

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 734

By: Rader

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the Oklahoma Acupuncture Practice Act;
9 providing short title; defining terms; establishing
10 the Oklahoma Board of Acupuncture; providing for
11 appointment of membership and terms, vacancy, and
12 removal; setting meetings and quorum; providing for
13 travel reimbursement and per diem and immunity for
14 liability; stating board duties and responsibilities;
15 authorizing employment or contracts for certain
16 services; creating the Oklahoma Board of Acupuncture
17 Revolving Fund; stating purpose and source of funds;
18 prohibiting practice of acupuncture without a license
19 after certain date; prohibiting certain activities;
20 stating license requirements; providing certain
21 exemptions for licensure; construing limitations;
22 stating license qualifications and procedure for
23 application; providing for renewals and
24 reinstatements; requiring certain report of
25 disciplinary actions and judgments; providing for
26 certain license endorsements; establishing procedure
27 for complaints; authorizing subpoenas for hearings;
28 requiring compliance under the Administrative
29 Procedures Act; stating grounds for unprofessional
30 conduct; allowing reinstatement of license after
31 certain time; providing certain action under court
32 orders; providing criminal misdemeanor penalty and
33 administrative fines; setting maximum fine; providing
34 for codification; and providing an effective date.

35 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4300 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma
5 Acupuncture Practice Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 4300.1 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in this act:

10 1. "ACAOM" means the accreditation commission for acupuncture
11 and oriental medicine educational institutions, or its equivalent as
12 determined by the board;

13 2. "Acupuncture" means the insertion of acupuncture needles
14 into the body, with or without the application of electric current
15 or heat to the needles, for the therapeutic purpose of promoting,
16 maintaining and restoring health, including the treatment of
17 dysfunctions of the body involving pain;

18 3. "Acupuncturist" means any person to whom a license to
19 practice acupuncture in this state has been issued under this act;

20 4. "Auricular acupuncture" means a practice trained by a
21 nationally-recognized auricular acupuncture program for the purpose
22 of treating mental and emotional health, post and acute trauma,
23 substance abuse and chemical dependency;

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1 5. "Board" means the Oklahoma Board of Acupuncture created
2 under Section 3 of this act;

3 6. "License" means a license to practice acupuncture in this
4 state issued by the board pursuant to this act and consistent with
5 the scope of practice a person is qualified to perform as a result
6 of their NCCAOM diplomate status, post graduate training, NADA
7 certificate of training completion or as otherwise authorized by the
8 board;

9 7. "Licensee" means a person licensed by the board under this
10 act;

11 8. "NADA" means the national acupuncture detoxification
12 association, or its equivalent as determined by the board;

13 9. "NCCAOM" means the national certification commission for
14 acupuncture and oriental medicine, or its equivalent as determined
15 by the board.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4300.2 of Title 59, unless there
18 is created a duplication in numbering, reads as follows:

19 A. The Oklahoma Board of Acupuncture is created to implement
20 and administer the provisions of this act. The board shall consist
21 of five (5) members who are legal residents of Oklahoma. The board
22 shall consist of one member of the public, one member who is NCCAOM
23 certified, two members who have been engaged in the practice of
24 acupuncture for a period of not less than five (5) years immediately

1 preceding appointment to the initial board and one member who is a
2 health care professional licensed pursuant to this title other than
3 this act.

4 B. The governor shall appoint the members of the board. Of the
5 initial members appointed to the board, two members shall be
6 appointed for a term of two (2) years and three members shall be
7 appointed for a term of four (4) years. Thereafter, the terms of
8 office shall be four (4) years. Each member shall serve until the
9 member's successor is appointed and qualified. No member shall
10 serve more than two (2) consecutive full terms.

11 C. Any vacancy on the board shall be filled by the governor for
12 the balance of the unexpired term.

13 D. The governor may remove any member from the board for cause.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 4300.3 of Title 59, unless there
16 is created a duplication in numbering, reads as follows:

17 The Oklahoma Board of Acupuncture shall meet at least once each
18 year and elect a chairman at the first meeting each year. The board
19 may convene at the request of the chairman or as determined by the
20 board for any other meeting as may be deemed necessary to transact
21 its business. Meetings may be carried out via telecommunications.
22 Three board members shall constitute a quorum.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4300.4 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Members of the Oklahoma Board of Acupuncture shall not
5 receive compensation for their services but shall receive mileage
6 and per diem as provided in the Oklahoma Travel and Reimbursement
7 Act while engaged in the discharge of official duties.

8 B. Members of the board shall have the same immunities from
9 personal liability as state employees for actions taken in the
10 performance of their duties under this act.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 4300.5 of Title 59, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The Oklahoma Board of Acupuncture shall:

15 1. Administer this act;

16 2. Determine the following standards for licensees:

17 a. continuing education requirements,

18 b. professional conduct standards, and

19 c. ethical standards of practice;

20 3. Approve or disapprove applications for licensure and issue
21 licenses, renewals and reinstatements;

22 4. Establish tiered licensing as necessary for the purpose of
23 differentiating auricular acupuncture;

1 5. Censure, suspend or revoke licenses as provided in this act
2 and the Administrative Procedures Act;

3 6. Initiate and conduct investigations, hearings and
4 proceedings concerning alleged violations of this act and board
5 rules;

6 7. Impose administrative fines established by rule for
7 disciplinary sanctions for violations of this act or any rules
8 promulgated by the Board pursuant to this act;

9 8. Keep a record of all proceedings and make available to
10 licensees and other concerned parties an annual report of all board
11 action;

12 9. Establish application and licensure fee requirements for
13 licensees regulated under this act;

14 10. Prescribe fees by rule for the purpose of implementing this
15 act; and

16 11. Promulgate rules and regulations as necessary to carry out
17 this act.

18 B. The board may employ or contract with individuals it
19 determines necessary to administer its affairs and provide support
20 services.

21 C. All fees collected by the board shall be deposited by the
22 state treasurer to the credit of the Oklahoma Board of Acupuncture
23 Revolving Fund created in Section 7 of this act. The fund shall be
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1 used by the board to defray costs incurred in the administration of
2 this act.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 4300.6 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the Oklahoma Board of Acupuncture to be designated the "Oklahoma
8 Board of Acupuncture Revolving Fund Revolving Fund". The fund shall
9 be a continuing fund, not subject to fiscal year limitations, and
10 shall consist of all monies received by the board from
11 acupuncturist's license fees and any administrative fines imposed
12 and collected for license violations. All monies accruing to the
13 credit of the fund are hereby appropriated and may be budgeted and
14 expended by the board for the purpose of implementing the Oklahoma
15 Acupuncture Practice Act. Expenditures from the fund shall be made
16 upon warrants issued by the State Treasurer against claims filed as
17 prescribed by law with the Director of the Office of Management and
18 Enterprise Services for approval and payment.

19 SECTION 8. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 4300.7 of Title 59, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Beginning October 1, 2020, unless the person is licensed to
23 practice acupuncture in compliance with this act and the rules and
24 regulations adopted pursuant thereto, no person shall:

1 1. Practice acupuncture or hold himself or herself out as an
2 acupuncturist or as being able to practice acupuncture in this
3 state;

4 2. Use the title of acupuncturist or any variant thereof; or

5 3. Use any configuration of letters, including L. Ac., after
6 his or her name indicating a degree in acupuncture.

7 B. Any license issued under this act shall:

8 1. Be issued in the name of the licensed acupuncturist;

9 2. State the licensing and expiration dates; and

10 3. Be displayed at all times in a conspicuous manner in the
11 place of business or employment of the licensee; provided, however,
12 the license shall not display the residential address of the
13 licensee, and such information may be obliterated if printed on the
14 face of such license.

15 C. The following persons are exempt from license requirements:

16 1. An acupuncturist licensed to practice acupuncture in another
17 jurisdiction while teaching or demonstrating or providing
18 acupuncture in connection with teaching or participating in an
19 educational seminar in this state. Any exemption under this
20 paragraph shall not exceed sixty (60) days cumulatively in a
21 calendar year;

22 2. An acupuncturist licensed in another jurisdiction who enters
23 this state to provide acupuncture during a natural disaster or a
24 public health emergency, as declared by the governor; and

1 3. With board approval, a person in training may practice
2 acupuncture provided all services are performed under the direct
3 supervision of an acupuncturist licensed in this state.

4 D. Nothing in this act shall be construed to prohibit or
5 restrict any other licensed health care provider in this state from
6 practicing acupuncture within their statutory scope of practice.
7 However, no person may represent themselves as an acupuncturist in
8 any manner unless licensed in accordance with this act.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4300.8 of Title 59, unless there
11 is created a duplication in numbering, reads as follows:

12 A. An applicant for licensure to practice acupuncture under
13 this act shall:

14 1. Apply for licensure with the Oklahoma Board of Acupuncture
15 by providing an application in the form and manner prescribed by the
16 board;

17 2. Pay the required fees established by the board; and

18 3. Furnish to the board evidence that the applicant has:

19 a. graduated from an accredited ACAOM program and passed
20 NCCAOM examination,

21 b. graduated from an accredited ACAOM program and
22 continuously practiced acupuncture in this state for
23 at least ten (10) years before October 1, 2020,

- 1 c. completed other examination, education or
2 apprenticeship processes the board considers
3 substantively qualifying, or
4 d. NADA certificate of training completion, if applying
5 for an auricular acupuncturist license.

6 B. Licenses shall be renewed or reinstated according to a
7 schedule established by the board pursuant to this act. If a
8 licensee fails to renew a license pursuant to the schedule
9 established by the board, the license shall expire and the licensee
10 shall not practice acupuncture in this state.

11 C. An applicant for licensure or licensee shall report any
12 pending or final administrative or disciplinary actions, or other
13 judgments, as well as the terms of any settlement or other
14 disposition of an action or judgment, against the applicant or
15 licensee involving malpractice or improper practice of acupuncture,
16 whether occurring in Oklahoma or in any other jurisdiction upon
17 application for licensure, renewal or reinstatement, or not later
18 than thirty (30) days after the licensee becomes aware of such
19 actions or judgments.

20 SECTION 10. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 4300.9 of Title 59, unless there
22 is created a duplication in numbering, reads as follows:

23 The Oklahoma Board of Acupuncture may issue a license by
24 endorsement to practice acupuncture in Oklahoma to an applicant who
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1 is licensed to practice acupuncture in another state subject to the
2 following:

3 1. The other state shall have substantially equivalent
4 acupuncture licensure requirements as Oklahoma, including similar
5 licensure by endorsement provisions for licensees of this state;

6 2. The applicant shall not have any disciplinary actions
7 pending at the time of application;

8 3. The applicant shall not have had a license to practice
9 acupuncture suspended or revoked in this state or any other; and

10 4. The person shall adhere to all requirements of continuing
11 education and ethical standards established by the board.

12 SECTION 11. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4300.10 of Title 59, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Upon receiving a complaint charging a licensee or applicant
16 with any act prohibited by this act, the board may conduct an
17 investigation. If the board finds reasonable grounds to
18 substantiate the allegations of the complaint, a time and place for
19 a hearing shall be set, notice of which shall be served on the
20 licensee or applicant at least fifteen (15) calendar days prior to
21 the hearing. The notice shall be by personal service or by
22 certified or registered mail sent to the last known address of the
23 licensee or applicant.

1 B. The Oklahoma Board of Acupuncture may issue subpoenas for
2 the attendance of witnesses and the production of necessary evidence
3 in any hearing before it. Upon request of the respondent or his or
4 her counsel, the board shall issue subpoenas on behalf of the
5 respondent.

6 C. Hearings under this section shall be held in accordance
7 with, and a person aggrieved by a decision of the board may take an
8 appeal pursuant to, the Administrative Procedures Act.

9 SECTION 12. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 4300.11 of Title 59, unless
11 there is created a duplication in numbering, reads as follows:

12 A. After any hearing conducted pursuant to the Administrative
13 Procedures Act, the board may approve, deny, suspend, revoke or
14 refuse to renew a license or impose probationary conditions on the
15 license if the licensee or applicant has engaged in unprofessional
16 conduct. For purposes of this section, unprofessional conduct
17 includes any of the following:

- 18 1. Obtaining a license by means of fraud, misrepresentation or
19 concealment of material facts;
- 20 2. Violating the ethical standards of practice or rules of
21 professional conduct as adopted and published by the board;
- 22 3. Being convicted of a felony offense where the health and
23 safety of the public is implicated by the nature of the offense

1 committed; provided, however the provisions of Section 4000 of Title
2 59 of the Oklahoma Statutes may be considered for reinstatement;

3 4. Being convicted of an offense involving a controlled
4 substance; provided the provisions of Section 4000 of Title 59 of
5 the Oklahoma Statutes may be considered for reinstatement;

6 5. Being negligent in the practice of acupuncture;

7 6. Violating any lawful order, rule or regulation rendered or
8 adopted by the board; and

9 7. Violating any provision of this act.

10 B. An application for reinstatement may be made to the board
11 not earlier than one year after the date of the revocation of the
12 license. The board may accept or reject an application for
13 reinstatement and may hold a hearing to consider reinstatement. An
14 applicant for reinstatement aggrieved by any final action of the
15 board may appeal to the district court pursuant to the
16 Administrative Procedures Act.

17 C. Upon receipt from the department of family services of a
18 certified copy of an order from a court to withhold, suspend or
19 otherwise restrict a license issued by the board, the board shall
20 notify the party named in the court order of the withholding,
21 suspension or restriction of the license in accordance with the
22 terms of the court order. No appeal under the Administrative
23 Procedures Act shall be allowed for a license withheld, suspended or
24 restricted under this subsection.

1 SECTION 13. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 4300.12 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. Any person who violates any provision of this act or any
5 rule promulgated by the Oklahoma Board of Acupuncture shall be
6 guilty of a misdemeanor, upon conviction, and shall be subject to a
7 fine in an amount not exceeding Five Thousand Dollars (\$5,000.00).

8 If the board has reason to believe that any individual is liable
9 under this section, it may certify the facts to the prosecuting
10 attorney of the jurisdiction in which the offense was committed.

11 B. The attorney general, the board, any district attorney or
12 any citizen may obtain an injunction in the name of the State of
13 Oklahoma upon the relation of a complainant enjoining any person
14 from engaging in the practice of acupuncture without a license. The
15 district court of the county in which an offending person resides,
16 or the district court of Oklahoma County, has original jurisdiction
17 of any such injunction proceedings. An injunction may be issued
18 without proof of actual damage sustained and upon proof of one or
19 more acts constituting the practice of acupuncture without a
20 license. The standard of proof of any violation of this subsection
21 shall be by a preponderance of the evidence.

22 C. Nothing in this section shall limit any additional civil or
23 criminal liability under the laws of this state.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 4300.13 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 The Oklahoma Board of Acupuncture may establish by rule a
5 schedule of administrative fines to be imposed as disciplinary
6 sanctions for violations of this act or the rules promulgated by the
7 board. An administrative fine may be imposed in lieu of requesting
8 criminal prosecution. Such administrative fines imposed by the
9 board shall not exceed Five Hundred Dollars (\$500.00) for any single
10 violation and not more than Five Thousand Dollars (\$5,000.00) for
11 all combined violations.

12 SECTION 15. This act shall become effective November 1, 2019.

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