

SENATE BILL No. 363

By Senators O'Donnell, Arpke, Baumgardner, Bruce, Fitzgerald, Francisco, Haley, Hawk, Holland, Holmes, Kelly, Kerschen, King, LaTurner, Longbine, Love, Masterson, McGinn, Olson, Petersen, Pettey, Powell, Smith, Wagle, Wilborn and Wolf

1-25

1 AN ACT concerning the state board of healing arts; relating to the
2 licensure of acupuncturists; amending K.S.A. 2015 Supp. 65-2872 and
3 repealing the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Sections 1 through 24, and amendments thereto, shall
7 be known and may be cited as the acupuncture and oriental medicine
8 practice act.

9 New Sec. 2. As used in sections 1 through 24, and amendments
10 thereto:

11 (a) "Act" means the acupuncture and oriental medicine practice act.

12 (b) "Acupuncture" means a distinct system of health care, based on
13 traditional and modern oriental medical concepts, to examine, evaluate,
14 diagnose, manage or treat disease, illness, injury, pain or other physical or
15 mental conditions in order to promote the restoration and maintenance of
16 health and wellness.

17 (c) "Licensed acupuncturists" means any person licensed by the board
18 in the practice of acupuncture and oriental medicine.

19 (d) "Auricular detox technician" means a person trained solely in, and
20 who performs only, auricular detox treatment.

21 (e) "Auricular detox treatment" means a very limited procedure
22 consisting of acupuncture needles inserted into specified points in the
23 outer ear of a person undergoing treatment for drug or alcohol abuse or
24 both drug and alcohol abuse.

25 (f) "Board" means the state board of healing arts.

26 (g) "Council" means the acupuncture advisory council.

27 (h) "Oriental medicine" means Chinese medicine, traditional Chinese
28 medicine, Asian medicine, East Asian medicine and the other names used
29 to describe such medical model and the therapies taught within such
30 medical model.

31 (i) "NCCAOM" means the national certification commission for
32 acupuncture and oriental medicine. NCCAOM is a national organization
33 that validates entry-level competency in the practice of acupuncture and
34 oriental medicine through the administration of professional certification

1 examinations.

2 (j) "Physician" means a person licensed to practice medicine and
3 surgery in Kansas.

4 (k) "Practice of acupuncture and oriental medicine" means the use,
5 recommendation and application of oriental medicine therapies, within the
6 scope of and based on oriental medicine concepts.

7 (1) Oriental medicine therapies include, but are not limited to:

8 (A) Acupuncture treatment and those related techniques which
9 involve the insertion and removal of needles through the skin at specific
10 points on the body with or without the palpation of specific points on the
11 body, with or without manipulation of the needles and with or without the
12 application of heat sources or electrical current. This includes, but is not
13 limited to, the techniques sometimes called "dry needling," "trigger point
14 therapy," "intramuscular therapy," "auricular detox treatment" and similar
15 terms;

16 (B) mechanical, thermal, pressure, suction, friction, electrical,
17 magnetic, light, sound, vibration, manual treatment and electromagnetic
18 treatment;

19 (C) the use, application or recommendation of therapeutic exercises,
20 breathing techniques, meditation and dietary and nutritional counseling
21 based on oriental medicine principles; and

22 (D) the use and recommendation of herbal products and nutritional
23 supplements, according to the acupuncturist's level of training and
24 certification as a diplomate in oriental medicine or diplomate in herbology
25 by NCCAOM.

26 (2) Oriental medicine therapies do not include:

27 (A) Dispensing or administering of any controlled substances as
28 defined in K.S.A. 65-4101, and amendments thereto, or any prescription-
29 only drugs;

30 (B) medicine and surgery including the use of lasers for surgical
31 purposes as practiced by physicians and surgeons;

32 (C) osteopathic medicine and surgery or osteopathic manipulative
33 treatment; or

34 (D) the practice of chiropractic as defined by article 28 of chapter 65
35 of the Kansas Statutes Annotated, and amendments thereto.

36 New Sec. 3. (a) On and after July 1, 2017, except as otherwise
37 provided in this act, no person shall practice acupuncture unless such
38 person possesses a current and valid acupuncture license issued under this
39 act, is licensed to practice medicine and surgery, is a licensed chiropractor
40 or is a licensed naturopathic doctor.

41 (b) (1) No person shall depict oneself orally or in writing, expressly
42 or by implication, as a holder of a Kansas acupuncture license who does
43 not hold a current and valid acupuncture and oriental medicine license

1 under this act.

2 (2) Only a person licensed as an acupuncturist under the acupuncture
3 and oriental medicine practice act shall be entitled to use the following
4 titles, as appropriate: "Licensed acupuncturist," "oriental medicine
5 practitioner," "practitioner of oriental medicine," abbreviations thereof or
6 words similar to such titles or the designated letters "L.Ac."

7 (3) Nothing in this section shall be construed to prohibit an
8 acupuncturist licensed under this act from listing or using in conjunction
9 with their name any letters, words, abbreviations or other insignia to
10 designate any educational degrees, certifications or credentials which such
11 licensed acupuncturist has earned. Each licensee, when using the letters or
12 term "Dr." or "Doctor" in conjunction with such licensee's professional
13 practice, whether in any written or oral communication, shall identify
14 oneself as a doctor of oriental medicine.

15 (4) Only a person licensed as an acupuncturist under this act shall be
16 entitled, as appropriate, to represent oneself, in any manner, as specializing
17 in or practicing any form of oriental medicine in the state of Kansas.

18 (c) Needles used in the practice of acupuncture shall only be
19 prepackaged, single use and sterile needles. These needles shall only be
20 used on an individual patient in a single treatment session.

21 New Sec. 4. (a) The following shall be exempt from the requirement
22 of an acupuncture license pursuant to this act:

23 (1) A person licensed to practice medicine and surgery, a licensed
24 chiropractor or a licensed naturopathic doctor if the person confines the
25 person's acts or practice to the scope of practice authorized by the other
26 health professional licensing laws and does not represent to the public,
27 directly or indirectly, that under this act:

28 (A) The person is licensed under this act; or

29 (B) through the usage of a name, title or other designation, the person
30 indicates licensure;

31 (2) any herbalist or herbal retailer who does not hold oneself out to be
32 a licensed acupuncturist;

33 (3) health care providers in the United States armed forces, federal
34 facilities and other military service when acting in the line of duty in this
35 state;

36 (4) any student, trainee or visiting teacher of acupuncture, oriental
37 medicine or herbology who is designated as a student, trainee or visiting
38 teacher while participating in a course of study or training under the
39 supervision of a licensed acupuncturist licensed under this act in a program
40 that the council has approved. This includes continuing education
41 programs and any acupuncture, oriental medicine or herbology programs
42 that are a recognized route by the NCCAOM to certification in
43 acupuncture, oriental medicine or herbology;

1 (5) persons rendering assistance in the case of an emergency or
2 disaster relief;

3 (6) self-care by a patient or gratuitous care by a family member who
4 does not represent or hold oneself out to the public to be a licensed
5 acupuncturist;

6 (7) persons who massage, so long as such persons do not practice
7 acupuncture and oriental medicine or hold themselves out to be licensed
8 acupuncturists or oriental medicine practitioners;

9 (8) any team acupuncturist, oriental medicine or herbology
10 practitioner, who is traveling with and treating those associated with an
11 out-of-state or national team that is temporarily in the state for training or
12 competition purposes; and

13 (9) any person who is an auricular detox technician, provided that
14 such person performs only auricular detox treatments under the
15 supervision of a licensed acupuncturist.

16 (b) This section shall take effect on and after July 1, 2017.

17 New Sec. 5. (a) An applicant for licensure as an acupuncturist shall
18 file an application, on forms provided by the board, showing to the
19 satisfaction of the board that the applicant meets the following
20 requirements:

21 (1) At the time of application such applicant is at least 21 years of
22 age;

23 (2) has graduated from a school or an apprenticeship program
24 recognized by the NCCAOM, or its equivalent, and approved by the board
25 and satisfies one of the following requirements:

26 (A) Has the active status of a NCCAOM certified diplomate of
27 acupuncture;

28 (B) has the active status of a NCCAOM certified diplomate of
29 oriental medicine; or

30 (C) has an equivalent status as recognized by the council and
31 approved by the board;

32 (3) demonstrates the ability to communicate in the English language
33 as determined by rules and regulations adopted by the board if English is a
34 second language for the applicant;

35 (4) has good moral character; and

36 (5) has paid all the fees required for licensure prescribed in section 8,
37 and amendments thereto, which shall be nonrefundable.

38 (b) Notwithstanding subsection (a), the board may issue a license to a
39 person who has been in the active practice of acupuncture or oriental
40 medicine in some other state, territory, the District of Columbia or other
41 country upon certificate of the proper licensing authority of that state,
42 territory, District of Columbia or other country certifying that the applicant
43 is duly licensed, certified or registered, that the applicant's license,

1 certification or registration has never been limited, suspended or revoked,
2 that the licensee, certification or registration holder has never been
3 censured or had other disciplinary action taken and that, so far as the
4 records of such authority are concerned, the applicant is entitled to its
5 endorsement. The applicant shall also present proof satisfactory to the
6 board:

7 (1) (A) That the state, territory, District of Columbia or country in
8 which the applicant last practiced maintains standards at least equal to
9 those maintained by Kansas;

10 (B) that the applicant's original license, certification or registration
11 was based upon licensure, certification or registration requirements at least
12 equal in quality to the state of Kansas licensure requirements pursuant to
13 this section;

14 (C) of the date of the applicant's original and any and all endorsed
15 licenses, certifications or registrations and the date and place from which
16 any license, certification or registration was attained; and

17 (D) that the applicant has been actively engaged in acupuncture and
18 oriental medicine under such license, certification or registration since
19 issued, and if not, indicate the time when and reason why the applicant
20 was out of practice.

21 An applicant for license by endorsement shall not be granted a license
22 unless such applicant's individual qualifications meet the state of Kansas
23 requirements;

24 (2) the applicant shall demonstrate the ability to communicate in the
25 English language, if English is a second language for such applicant, as
26 determined by rules and regulations adopted by the board; and

27 (3) the applicant shall pay all fees required for licensure as prescribed
28 by section 8, and amendments thereto, which shall be nonrefundable.

29 (c) The board may issue a license to a person who does not meet the
30 qualifications listed in subsection (a), but who has practiced acupuncture
31 and oriental medicine in Kansas during three of the last five years
32 preceding the effective date of this act. Such applicant shall meet the
33 following requirements:

34 (1) The applicant shall provide proof of a minimum of 1,350 hours of
35 study, excluding online study, in the field of acupuncture obtained on or
36 before July 1, 2017;

37 (2) the applicant's practice shall include a minimum of 1,500 patient
38 visits to the applicant for the purpose of acupuncture and oriental medicine
39 services for three of the last five years preceding application for licensure.
40 Documentation shall include:

41 (A) Two affidavits from office partners, clinic supervisors,
42 accountants or other individuals approved by the board, who have personal
43 knowledge of the years of practice and number of patients visiting the

1 applicant for acupuncture and oriental medicine services; and

2 (B) notarized copies of appointment books, patient charts, financial
3 records or other documentation as required by the board, except that no
4 personally identifiable patient health information in violation of or
5 protected by the provisions of the health insurance portability and
6 accountability act of 1996 shall be disclosed;

7 (3) the applicant must show that any complaints against the applicant
8 have been absolved or resolved to the satisfaction of the board;

9 (4) the applicant's application for licensure shall be submitted on or
10 before January 1, 2018;

11 (5) the applicant shall demonstrate the ability to communicate in the
12 English language, if English is a second language for such applicant, as
13 determined by rules and regulations adopted by the board; and

14 (6) the applicant shall pay all fees required for licensure as prescribed
15 by section 8, and amendments thereto, which shall be nonrefundable.

16 (d) Notwithstanding subsections (a) and (c), the board may issue a
17 license to a person who successfully passes the NCCAOM board
18 examinations and who submits an application for license under the act on
19 or before January 1, 2018.

20 (e) A person whose license has been revoked may make written
21 application to the board requesting reinstatement of the license in a manner
22 prescribed by the board. An application for reinstatement of a license shall
23 be accompanied by the fee provided for in section 8, and amendments
24 thereto, and as established in the rules and regulations adopted by the
25 board.

26 New Sec. 6. (a) There is hereby created the designation of inactive
27 license. The board is authorized to issue an inactive license to any licensee
28 who makes written application for such license on a form provided by the
29 board and remits the fee for an inactive license established pursuant to
30 section 8, and amendments thereto.

31 (b) The board may issue an inactive license only to a person who
32 meets all the requirements for a license to practice as an acupuncturist and
33 who does not engage in the active practice of acupuncture and oriental
34 medicine in the state of Kansas.

35 (c) An inactive license shall not entitle the holder to engage in active
36 practice. The provisions of section 7, and amendments thereto, relating to
37 expiration, renewal and reinstatement of a license shall be applicable to an
38 inactive license issued under this subsection. Each inactive licensee may
39 apply to engage in active practice by presenting a request required by
40 section 5, and amendments thereto. The request shall be accompanied by
41 the fee established pursuant to section 8, and amendments thereto.

42 (d) This section shall take effect on and after July 1, 2017.

43 New Sec. 7. (a) Licenses issued annually under this act shall be

1 canceled on March 31 of each year unless renewed in the manner
 2 prescribed by the board. A license issued or reinstated from January 1
 3 through March 31 shall be cancelled on March 31 of the following year. A
 4 request for the renewal of a license shall be on a form provided by the
 5 board and shall be accompanied by the renewal fee established pursuant to
 6 section 8, and amendments thereto, which shall be paid not later than the
 7 renewal date of the license.

8 (b) At least 60 days before the renewal date of a licensee's license, the
 9 board shall notify the licensee of the licensure renewal date by mail
 10 addressed to the licensee's last mailing address as noted upon the office
 11 records. If the licensee fails to submit an application for renewal of
 12 licensure on a form provided by the board, or fails to pay the renewal fee
 13 by the date of cancellation, the board shall give notice to the licensee that
 14 the license has been canceled and the license may be renewed only if an
 15 application for active status reinstatement, a renewal fee, and a late
 16 renewal fee are received by the board. If cancelled for at least one year but
 17 not more than five years, an active status license shall be reinstated when
 18 an appropriate fee has been paid and proof of NCCAOM current
 19 credentials has been presented, or an equivalent status as recognized by the
 20 council and approved by the board in lieu of the NCCAOM credentials.

21 (c) The board may require any licensee to submit to a continuing
 22 education audit and provide to the board evidence of satisfactory
 23 completion of a program of continuing education required by rules and
 24 regulations of the board. The board may accept a licensee's current active
 25 status as a NCCAOM diplomate of acupuncture or NCCAOM diplomate
 26 of oriental medicine as proof of satisfactory completion of continuing
 27 education requirements.

28 (d) The board, prior to renewal of a license, shall require the licensee,
 29 if in the active practice of acupuncture and oriental medicine within the
 30 state, to submit to the board evidence satisfactory to the board that the
 31 licensee is maintaining a policy of professional liability insurance. The
 32 board may require any licensee to provide to the board evidence of
 33 malpractice insurance.

34 (e) This section shall take effect on and after July 1, 2017.

35 New Sec. 8. (a) The board shall charge and collect in advance fees for
 36 acupuncturists, as follows, through March 31, 2018:

37 Initial application for licensure.....	\$700
38 Annual renewal of license:	
39 Paper renewal.....	\$300
40 On-line renewal.....	\$250
41 Late renewal of licensure:	
42 Late paper renewal.....	\$100
43 Late on-line renewal.....	\$100

1	Application for reinstatement of revoked license.....	\$800
2	Application for inactive license.....	\$30
3	Renewal of inactive license.....	\$150
4	Conversion of inactive license to active:	
5	Paper conversion.....	\$300
6	On-line conversion.....	\$250
7	Certified copy of license.....	\$25
8	Written verification of license.....	\$25

9 (b) After March 31, 2018, the board shall charge and collect in
10 advance fees for acupuncturists as established by the board by rules and
11 regulations not to exceed the amounts in subsection (a).

12 (c) If an examination is not administered by the board, the board may
13 require that fees paid for any examination under the acupuncture and
14 oriental medicine practice act be paid directly to the examination service
15 by the person taking the examination.

16 New Sec. 9. The board shall remit all moneys received by or for the
17 board from fees, charges or penalties to the state treasurer in accordance
18 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
19 receipt of each such remittance, the state treasurer shall deposit the entire
20 amount in the state treasury. Twenty percent of such amount shall be
21 credited to the state general fund and the balance shall be credited to the
22 healing arts fee fund. All expenditures from the healing arts fee fund shall
23 be made in accordance with appropriation acts upon warrants of the
24 director of accounts and reports pursuant to vouchers approved by
25 the president of the board or by a person or persons designated by the
26 president.

27 New Sec. 10. (a) There is established the acupuncture advisory
28 council to assist the state board of healing arts in carrying out the
29 provisions of this act. The council shall consist of five members, all
30 citizens and residents of the state of Kansas, appointed as follows:

31 (1) The board, with recommendation from the Kansas association of
32 oriental medicine, shall appoint:

33 (A) Two members who are actively licensed as acupuncturists under
34 this act; and

35 (B) one member who is actively licensed as an acupuncturist under
36 this act and holds a current NCCAOM certification in herbology or
37 oriental medicine;

38 (2) one member shall be the president of the state board of healing
39 arts or a person designated by the president; and

40 (3) the governor shall appoint one member from the public sector
41 who is not engaged, directly or indirectly, in the provision of health
42 services. Insofar as possible, persons appointed to the council shall be
43 from different geographic areas. If a vacancy occurs on the council, the

1 appointing authority of the position which has become vacant shall appoint
2 a person of like qualifications to fill the vacant position for the unexpired
3 term, if any.

4 (b) The member of the council appointed by the governor shall be
5 appointed for a term of three years and until a successor is appointed. The
6 members appointed by the state board of healing arts shall serve at the
7 pleasure of the state board of healing arts. If a member is designated by the
8 president of the state board of healing arts, the member shall serve at the
9 pleasure of the president.

10 (c) Acupuncturists initially appointed to the council must be eligible,
11 as appropriate, for licensure pursuant to section 5, and amendments
12 thereto. On and after July 1, 2017, new appointees, as appropriate, shall be
13 licensed under the provisions of this act.

14 (d) The council shall meet at least once each year at a time and place
15 of its choosing and at such other times as may be necessary on the
16 chairperson's call or on the request of a majority of the council's members.
17 At the first meeting, the council shall select a chairperson and vice-
18 chairperson, and annually thereafter. The first meeting shall be called by
19 the president of the state board of healing arts or such person's designee.

20 (e) A majority of the council constitutes a quorum. No action may be
21 taken by the council except by affirmative vote of the majority of the
22 members present and voting.

23 (f) Members of the council attending meetings of the council, or
24 attending a subcommittee meeting thereof authorized by the council, shall
25 be paid amounts provided in K.S.A. 75-3223(e), and amendments thereto,
26 from the healing arts fee fund.

27 New Sec. 11. The acupuncture advisory council shall advise the
28 board regarding:

29 (a) Examination, licensing and other fees;

30 (b) rules and regulations to be adopted to carry out the provisions of
31 this act;

32 (c) the number of yearly continuing education hours required to
33 maintain active licensure;

34 (d) changes and new requirements taking place in the areas of
35 acupuncture and oriental medicine; and

36 (e) such other duties and responsibilities as the board may assign.

37 New Sec. 12. The board, with the advice and assistance of the
38 acupuncture advisory council, shall:

39 (a) Duly license and regulate applicants for licensure and keep a
40 roster of all such licensed individuals;

41 (b) adopt rules and regulations as may be necessary to administer the
42 provisions of this act and prescribe forms which shall be issued in the
43 administration of this act;

1 (c) establish standards for approval of an educational course of study
2 and clinical experience;

3 (d) establish criteria for continuing education;

4 (e) establish standards of professional conduct, procedure for the
5 discipline of licensees and keep a record of all such proceedings; and

6 (f) establish standards for clean needle technique.

7 New Sec. 13. (a) A licensee's license may be revoked, suspended or
8 limited, or the licensee may be publicly or privately censured, or an
9 application for a license or for reinstatement of a license may be denied
10 upon a finding of the existence of any of the following grounds:

11 (1) The licensee has committed an act of unprofessional conduct as
12 defined by rules and regulations adopted by the board;

13 (2) the licensee has obtained a license by means of fraud,
14 misrepresentations or concealment of material facts;

15 (3) the licensee has committed an act of professional incompetency as
16 defined by rules and regulations adopted by the board;

17 (4) the licensee has been convicted of a felony;

18 (5) the licensee has violated any provision of this act;

19 (6) the licensee has violated any lawful order or rule and regulation of
20 the board;

21 (7) the licensee has been found to be mentally ill, disabled, not guilty
22 by reason of insanity, not guilty because the licensee suffers from a mental
23 disease or defect or incompetent to stand trial by a court of competent
24 jurisdiction;

25 (8) the licensee has failed to report to the board any adverse action
26 taken against the licensee by another state or licensing jurisdiction, a peer
27 review body, a health care facility, a professional association or society, a
28 governmental agency, a law enforcement agency or a court for acts or
29 conduct similar to acts or conduct which would constitute grounds for
30 disciplinary action under this section;

31 (9) the licensee has surrendered a license or authorization to practice
32 as an acupuncturist in another state or jurisdiction, has agreed to a
33 limitation to or restriction of privileges at any medical care facility or has
34 surrendered the licensee's membership on any professional staff or in any
35 professional association or society while under investigation for acts or
36 conduct similar to acts or conduct which would constitute grounds for
37 disciplinary action under this section;

38 (10) the licensee has failed to report to the board the surrender of the
39 licensee's license or authorization to practice as an acupuncturist in another
40 state or jurisdiction or the surrender of the licensee's membership on any
41 professional staff or in any professional association or society while under
42 investigation for acts or conduct similar to acts or conduct which would
43 constitute grounds for disciplinary action under this section;

1 (11) the licensee has an adverse judgment, award or settlement
2 against the licensee resulting from a medical liability claim related to acts
3 or conduct similar to acts or conduct which would constitute grounds for
4 disciplinary action under this section;

5 (12) the licensee has failed to report to the board any adverse
6 judgment, settlement or award against the licensee resulting from a
7 medical malpractice liability claim related to acts or conduct similar to acts
8 or conduct which would constitute grounds for disciplinary action under
9 this section; or

10 (13) the licensee's ability to practice with reasonable skill and safety
11 to patients is impaired by reason of physical or mental illness, or condition
12 or use of alcohol, drugs or controlled substances. All information, reports,
13 findings and other records relating to impairment shall be confidential and
14 not subject to discovery by or release to any person or entity outside of a
15 board proceeding. The provision regarding confidentiality shall expire on
16 July 1, 2022. The state legislature shall review such provision before July
17 1, 2022.

18 (b) The denial, refusal to renew, suspension, limitation, probation or
19 revocation of a license or other sanction may be ordered by the board upon
20 a finding of a violation of the acupuncture and oriental medicine practice
21 act. All administrative proceedings conducted pursuant to this act shall be
22 in accordance with the provisions of the Kansas administrative procedure
23 act and shall be reviewable in accordance with the Kansas judicial review
24 act.

25 (c) A person whose acupuncture license is suspended, limited or
26 revoked shall not engage in any conduct or activity in violation of the
27 order.

28 (d) This section shall take effect on and after July 1, 2017.

29 New Sec. 14. (a) The board shall have jurisdiction of proceedings to
30 take disciplinary action against any licensee practicing under the
31 acupuncture and oriental medicine practice act. Any such action shall be
32 taken in accordance with the provisions of the Kansas administrative
33 procedure act.

34 (b) Either before or after formal charges have been filed, the board
35 and the licensee may enter into a stipulation which shall be binding upon
36 the board and the licensee entering into such stipulation, and the board
37 may enter its findings of fact and enforcement order based upon such
38 stipulation without the necessity of filing any formal charges or holding
39 hearings in the case. An enforcement order based upon a stipulation may
40 order any disciplinary action against the licensee entering into such
41 stipulation.

42 (c) The board may temporarily suspend or temporarily limit the
43 license of any licensee in accordance with the emergency adjudicative

1 proceedings under the Kansas administrative procedure act if the board
2 determines that there is cause to believe that grounds exist for disciplinary
3 action against the licensee and that the licensee's continuation of practice
4 would constitute an imminent danger to public health and safety.

5 (d) Judicial review and civil enforcement of any agency actions under
6 this act shall be in accordance with the Kansas judicial review act.

7 New Sec. 15. (a) The board or a committee of the board as a non-
8 disciplinary resolution, may enter into a written agreement with a licensee
9 for a professional development plan, make written recommendations to a
10 licensee or issue a written letter of concern to a licensee if the board,
11 committee of the board or peer review committee determines that the
12 licensee:

13 (1) Seeks to establish continued competency for renewal of licensure
14 other than through continued education requirements;

15 (2) has been absent from clinical practice for an extended period of
16 time and seeks to resume clinical practice;

17 (3) has failed to adhere to the applicable standard of care; or

18 (4) has engaged in an act or practice that, if continued, would
19 reasonably be expected to result in future violations of this act.

20 (b) Notwithstanding any other provision of law, a meeting of the
21 board or a committee of the board for the purpose of discussing or
22 adopting a non-disciplinary resolution authorized by this section shall not
23 be subject to the Kansas administrative procedure act, K.S.A. 77-501 et
24 seq., and amendments thereto, and shall not be subject to the Kansas open
25 meetings act as provided in K.S.A. 75-4317 et seq., and amendments
26 thereto. A non-disciplinary resolution authorized by this section shall not
27 be deemed disciplinary action or other order or adjudication. No failure to
28 adhere to the applicable standard of care or violation of this act may be
29 implied by the adoption of a non-disciplinary resolution.

30 (c) A non-disciplinary resolution authorized by this section shall be
31 confidential and shall not be admissible in any civil, criminal or
32 administrative action, except that such resolution shall be admissible in
33 any disciplinary proceeding by the board.

34 New Sec. 16. (a) In connection with any investigation by the board,
35 the board or its duly authorized agents or employees shall at all reasonable
36 times have access to, for the purpose of examination, and the right to copy
37 any document, report, record or other physical evidence of any person
38 being investigated, or any document, report, record or other evidence
39 maintained by and in possession of any clinic, office of a practitioner of
40 acupuncture and oriental medicine or other public or private agency if such
41 document, report, record or evidence relates to the competence,
42 unprofessional conduct or the mental or physical ability of a licensee to
43 safely practice acupuncture and oriental medicine.

1 (b) For the purpose of all investigations and other administrative
2 proceedings under this act, the board may issue subpoenas compelling the
3 attendance and testimony of witnesses or the production for examination
4 or copying of documents or any other physical evidence if such evidence
5 relates to the competence, unprofessional conduct or the mental or
6 physical ability of a licensee to safely practice acupuncture and oriental
7 medicine. Any member of the board, or any agent designated by the board,
8 may administer oaths or affirmations, examine witnesses and receive such
9 evidence.

10 (1) Within five days after the service of the subpoena on any person
11 requiring the production of any evidence in the person's possession or
12 under the person's control, such person may petition the board to revoke,
13 limit or modify the subpoena.

14 (2) The board shall revoke, limit or modify such subpoena if in its
15 opinion the evidence required does not relate to practices which may be
16 grounds for disciplinary action, is not relevant to the charge which is the
17 subject matter of the proceeding or investigation, or does not describe with
18 sufficient particularity the physical evidence which is required to be
19 produced.

20 (3) The district court, upon application by the board or by the person
21 subpoenaed, shall have jurisdiction to issue an order:

22 (A) Requiring such person to appear before the board or the board's
23 duly authorized agent to produce evidence relating to the matter under
24 investigation; or

25 (B) revoking, limiting or modifying the subpoena if in the court's
26 opinion the evidence demanded does not relate to practices which may be
27 grounds for disciplinary action, is not relevant to the charge which is the
28 subject matter of the hearing or investigation or does not describe with
29 sufficient particularity the evidence which is required to be produced.

30 New Sec. 17. The board, in addition to any other penalty prescribed
31 pursuant to this act, may assess a civil fine, after proper notice and an
32 opportunity to be heard, against a licensee for a violation of this act in an
33 amount not to exceed \$2,000 for the first violation, \$5,000 for the second
34 violation and \$10,000 for the third violation and for each subsequent
35 violation. All fines assessed and collected under this section shall be
36 remitted to the state treasurer in accordance with the provisions of K.S.A.
37 75-4215, and amendments thereto. Upon receipt of each such remittance,
38 the state treasurer shall deposit the entire amount in the state treasury to
39 the credit of the state general fund.

40 New Sec. 18. (a) Any complaint or report, record or other information
41 relating to a complaint which is received, obtained or maintained by the
42 board shall be confidential and shall not be disclosed by the board or its
43 employees in a manner which identifies or enables identification of the

1 person who is the subject or source of the information, except the
2 information may be disclosed:

3 (1) In any proceeding conducted by the board under the law or in an
4 appeal of an order of the board entered in a proceeding, or to any party to a
5 proceeding or appeal or the party's attorney;

6 (2) to the person who is the subject of the information or to any
7 person or entity when requested by the person who is the subject of the
8 information, but the board may require disclosure in such a manner that
9 will prevent identification of any other person who is the subject or source
10 of the information; or

11 (3) to a state or federal licensing, regulatory or enforcement agency
12 with jurisdiction over the subject of the information or to an agency with
13 jurisdiction over acts or conduct similar to acts or conduct which would
14 constitute grounds for action under this act.

15 (b) Any confidential complaint or report, record or other information
16 disclosed by the board as authorized by this section shall not be re-
17 disclosed by the receiving agency except as otherwise authorized by law.

18 (c) This provision regarding confidentiality shall expire on July 1,
19 2022. The state legislature shall review such provision before July 1, 2022.

20 New Sec. 19. (a) No person reporting to the state board of healing
21 arts in good faith any information such person may have relating to alleged
22 incidents of malpractice, or the qualifications, fitness or character of, or
23 disciplinary action taken against a person licensed, registered or certified
24 by the board shall be subject to a civil action for damages as a result of
25 reporting such information.

26 (b) Any state, regional or local association composed of persons
27 licensed to practice acupuncture and oriental medicine and the individual
28 members of any committee thereof, which in good faith investigates or
29 communicates information pertaining to the alleged incidents of
30 malpractice, or the qualifications, fitness or character of, or disciplinary
31 action taken against any licensee, registrant or certificate holder to the
32 state board of healing arts or to any committee or agent thereof, shall be
33 immune from liability in any civil action that is based upon such
34 investigation or transmittal of information if the investigation and
35 communication was made in good faith and did not represent as true any
36 matter not reasonably believed to be true.

37 New Sec. 20. (a) Professional liability insurance coverage shall be
38 maintained in effect by each licensed acupuncturist and as a condition to
39 rendering professional services as a licensed acupuncturist in the state of
40 Kansas. The board shall fix by rules and regulations the minimum level of
41 coverage for such professional liability insurance.

42 (b) This section shall take effect on and after July 1, 2017.

43 New Sec. 21. (a) The confidential relations and communications

1 between a licensed acupuncturist and the acupuncturist's patient are placed
2 on the same basis as provided by law as those between a physician and a
3 physician's patient in K.S.A. 60-427, and amendments thereto.

4 (b) The provisions of this section shall take effect on and after July 1,
5 2017.

6 New Sec. 22. (a) When it appears that any person is violating any
7 provision of this act, the board may bring an action in the name of the
8 state in a court of competent jurisdiction for an injunction against such
9 violation without regard as to whether proceedings have been or may be
10 instituted before the board or whether criminal proceedings have been or
11 may be instituted.

12 (b) This section shall take effect on and after July 1, 2017.

13 New Sec. 23. On and after July 1, 2017, any violation of sections 1
14 through 23, and amendments thereto, shall constitute a class B
15 misdemeanor.

16 New Sec. 24. If any section of sections 1 through 23, and
17 amendments thereto, or any part thereof, is adjudged by any court of
18 competent jurisdiction to be invalid, such judgment shall not affect, impair
19 or invalidate the remainder or any other section or part thereof.

20 Sec. 25. K.S.A. 2015 Supp. 65-2872 is hereby amended to read as
21 follows: 65-2872. The practice of the healing arts shall not be construed to
22 include the following persons:

23 (a) Persons rendering gratuitous services in the case of an emergency.

24 (b) Persons gratuitously administering ordinary household remedies.

25 (c) The members of any church practicing their religious tenets
26 provided they shall not be exempt from complying with all public health
27 regulations of the state.

28 (d) Students while in actual classroom attendance in an accredited
29 healing arts school who after completing one year's study treat diseases
30 under the supervision of a licensed instructor.

31 (e) Students upon the completion of at least three years study in an
32 accredited healing arts school and who, as a part of their academic
33 requirements for a degree, serve a preceptorship not to exceed 180 days
34 under the supervision of a licensed practitioner.

35 (f) Persons who massage for the purpose of relaxation, muscle
36 conditioning, or figure improvement, provided no drugs are used and such
37 persons do not hold themselves out to be physicians or healers.

38 (g) Persons whose professional services are performed under the
39 supervision or by order of or referral from a practitioner who is licensed
40 under this act.

41 (h) Persons in the general fields of psychology, education and social
42 work, dealing with the social, psychological and moral well-being of
43 individuals or groups, or both, provided they do not use drugs and do not

1 hold themselves out to be the physicians, surgeons, osteopathic physicians
2 or chiropractors.

3 (i) Practitioners of the healing arts in the United States army, navy, air
4 force, public health service, and coast guard or other military service when
5 acting in the line of duty in this state.

6 (j) Practitioners of the healing arts licensed in another state when and
7 while incidentally called into this state in consultation with practitioners
8 licensed in this state.

9 (k) Dentists practicing their professions, when licensed and practicing
10 in accordance with the provisions of article 14 of chapter 65 of the Kansas
11 Statutes Annotated, and amendments thereto, and any interpretation
12 thereof by the supreme court of this state.

13 (l) Optometrists practicing their professions, when licensed and
14 practicing under and in accordance with the provisions of article 15 of
15 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and
16 any interpretation thereof by the supreme court of this state.

17 (m) Nurses practicing their profession when licensed and practicing
18 under and in accordance with the provisions of article 11 of chapter 65 of
19 the Kansas Statutes Annotated, and amendments thereto, and any
20 interpretation thereof by the supreme court of this state.

21 (n) Podiatrists practicing their profession, when licensed and
22 practicing under and in accordance with the provisions of article 20 of
23 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and
24 any interpretation thereof by the supreme court of this state.

25 (o) Every act or practice falling in the field of the healing arts, not
26 specifically excepted herein, shall constitute the practice thereof.

27 (p) Pharmacists practicing their profession, when licensed and
28 practicing under and in accordance with the provisions of article 16 of
29 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and
30 any interpretation thereof by the supreme court of this state.

31 (q) A dentist licensed in accordance with the provisions of article 14
32 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto,
33 who administers general and local anesthetics to facilitate medical
34 procedures conducted by a person licensed to practice medicine and
35 surgery if such dentist is certified by the board of healing arts under K.S.A.
36 65-2899, and amendments thereto, to administer such general and local
37 anesthetics.

38 (r) Practitioners of the healing arts duly licensed under the laws of
39 another state who do not open an office or maintain or appoint a place to
40 regularly meet patients or to receive calls within this state, but who order
41 services which are performed in this state in accordance with rules and
42 regulations of the board. The board shall adopt rules and regulations
43 identifying circumstances in which professional services may be

1 performed in this state based upon an order by a practitioner of the healing
2 arts licensed under the laws of another state.

3 (s) *Acupuncturists, when licensed and practicing in accordance with*
4 *sections 1 through 24, and amendments thereto, rules and regulations*
5 *adopted thereto, and interpretations thereof by the supreme court of this*
6 *state.*

7 (t) Persons licensed by the state board of cosmetology practicing their
8 professions, when licensed and practicing under and in accordance with
9 the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated,
10 and amendments thereto, and any interpretation thereof by the supreme
11 court of this state.

12 Sec. 26. K.S.A. 2015 Supp. 65-2872 is hereby repealed.

13 Sec. 27. This act shall take effect and be in force from and after its
14 publication in the statute book.