

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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, AND, IN CONNECTION THEREWITH, MAKING**
103 **AN APPROPRIATION.**

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

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.

SENATE
Amended 2nd Reading
March 12, 2013

"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.

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.**

1 (44) The following agencies, functions, or both, shall terminate on July
2 1, 2013:

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) AN ACUPUNCTURIST WHO HAS HAD HIS OR HER LICENSE
27 REVOKED, OR WHO HAS SURRENDERED HIS OR HER LICENSE TO AVOID

1 DISCIPLINARY ACTION IS NOT ELIGIBLE TO APPLY FOR A LICENSE FOR TWO
2 YEARS AFTER THE LICENSE IS REVOKED OR SUSPENDED.

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

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

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

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

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

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

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

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

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

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

18 **12-29.5-107. Disciplinary authority and proceedings.**

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

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

26 (II) When THE DIRECTOR SENDS a letter of admonition ~~is sent by~~
27 ~~the director by certified mail,~~ to a licensee, ~~such~~ THE DIRECTOR SHALL

1 ADVISE THE licensee ~~shall be advised~~ that he or she has the right to
2 request in writing, within twenty days after receipt of the letter, that
3 formal disciplinary proceedings be initiated to adjudicate the propriety of
4 the conduct upon which the letter of admonition is based.

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

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

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

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

1 (c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS
2 NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR OF
3 MONITORING.

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

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

15 **SECTION 9. Appropriation.** (1) In addition to any other
16 appropriation, there is hereby appropriated, out of any moneys in the
17 division of professions and occupations cash fund created in section
18 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise
19 appropriated, to the department of regulatory agencies, for the fiscal year
20 beginning July 1, 2013, the sum of \$5,021, or so much thereof as may be
21 necessary, to be allocated to the executive director's office and
22 administrative services for the purchase of legal services for the
23 implementation of this act.

24 (2) In addition to any other appropriation, there is hereby
25 appropriated to the department of law, for the fiscal year beginning July
26 1, 2013, the sum of \$5,021, or so much thereof as may be necessary, for
27 the provision of legal services for the department of regulatory agencies

1 related to the implementation of this act. Said sum is from reappropriated
2 funds received from the department of regulatory agencies out of the
3 appropriation made in subsection (1) of this section.

4 **SECTION 10. Safety clause.** The general assembly hereby finds,
5 determines, and declares that this act is necessary for the immediate
6 preservation of the public peace, health, and safety.