

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0316.01 Kristen Forrestal x4217

HOUSE BILL 22-1263

HOUSE SPONSORSHIP

Kennedy, Lontine, McCormick

SENATE SPONSORSHIP

(None),

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF LICENSING REQUIREMENTS FOR
102 ACUPUNCTURISTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Sunset Process - House Health and Insurance Committee. The bill makes changes to the acupuncturists' practice act, including the changes recommended by the department of regulatory agencies' (department) sunset review and report on the licensing of acupuncturists, by:

- Continuing the licensing requirements for 11 years, until

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- September 1, 2033;
- Authorizing the director of the division of professions and occupations (director) in the department to impose administrative fines as a disciplinary action;
 - Requiring final actions of the director to be appealed directly to the court of appeals;
 - Modernizing the definition of "acupuncturist" so that it only includes persons licensed under the acupuncturist practice act and modernizing the titles and designations protected for use by licensed acupuncturists;
 - Authorizing an acupuncturist to supervise unlicensed acupuncture aides in the performance of specific tasks as determined by rule of the director and directing the director to adopt rules specifying the tasks that may be performed by acupuncture aides, the training and supervision required, and the number of acupuncture aides that an acupuncturist may supervise;
 - Updating the term "oriental", in references to the methods and concepts of acupuncture, with more modern terminology;
 - Requiring each acupuncturist to devise a plan for the safe storage, security, and disposal of patient records;
 - Requiring each applicant for acupuncturist licensure to pass an examination approved by the director;
 - Repealing the reference to the specific national organization that establishes standards for auricular acudetox training and allowing the director to designate a national organization;
 - Updating the grounds for discipline of an acupuncturist relating to the use or abuse of alcohol, habit-forming drugs, and controlled substances to align with other regulated professions;
 - Adding as a grounds for discipline the failure to respond to a complaint filed against the acupuncturist in an honest, responsive, and timely manner; and
 - Authorizing the director to adopt rules to establish the appropriate use of telehealth to provide acupuncture services.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-200-118

3 as follows:

1 **12-200-118. Repeal of article - review of functions.** This article
2 200 is repealed, effective ~~September 1, 2022~~ SEPTEMBER 1, 2033. Before
3 the repeal, the licensing functions of the director are scheduled for review
4 in accordance with section 24-34-104.

5 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**
6 (23)(a)(IV); and **add** (34)(a)(II) as follows:

7 **24-34-104. General assembly review of regulatory agencies**
8 **and functions for repeal, continuation, or reestablishment - legislative**
9 **declaration - repeal.** (23) (a) The following agencies, functions, or both,
10 are scheduled for repeal on September 1, 2022:

11 ~~(IV) The licensing of persons who practice acupuncture by the~~
12 ~~director of the division of professions and occupations in accordance with~~
13 ~~article 200 of title 12;~~

14 (34) (a) The following agencies, functions, or both, are scheduled
15 for repeal on September 1, 2033:

16 (II) THE LICENSING OF PERSONS WHO PRACTICE ACUPUNCTURE BY
17 THE DIRECTOR OF THE DIVISION OF PROFESSIONS AND OCCUPATIONS IN
18 ACCORDANCE WITH ARTICLE 200 OF TITLE 12.

19 **SECTION 3.** In Colorado Revised Statutes, 12-20-404, **repeal**
20 (1)(c)(II)(C) as follows:

21 **12-20-404. Disciplinary actions - regulator powers -**
22 **disposition of fines - mistreatment of at-risk adult.** (1) **General**
23 **disciplinary authority.** If a regulator determines that an applicant,
24 licensee, certificate holder, or registrant has committed an act or engaged
25 in conduct that constitutes grounds for discipline or unprofessional
26 conduct under a part or article of this title 12 governing the particular
27 profession or occupation, the regulator may:

1 (c) (II) A regulator is not authorized under this subsection (1)(c)
2 to impose a fine on a licensee, certificate holder, or registrant regulated
3 under the following:

4 (C) ~~Article 200 of this title 12 concerning acupuncturists;~~

5 **SECTION 4.** In Colorado Revised Statutes, 12-20-408, **amend**
6 (2)(c) and (2)(d); and **repeal** (2)(e) as follows:

7 **12-20-408. Judicial review.** (2) A district court of competent
8 jurisdiction has initial jurisdiction to review all final actions and orders
9 of a regulator that are subject to judicial review and shall conduct the
10 judicial review proceedings in accordance with section 24-4-106 (3) for
11 the following:

12 (c) Article 135 of this title 12 concerning mortuaries and
13 crematories; AND

14 (d) Article 140 of this title 12 concerning nontransplant tissue
15 banks. ~~and~~

16 (e) ~~Article 200 of this title 12 concerning acupuncturists.~~

17 **SECTION 5.** In Colorado Revised Statutes, **repeal and reenact,**
18 **with amendments,** 12-200-101 as follows:

19 **12-200-101. Legislative declaration.** (1) THE GENERAL
20 ASSEMBLY FINDS AND DECLARES THAT:

21 (a) IN ORDER TO SAFEGUARD THE LIFE, HEALTH, PROPERTY, AND
22 PUBLIC WELFARE OF THE PEOPLE OF THIS STATE, AND IN ORDER TO
23 PROTECT THE PEOPLE OF THIS STATE FROM UNAUTHORIZED, UNQUALIFIED,
24 AND IMPROPER APPLICATION OF SERVICES BY INDIVIDUALS IN THE
25 PRACTICE OF ACUPUNCTURE, IT IS NECESSARY THAT A PROPER
26 REGULATORY AUTHORITY BE ESTABLISHED AND ADEQUATELY FUNDED;

27 (b) THE SCOPE OF THE PRACTICE OF ACUPUNCTURE WILL CONTINUE

1 TO EVOLVE IN RESPONSE TO INNOVATION, RESEARCH, COLLABORATION,
2 AND CHANGES IN TECHNOLOGY AND SOCIETAL NEEDS;

3 (c) UNLESS OTHERWISE AUTHORIZED BY LAW, A PERSON SHOULD
4 NOT USE, IN CONNECTION WITH THE PERSON'S NAME OR BUSINESS, OR
5 OTHERWISE ASSUME OR ADVERTISE ANY TITLE OR DESCRIPTION THAT WILL
6 OR THAT REASONABLY MIGHT BE EXPECTED TO MISLEAD THE PUBLIC INTO
7 BELIEVING THAT THE PERSON IS AN ACUPUNCTURIST UNLESS THE PERSON
8 IS DULY LICENSED UNDER THIS ARTICLE 200; AND

9 (d) A PERSON WHO HOLDS HIMSELF OR HERSELF OUT TO THE
10 PUBLIC AS AN ACUPUNCTURIST WITHOUT QUALIFYING FOR PROPER
11 LICENSING UNDER THIS ARTICLE 200 ENDANGERS THE PUBLIC LIFE,
12 HEALTH, PROPERTY, AND WELFARE.

13 **SECTION 6.** In Colorado Revised Statutes, 12-200-103, **amend**
14 (1), (2), (4), and (5); and **add** (1.5) as follows:

15 **12-200-103. Definitions - rules.** As used in this article 200, unless
16 the context otherwise requires:

17 (1) "Acupuncture" means a system of health care based upon
18 traditional and ~~modern oriental~~ CONTEMPORARY medical concepts that
19 employs ~~oriental methods of~~ ACUPUNCTURE diagnosis, treatment, and
20 adjunctive therapies for the promotion, maintenance, and restoration of
21 health and the prevention of disease.

22 (1.5) "ACUPUNCTURE AIDE" MEANS AN UNLICENSED INDIVIDUAL
23 PERFORMING TASKS DELEGATED TO THE INDIVIDUAL BY, AND UNDER THE
24 SUPERVISION OF, AN ACUPUNCTURIST IN ACCORDANCE WITH RULES
25 PROMULGATED BY THE DIRECTOR PURSUANT TO SECTION 12-200-114.

26 (2) "Acupuncturist" means ~~any person who provides for~~
27 ~~compensation, or holds himself or herself out to the public as providing,~~

1 ~~acupuncture services~~ A PERSON WHO IS LICENSED PURSUANT TO THIS
2 ARTICLE 200 TO PERFORM ACUPUNCTURE.

3 (4) "Injection therapy" means the injection of sterile herbs,
4 vitamins, minerals, homeopathic substances, or other similar substances
5 specifically manufactured for nonintravenous injection into acupuncture
6 points by means of hypodermic needles used primarily for the treatment
7 of musculoskeletal pain. Permissible substances include saline, glucose,
8 lidocaine, procaine, ~~oriental~~ STERILE herbs, vitamin B-12, traumeel,
9 sarapin, and homeopathic substances. "Injection therapy" includes the use
10 of epinephrine and oxygen as necessary for patient care and safety,
11 including for the purpose of addressing any risk of allergic reactions
12 when using injection substances.

13 (5) (a) (I) "Practice of acupuncture" means the insertion and
14 removal of acupuncture needles, DRY NEEDLING, injection therapy, the
15 application of heat therapies to specific areas of the human body, and
16 adjunctive therapies. Adjunctive therapies within the scope of
17 acupuncture may include manual, mechanical, thermal, electrical, and
18 electromagnetic treatment; the recommendation of therapeutic exercises;
19 and, subject to federal law, the recommendation of herbs and dietary
20 guidelines. The "practice of acupuncture" is based upon traditional and
21 ~~modern oriental~~ CONTEMPORARY medical concepts and ~~does not include~~
22 ~~the utilization of western medical diagnostic tests and procedures, such~~
23 ~~as magnetic resonance imaging, radiographs (X rays), computerized~~
24 ~~tomography scans, and ultrasound~~ UTILIZES WESTERN MEDICINE
25 DIAGNOSTIC CODES.

26 (II) "PRACTICE OF ACUPUNCTURE" INCLUDES:

27 (A) THE DELEGATION OF SPECIFIED TASKS TO AND THE

1 SUPERVISION OF ACUPUNCTURE AIDES IN THE PERFORMANCE OF TASKS AS
2 SPECIFIED IN RULES PROMULGATED BY THE DIRECTOR PURSUANT TO
3 SECTION 12-200-114; AND

4 (B) THE PROVISION OF ACUPUNCTURE SERVICES THROUGH
5 TELEHEALTH.

6 (b) Nothing in this article 200 authorizes an acupuncturist to
7 perform the practice of medicine; surgery; OR spinal adjustment,
8 manipulation, or mobilization. ~~or any other form of healing except as~~
9 ~~authorized by this article 200.~~

10 **SECTION 7.** In Colorado Revised Statutes, 12-200-105, **amend**
11 (1)(h) as follows:

12 **12-200-105. Mandatory disclosure of information to patients**
13 **- retention of records of disclosure.** (1) Every acupuncturist shall
14 provide the following information in writing to each patient during the
15 initial patient contact:

16 (h) A statement indicating the acupuncturist's training and
17 experience in the recommendation and application of adjunctive therapies
18 and herbs as defined by ~~traditional oriental medical~~ ACUPUNCTURE
19 concepts.

20 **SECTION 8.** In Colorado Revised Statutes, **add** 12-200-105.5 as
21 follows:

22 **12-200-105.5. Protection of patient records - acupuncturist's**
23 **obligations - verification of compliance - rules.** (1) EACH
24 ACUPUNCTURIST SHALL DEVELOP A WRITTEN PLAN TO ENSURE THE
25 SECURITY OF PATIENT RECORDS. THE PLAN MUST ADDRESS AT LEAST THE
26 FOLLOWING:

27 (a) THE STORAGE AND PROPER DISPOSAL OF PATIENT RECORDS;

1 (b) THE DISPOSITION OF PATIENT RECORDS IN THE EVENT THE
2 ACUPUNCTURIST DIES, RETIRES, OR OTHERWISE CEASES TO PRACTICE OR
3 PROVIDE ACUPUNCTURE SERVICES TO PATIENTS; AND

4 (c) THE METHOD BY WHICH PATIENTS MAY ACCESS OR OBTAIN
5 THEIR RECORDS PROMPTLY IF ANY OF THE EVENTS DESCRIBED IN
6 SUBSECTION (1)(b) OF THIS SECTION OCCURS.

7 (2) UPON INITIAL LICENSURE UNDER THIS ARTICLE 200, THE
8 ACUPUNCTURIST SHALL ATTEST TO THE DIRECTOR THAT THE
9 ACUPUNCTURIST HAS DEVELOPED A PLAN IN COMPLIANCE WITH THIS
10 SECTION.

11 (3) AN ACUPUNCTURIST SHALL INFORM EACH PATIENT, IN WRITING,
12 OF THE METHOD BY WHICH THE PATIENT MAY ACCESS OR OBTAIN THE
13 PATIENT'S RECORDS IF AN EVENT DESCRIBED IN SUBSECTION (1)(b) OF THIS
14 SECTION OCCURS.

15 (4) THE DIRECTOR MAY ADOPT RULES AS NECESSARY TO
16 IMPLEMENT THIS SECTION.

17 **SECTION 9.** In Colorado Revised Statutes, 12-200-106, **amend**
18 (3) as follows:

19 **12-200-106. Requirement for licensure with the division -**
20 **annual fee - required disclosures.** (3) In order to qualify for licensure,
21 an acupuncturist shall have:

22 (a) (I) Successfully completed an education program for
23 acupuncturists that conforms to standards approved by the director, which
24 standards may be established by utilizing the assistance of any
25 professional organization whose membership includes not less than
26 one-third of the persons licensed pursuant to this article 200; or

27 ~~(b)~~ (II) Qualifications based on education, experience, or training

1 that are substantially similar to those provided by THIS subsection (3)(a),
2 of this section, which are documented in the form required by the director
3 and accepted by the director in lieu of the education program; AND

4 (b) PASSED AN EXAMINATION APPROVED BY THE DIRECTOR.

5 **SECTION 10.** In Colorado Revised Statutes, 12-200-108, **amend**
6 (2)(a), (2)(b)(II), and (4)(d) as follows:

7 **12-200-108. Unlawful acts - exceptions - definition - title**
8 **protection.** (2) (a) It is unlawful for any person to practice acupuncture
9 without a valid and current license on file with the division, unless the
10 ~~acupuncturist~~ PERSON is practicing pursuant to section 12-240-107 (3)(I)
11 or has met the requirements of subsection (3) of this section.

12 (b) It is unlawful for any person to:

13 (II) Use the title "ACUPUNCTURIST" OR "licensed acupuncturist",
14 ~~"registered acupuncturist", or "diplomate of acupuncture",~~ or use the
15 designation "L.Ac.", "R.Ac.", or ~~"Dipl. Ac."~~, OR USE ANY OTHER TITLE OR
16 DESIGNATION THAT SUGGESTS THE PERSON IS AN ACUPUNCTURIST unless
17 the person is ~~practicing pursuant to section 12-240-107 (3)~~ LICENSED
18 PURSUANT TO THIS ARTICLE 200.

19 (4) (d) In order to perform auricular acudetox pursuant to this
20 subsection (4), a professional must successfully complete a training
21 program in auricular acudetox for the treatment of substance use disorders
22 that meets or exceeds standards of training established by ~~the National~~
23 ~~Acupuncture Detoxification Association or another~~ A NATIONAL
24 organization approved by the director.

25 **SECTION 11.** In Colorado Revised Statutes, 12-200-109, **amend**
26 (1)(m), (1)(n), and (1)(o); and **add** (1)(p) as follows:

27 **12-200-109. Grounds for disciplinary action.** (1) The director

1 may deny licensure to or take disciplinary action against an acupuncturist
2 pursuant to sections 12-20-403, 12-20-404, and 24-4-105 if the director
3 finds that the acupuncturist has committed any of the following acts:

4 (m) ~~Continued in the practice of acupuncture while abusing or~~
5 ~~habitually or excessively using~~ HABITUAL OR EXCESSIVE USE OR ABUSE OF
6 alcohol, a habit-forming drug, or controlled substance as defined in
7 section 18-18-102 (5);

8 (n) Committed and been convicted of a felony or entered a plea of
9 guilty or nolo contendere to a felony; ~~and~~

10 (o) Published or circulated, directly or indirectly, any fraudulent,
11 false, deceitful, or misleading claims or statements relating to
12 acupuncture or to the acupuncturist's practice, capabilities, services,
13 methods, or qualifications; AND

14 (p) FAILED TO RESPOND TO A COMPLAINT FILED AGAINST THE
15 ACUPUNCTURIST IN AN HONEST, MATERIALLY RESPONSIVE, AND TIMELY
16 MANNER.

17 **SECTION 12.** In Colorado Revised Statutes, 12-200-110, **amend**
18 (2)(b) and (2)(c); and **add** (2)(d) as follows:

19 **12-200-110. Disciplinary authority and proceedings.**

20 (2) Disciplinary actions may consist of the following:

21 (b) Placement of the licensee on probation and setting the terms
22 of that probation; ~~and~~

23 (c) Issuing and sending a letter of admonition by first-class mail
24 to the licensee under the circumstances specified in and in accordance
25 with section 12-20-404 (4); AND

26 (d) IMPOSING ADMINISTRATIVE FINES.

27 **SECTION 13.** In Colorado Revised Statutes, 12-200-114, **amend**

1 (1) introductory portion; and **add** (1)(k) and (1)(l) as follows:

2 **12-200-114. Director - powers and duties - rules.** (1) In
3 addition to any other powers and duties conferred by this article 200, the
4 director ~~shall have~~ HAS the following powers and duties:

5 (k) TO ADOPT RULES REGARDING THE ABILITY OF AN
6 ACUPUNCTURE AIDE TO PERFORM SPECIFIED TASKS UNDER THE
7 SUPERVISION OF AN ACUPUNCTURIST, INCLUDING:

8 (I) THE SPECIFIC TASKS AN ACUPUNCTURE AIDE MAY PERFORM AND
9 THE SPECIFIC TASKS AN ACUPUNCTURE AIDE IS PROHIBITED FROM
10 PERFORMING;

11 (II) THE REQUIREMENTS FOR THE TRAINING AND SUPERVISION OF
12 ACUPUNCTURE AIDES; AND

13 (III) THE NUMBER OF ACUPUNCTURE AIDES AN ACUPUNCTURIST
14 MAY SUPERVISE; AND

15 (l) TO ADOPT RULES ESTABLISHING THE APPROPRIATE USE OF
16 TELEHEALTH TO PROVIDE ACUPUNCTURE SERVICES.

17 **SECTION 14. Act subject to petition - effective date.** This act
18 takes effect September 1, 2022; except that, if a referendum petition is
19 filed pursuant to section 1 (3) of article V of the state constitution against
20 this act or an item, section, or part of this act within the ninety-day period
21 after final adjournment of the general assembly, then the act, item,
22 section, or part will not take effect unless approved by the people at the
23 general election to be held in November 2022 and, in such case, will take
24 effect on the date of the official declaration of the vote thereon by the
25 governor.