SENATE BILL 13-172

CONCERNING THE CONTINUATION OF THE REGULATION OF 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
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.

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

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

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

(1) This article is repealed, effective **September 1, 2022**.

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

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

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

(44) The following agencies, functions, or both, shall terminate on July
1, 2013:

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

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

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

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

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

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

(a) Osteopathic medicine and osteopathic manipulative treatment;
(b) "Chiropractic" or "chiropractic adjustment" as defined in section 12-33-102 or therapies allowed as part of the practice of chiropractic or chiropractic adjustment; nothing in this article authorizes an acupuncturist to perform the practice of medicine, surgery, or any other form of healing except as authorized by this article.

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

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

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

(b) An acupuncturist who has had his or her license revoked, or who has surrendered his or her license to avoid disciplinary action is not eligible to apply for a license for two years after the license is revoked or suspended.

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

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

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

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

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

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

(l) continued in the practice of acupuncture while subject to any failure to notify the director of a physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; or continued in the practice of acupuncture while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety illness or condition that impacts the licensee's ability to practice acupuncture with reasonable skill and safety to patients; failed to act within the
LIMITATIONS CREATED BY A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE LICENSEE UNABLE TO PERFORM ACUPUNCTURE WITH REASONABLE SKILL AND SAFETY TO THE PATIENT; OR FAILED TO COMPLY WITH THE LIMITATIONS AGREED TO UNDER A CONFIDENTIAL AGREEMENT; (m) Continued in the practice of acupuncture while addicted to or dependent upon alcohol or upon any habit-forming drug or while abusing or habitually or excessively using any such ALCOHOL, A habit-forming drug, or any controlled substance as defined in section 18-18-102 (5), C.R.S.;

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

12-29.5-107. Disciplinary authority and proceedings. (2) Disciplinary actions may consist of the following:

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

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

SECTION 8. In Colorado Revised Statutes, add 12-29.5-108.5 as follows:
12-29.5-108.5. Examinations - notice - confidential agreements. (1) If an acupuncturist suffers from a physical or mental illness or condition rendering the licensee unable to practice acupuncture or practice as an acupuncturist with reasonable skill and patient safety, the acupuncturist shall notify the director of the illness or condition in a manner and within a period of time determined by the director. The director may require the licensee to submit to an examination or to evaluate the extent of the illness or condition and its impact on the licensee’s ability to practice with reasonable skill and safety to patients.

(2) (a) Upon determining that an acupuncturist with a physical or mental illness or condition is able to render limited acupuncture treatment with reasonable skill and patient safety, the director may enter into a confidential agreement with the acupuncturist in which the acupuncturist agrees to limit his or her practice based on the restrictions imposed by the illness or condition, as determined by the director.

(b) The agreement must specify that the licensee is subject to periodic reevaluations or monitoring as determined appropriate by the director.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(d) By entering into an agreement with the director under this subsection (2) to limit his or her practice, the licensee is not engaging in unprofessional conduct. The agreement is an
ADMINISTRATIVE ACTION AND DOES NOT CONSTITUTE A RESTRICTION OR
DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE LICENSEE FAILS TO
COMPLY WITH AN AGREEMENT ENTERED INTO PURSUANT TO THIS
SUBSECTION (2), THE FAILURE CONSTITUTES GROUNDS FOR DISCIPLINARY
ACTION UNDER SECTION 12-29.5-106 (1) (l) AND THE LICENSEE IS SUBJECT
to discipline in accordance with section 12-29.5-107.

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

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