

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0155.01 Kristen Forrestal x4217

SENATE BILL 13-172

SENATE SPONSORSHIP

Newell,

HOUSE SPONSORSHIP

Ginal,

Senate Committees

Health & Human Services
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION OF THE REGULATION OF**
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://www.leg.state.co.us/billsummaries>.)

Sunset Process - Senate Health and Human Services Committee. The bill continues the regulation of acupuncturists by the division of professions and occupations in the department of regulatory agencies until 2022. The bill removes the words "traditional" and "oriental" from the definition of the practice of acupuncture in reference

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

to adjunctive therapies. The bill clarifies that a licensed acupuncturist is not authorized to practice medicine, surgery, or any other form of healing except as authorized in the "Acupuncture Practice Act". An acupuncturist who has had his or her license revoked, or who has surrendered his or her license in lieu of discipline must wait at least 2 years before reapplying for licensure. The bill revises the grounds for discipline by removing the reference to "addicted to or dependent on alcohol or upon any habit-forming drug".

Current law states that an acupuncturist may be disciplined if he or she continues to practice acupuncture while subject to any physical or mental disability or while afflicted with a communicable disease. Under the bill, an acupuncturist may be disciplined if he or she fails to notify the director of the division of professions and occupations (director) of a physical or mental condition that impacts his or her ability to perform acupuncture or if he or she fails to comply with a confidential agreement with the director.

Current law requires letters of admonition to be sent by certified mail; the bill requires that the letters be sent by first-class mail.

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

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

4 **12-29.5-116. Repeal of article - termination of functions.**

5 (1) This article is repealed, effective ~~July 1, 2013~~ SEPTEMBER 1, 2022.

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

10 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **amend**
11 (44) introductory portion and (53.5) introductory portion; **repeal** (44) (a);
12 and **add** (53.5) (c) as follows:

13 **24-34-104. General assembly review of regulatory agencies**
14 **and functions for termination, continuation, or reestablishment.**

15 (44) The following agencies, functions, or both, ~~shall~~ terminate on July

1 1, 2013:

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

5 (53.5) The following agencies, functions, or both, ~~shall~~ terminate
6 on September 1, 2022:

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

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

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

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

19 (3.5) (a) "Practice of acupuncture" means the insertion and
20 removal of acupuncture needles, the application of heat therapies to
21 specific areas of the human body, and ~~traditional oriental~~ adjunctive
22 therapies. ~~Traditional oriental~~ Adjunctive therapies within the scope of
23 acupuncture may include manual, mechanical, thermal, electrical, and
24 electromagnetic treatment; the recommendation of ~~oriental~~ therapeutic
25 exercises; and, subject to federal law, the recommendation of herbs and
26 dietary guidelines. The "practice of acupuncture" ~~shall be defined by IS~~
27 BASED UPON traditional AND MODERN oriental medical concepts and ~~shall~~

1 DOES not include the utilization of western medical diagnostic tests and
2 procedures, such as magnetic resonance imaging, radiographs (X rays),
3 computerized tomography scans, and ultrasound. "~~Practice of~~
4 ~~acupuncture~~" does not mean:

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

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

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

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

16 **12-29.5-104. Requirement for licensure with the division of**
17 **registrations - annual fee - required disclosures.** (5) (a) Every
18 acupuncturist shall report to the director every judgment or administrative
19 action, as well as the terms of any settlement or other disposition of any
20 such judgment or action, against the acupuncturist involving malpractice
21 or improper practice of acupuncture, whether occurring in Colorado or in
22 any other jurisdiction. The acupuncturist shall make such report either
23 within thirty days after the judgment or action or upon application for
24 licensure or reinstatement, whichever occurs earlier.

25 (b) AN ACUPUNCTURIST WHO HAS HAD HIS OR HER LICENSE
26 REVOKED, OR WHO HAS SURRENDERED HIS OR HER LICENSE TO AVOID
27 DISCIPLINARY ACTION IS NOT ELIGIBLE TO APPLY FOR A LICENSE FOR TWO

1 YEARS AFTER THE LICENSE IS REVOKED OR SUSPENDED.

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

4 **12-29.5-105. Unlawful acts - exceptions.** (2) Notwithstanding
5 ~~the provisions~~ ANY PROVISION of this section to the contrary, a person in
6 training may practice acupuncture without a valid and current license ~~on~~
7 ~~file with~~ ISSUED BY the division if such practice takes place in the course
8 of a bona fide training program and

9 (a) THE PERSON PERFORMS all acupuncture acts and services
10 ~~performed by such persons are performed~~ under the direct, on-site
11 supervision of a licensed acupuncturist, who ~~shall be~~ IS responsible for all
12 such acts and services as though the licensed acupuncturist had personally
13 performed them. ~~and~~

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

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

19 **12-29.5-106. Grounds for disciplinary action.** (1) The director
20 may deny licensure to or take disciplinary action against an acupuncturist
21 pursuant to section 24-4-105, C.R.S., if the director finds that the
22 acupuncturist has committed any of the following acts:

23 (l) ~~Continued in the practice of acupuncture while subject to any~~
24 FAILED TO NOTIFY THE DIRECTOR OF A physical or mental disability which
25 renders the acupuncturist unable to treat patients with reasonable skill and
26 safety or which may endanger a patient's health or safety; or continued in
27 the practice of acupuncture while afflicted with a communicable;

1 ~~infectious, or contagious disease of such a serious nature as to render the~~
2 ~~acupuncturist unable to treat patients with reasonable skill and safety or~~
3 ~~which may endanger a patient's health or safety~~ ILLNESS OR CONDITION
4 THAT IMPACTS THE LICENSEE'S ABILITY TO PRACTICE ACUPUNCTURE WITH
5 REASONABLE SKILL AND SAFETY TO PATIENTS; FAILED TO ACT WITHIN THE
6 LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION
7 THAT RENDERS THE LICENSEE UNABLE TO PERFORM ACUPUNCTURE WITH
8 REASONABLE SKILL AND SAFETY TO THE PATIENT; OR FAILED TO COMPLY
9 WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT;

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

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

17 **12-29.5-107. Disciplinary authority and proceedings.**

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

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

25 (II) When THE DIRECTOR SENDS a letter of admonition ~~is sent by~~
26 ~~the director by certified mail,~~ to a licensee, ~~such~~ THE DIRECTOR SHALL
27 ADVISE THE licensee ~~shall be advised~~ that he or she has the right to

1 request in writing, within twenty days after receipt of the letter, that
2 formal disciplinary proceedings be initiated to adjudicate the propriety of
3 the conduct upon which the letter of admonition is based.

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

6 **12-29.5-108.5. Examinations - notice - confidential**
7 **agreements.** (1) IF AN ACUPUNCTURIST SUFFERS FROM A PHYSICAL OR
8 MENTAL ILLNESS OR CONDITION RENDERING THE LICENSEE UNABLE TO
9 PRACTICE ACUPUNCTURE OR PRACTICE AS AN ACUPUNCTURIST WITH
10 REASONABLE SKILL AND PATIENT SAFETY, THE ACUPUNCTURIST SHALL
11 NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND
12 WITHIN A PERIOD OF TIME DETERMINED BY THE DIRECTOR. THE DIRECTOR
13 MAY REQUIRE THE LICENSEE TO SUBMIT TO AN EXAMINATION OR TO
14 EVALUATE THE EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON
15 THE LICENSEE'S ABILITY TO PRACTICE WITH REASONABLE SKILL AND
16 SAFETY TO PATIENTS.

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

24 (b) THE AGREEMENT MUST SPECIFY THAT THE LICENSEE IS SUBJECT
25 TO PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED
26 APPROPRIATE BY THE DIRECTOR.

27 (c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS

1 NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF
2 MONITORING.

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

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

14 **SECTION 9. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.