concepts and ~~shall~~ DOES not include the utilization of western medical diagnostic tests and procedures, such as magnetic resonance imaging, radiographs (X rays), computerized tomography scans, and ultrasound. ~~"Practice of acupuncture" does not mean:~~

~~(a) Osteopathic medicine and osteopathic manipulative treatment;~~

~~(b) "Chiropractic" or "chiropractic adjustment" as defined in section 12-33-102 or therapies allowed as part of the practice of chiropractic or chiropractic adjustment;~~ NOTHING IN THIS ARTICLE AUTHORIZES AN ACUPUNCTURIST TO PERFORM THE PRACTICE OF MEDICINE; SURGERY; SPINAL ADJUSTMENT, MANIPULATION, OR MOBILIZATION; OR ANY OTHER FORM OF HEALING EXCEPT AS AUTHORIZED BY THIS ARTICLE.

~~(c) Physical therapy as defined in section 12-41-103 or therapies allowed as part of the practice of physical therapy.~~

SECTION 4. In Colorado Revised Statutes, 12-29.5-104, **amend** (5) as follows:

12-29.5-104. Requirement for licensure with the division of registrations - annual fee - required disclosures. (5) (a) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make such report either within thirty days after the judgment or action or upon application for licensure or reinstatement, whichever occurs earlier.

(b) AN ACUPUNCTURIST WHO HAS HAD HIS OR HER LICENSE REVOKED, OR WHO HAS SURRENDERED HIS OR HER LICENSE TO AVOID DISCIPLINARY ACTION IS NOT ELIGIBLE TO APPLY FOR A LICENSE FOR TWO YEARS AFTER THE LICENSE IS REVOKED OR SUSPENDED.

SECTION 5. In Colorado Revised Statutes, 12-29.5-105, **amend** (2) as follows:

12-29.5-105. Unlawful acts - exceptions. (2) Notwithstanding the provisions ANY PROVISION of this section to the contrary, a person in training may practice acupuncture without a valid and current license ~~on file with~~ ISSUED BY the division if such practice takes place in the course of a bona fide training program and

~~(a)~~ THE PERSON PERFORMS all acupuncture acts and services

~~performed by such persons are performed~~ under the direct, on-site supervision of a licensed acupuncturist, who ~~shall be~~ IS responsible for all such acts and services as though the licensed acupuncturist had personally performed them. ~~and~~

~~(b) The names and current residence addresses of all of such persons have been reported to the director by or on behalf of the licensed acupuncturist supervising such persons.~~

SECTION 6. In Colorado Revised Statutes, 12-29.5-106, **amend** (1) (l) and (1) (m) as follows:

12-29.5-106. Grounds for disciplinary action. (1) The director may deny licensure to or take disciplinary action against an acupuncturist pursuant to section 24-4-105, C.R.S., if the director finds that the acupuncturist has committed any of the following acts:

~~(l) Continued in the practice of acupuncture while subject to any FAILED TO NOTIFY THE DIRECTOR OF A physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; or continued in the practice of acupuncture while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety~~ ILLNESS OR CONDITION THAT IMPACTS THE LICENSEE'S ABILITY TO PRACTICE ACUPUNCTURE WITH REASONABLE SKILL AND SAFETY TO PATIENTS; FAILED TO ACT WITHIN THE LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE LICENSEE UNABLE TO PERFORM ACUPUNCTURE WITH REASONABLE SKILL AND SAFETY TO THE PATIENT; OR FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT;

~~(m) Continued in the practice of acupuncture while addicted to or dependent upon alcohol or upon any habit-forming drug or while abusing or habitually or excessively using any such~~ ALCOHOL, A habit-forming drug, or ~~any~~ controlled substance as defined in section 18-18-102 (5), C.R.S.;

SECTION 7. In Colorado Revised Statutes, 12-29.5-107, **amend** (2) (c) (I) and (2) (c) (II) as follows:

12-29.5-107. Disciplinary authority and proceedings.

(2) Disciplinary actions may consist of the following:

(c) (I) Issuance of letters of admonition. When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, THE DIRECTOR MAY ISSUE AND SEND a letter of admonition ~~may be issued and sent~~, by ~~certified~~ FIRST-CLASS mail, to the licensee.

(II) When THE DIRECTOR SENDS a letter of admonition ~~is sent by the director by certified mail~~, to a licensee, ~~such~~ THE DIRECTOR SHALL ADVISE THE licensee ~~shall be advised~~ that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

SECTION 8. In Colorado Revised Statutes, **add** 12-29.5-108.5 as follows:

12-29.5-108.5. Examinations - notice - confidential agreements.

(1) IF AN ACUPUNCTURIST SUFFERS FROM A PHYSICAL OR MENTAL ILLNESS OR CONDITION RENDERING THE LICENSEE UNABLE TO PRACTICE ACUPUNCTURE OR PRACTICE AS AN ACUPUNCTURIST WITH REASONABLE SKILL AND PATIENT SAFETY, THE ACUPUNCTURIST SHALL NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND WITHIN A PERIOD OF TIME DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY REQUIRE THE LICENSEE TO SUBMIT TO AN EXAMINATION OR TO EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON THE LICENSEE'S ABILITY TO PRACTICE WITH REASONABLE SKILL AND SAFETY TO PATIENTS.

(2) (a) UPON DETERMINING THAT AN ACUPUNCTURIST WITH A PHYSICAL OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED ACUPUNCTURE TREATMENT WITH REASONABLE SKILL AND PATIENT SAFETY, THE DIRECTOR MAY ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE ACUPUNCTURIST IN WHICH THE ACUPUNCTURIST AGREES TO LIMIT HIS OR HER PRACTICE BASED ON THE RESTRICTIONS IMPOSED BY THE ILLNESS OR CONDITION, AS DETERMINED BY THE DIRECTOR.

(b) THE AGREEMENT MUST SPECIFY THAT THE LICENSEE IS SUBJECT

TO PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED APPROPRIATE BY THE DIRECTOR.

(c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF MONITORING.

(d) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR UNDER THIS SUBSECTION (2) TO LIMIT HIS OR HER PRACTICE, THE LICENSEE IS NOT ENGAGING IN UNPROFESSIONAL CONDUCT. THE AGREEMENT IS AN ADMINISTRATIVE ACTION AND DOES NOT CONSTITUTE A RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE LICENSEE FAILS TO COMPLY WITH AN AGREEMENT ENTERED INTO PURSUANT TO THIS SUBSECTION (2), THE FAILURE CONSTITUTES GROUNDS FOR DISCIPLINARY ACTION UNDER SECTION 12-29.5-106 (1) (1) AND THE LICENSEE IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION 12-29.5-107.

(3) THIS SECTION DOES NOT APPLY TO A LICENSEE SUBJECT TO DISCIPLINE UNDER SECTION 12-29.5-106 (1) (m).

SECTION 9. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of professions and occupations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2013, the sum of \$5,021, or so much thereof as may be necessary, to be allocated to the executive director's office and administrative services for the purchase of legal services for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2013, the sum of \$5,021, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 10. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

John P. Morse
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO