

CHAPTER 249**(HB 17)**

AN ACT relating to acupuncture.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

In order to protect the life, health, and safety of the public, any person practicing or offering to practice as an acupuncturist shall be certified as provided in Sections 1 to 16 of this Act. After the effective date of this Act, it shall be unlawful for any person not certified under the provisions of Sections 1 to 16 of this Act to practice acupuncture in this state, or to use any title, sign, card, or device to indicate that he or she is an acupuncturist. The provisions of Sections 1 to 16 of this Act are not intended to limit, preclude, or otherwise interfere with the practice of other health care providers, working in any setting and certified or licensed by appropriate agencies or committees of the Commonwealth of Kentucky, whose practices and training may include elements of the same nature as the practice of a certified acupuncturist.

SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

In Sections 1 to 16 of this Act, the following words and phrases shall have the meanings given to them, unless the context clearly indicates otherwise:

- (1) *"Acupuncturist" means an individual certified to practice acupuncture by the board;*
- (2) *"Board" means the State Board of Medical Licensure;*
- (3) *"Council" means the Acupuncture Advisory Council under the State Board of Medical Licensure;*
- (4) *"Certification" means certification by the board to practice acupuncture; and*
- (5) *"Practice of acupuncture" means the insertion of acupuncture needles, with or without accompanying electrical or thermal stimulation, at certain acupuncture points or meridians on the surface of the human body for purposes of changing the flow of energy in the body and may include acupressure, cupping, moxibustion, or dermal friction. The practice of acupuncture shall not include laser acupuncture, osteopathic manipulative treatment, chiropractic adjustments, physical therapy, or surgery.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the certification and regulation, including temporary certification, of acupuncturists. Regulation of acupuncture includes continuing education requirements and fee schedules.*
- (2) *The board shall establish an eight (8) member Acupuncture Advisory Committee that shall review and make recommendations to the board regarding matters relating to acupuncturists that come before the board, including but not limited to:*
 - (a) *Applications for acupuncturist certification;*
 - (b) *Certification renewal requirements;*
 - (c) *Fees;*
 - (d) *Applicable standards of practice for acupuncture practitioners;*
 - (e) *Continuing education requirements;*
 - (f) *Rotating appointment of committee members;*
 - (g) *Disciplinary actions, at the request of a panel of the board; and*
 - (h) *Promulgation and revision of administrative regulations.*
- (3) *Members of the Acupuncturist Advisory Committee shall be appointed by the board for four (4) year terms, on a rotating basis to provide for continuity, and shall consist of:*
 - (a) *One (1) member of the board;*
 - (b) *Two (2) physicians licensed by the board whose practices include the use of acupuncture;*

- (c) *One (1) member of the public who is not associated with or financially interested in the practice of acupuncture;*
- (d) *Four (4) acupuncture practitioners certified by the board.*
- (4) *The chairperson and secretary of the committee shall be elected by a majority vote of the committee members annually. The president shall be responsible for presiding over meetings that shall be held on a regular basis, but no less than two (2) times each calendar year. Additional meetings may be held each calendar year at the call of the chairperson or by the written request of at least three (3) committee members. The secretary shall keep a record of the minutes of the committee's meetings. Five (5) members of the committee shall constitute a quorum to conduct business.*
- (5) *Members shall receive reimbursement for expenditures relating to attendance at committee meetings consistent with state policies for reimbursement of travel expenses for state employees.*
- (6) *The board may remove any member on the member's request or for poor attendance at committee meetings, neglect of duties, or malfeasance in office.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *To be certified by the board as an acupuncturist, an applicant shall:*
 - (a) *Submit an application approved by the board, with all sections completed with the required fee;*
 - (b) *Be of good character and reputation;*
 - (c) *Have achieved a passing score on the acupuncture examination administered by the National Commission for Certification of Acupuncture and Oriental Medicine; and*
 - (d) *Have graduated from a course of training of at least one thousand eight hundred (1,800) hours, including three hundred (300) clinical hours, that is approved by the Accreditation Commission for Acupuncture and Oriental Medicine. Prior to July 1, 2007, a person who is a Kentucky resident who does not meet the requirement of paragraph (d) of this subsection may be certified by the board if he or she meets all the requirements of paragraphs (a) and (b) of this subsection and passes the examination required under paragraph (c) of this subsection. On and after July 1, 2007, all provisions of this subsection, including graduation from an approved course of training as specified in paragraph (d) of this subsection, must be met by all applicants before initial certification as an acupuncturist may be granted.*
- (2) *An acupuncturist who is legally authorized to practice acupuncture in another state and who is presently in good standing in that other state may be certified by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth. Applicants who submit their application for certification within the six (6) months immediately following the effective date of this statute shall be certified by the board as an acupuncturist if the applicant meets the requirements of subsection (1)(a) to (c) of this section and has been legally authorized to practice acupuncture in another state for at least two (2) years prior to submission of the application.*
- (3) *The board may request any reasonable information from the applicant and from collateral sources that is necessary for the board to make an informed decision. The applicant will execute any necessary waiver or release so that the board may obtain necessary information from collateral sources. An application will be considered completed when the applicant has fully answered all sections of the approved application and the board has received all necessary additional information from the applicant and collateral sources.*
- (4) *An acupuncturist's certificate shall be renewed every two (2) years upon fulfillment of the following requirements:*
 - (a) *The applicant has submitted a renewal application approved by the board within the time specified, with all sections completed, with the required fee;*
 - (b) *The applicant is of good character and reputation; and*
 - (c) *The applicant has provided evidence of completion of the required continuing education during the previous period of certification, including evidence of completion of a continuing education course on the human immunodeficiency virus and acquired immunodeficiency syndrome in the previous ten (10) years that meets the requirements of KRS 214.610.*

- (5) *The board shall notify each applicant in writing of the action it takes on an application within one hundred twenty (120) days following the board's receipt of a completed application.*
- (6) *Notwithstanding any of the requirements for certification established in this section, and after providing the applicant with reasonable notice of its intended action and after providing a reasonable opportunity to be heard, the board may deny certification to an applicant without a prior evidentiary hearing upon a finding that the applicant has violated any provision of this section or is otherwise unfit to practice. If the board denies an application, it shall notify the applicant of the grounds on which the denial is based. Orders denying a certificate may be appealed pursuant to KRS 311.593.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Whenever, in the opinion of the executive director, based upon verified information contained in the application, an applicant for a certificate to practice as an acupuncturist is eligible under the applicable provisions of Sections 1 to 16 of this Act, the executive director may issue to the applicant, on behalf of the board, a temporary certificate which shall entitle the holder to practice as an acupuncturist for a maximum of six (6) months from the date of issuance unless the temporary certificate is canceled by the executive director, the executive director may cancel the temporary certificate at any time, without a hearing, for reasons deemed sufficient, with appropriate consultation with the president, and the executive director shall cancel the temporary certificate immediately upon direction by the board or upon the board's denial of the application for a certificate. The temporary certificate shall not be renewable.*
- (2) *The executive director shall present to the board the application for certification made by the holder of the temporary certificate. If the board issues a regular certificate to the holder of a temporary certificate, the fee paid in connection with the temporary certificate shall be applied to the regular certificate fee.*
- (3) *If the executive director cancels a temporary certificate, he or she shall promptly notify by United States certified mail, the holder of the temporary certificate at the last known address on file with the board. The temporary certificate shall be terminated and of no further force or effect three (3) days after the date the notice was sent by certified mail.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An acupuncture practitioner shall use the designation "certified acupuncturist" or "C.Ac." following his or her name in all advertisements, professional literature, and billings used in connection with his or her practice.*
- (2) *The certification issued by the board shall be conspicuously displayed in the certified acupuncture practitioner's place of business.*
- (3) *A person who is not certified under Sections 1 to 16 of this Act shall not use any terms, words, abbreviations, letters, or insignia that indicate or imply that he or she is engaged in the practice of acupuncture.*
- (4) *Any person who violates this section shall be guilty of a Class A misdemeanor.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 to 16 of this Act shall not apply to:

- (1) *Persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes and does not prohibit them from rendering services consistent with the laws regulating their professional practices and the ethics of their professions;*
- (2) *Student interns or trainees pursuing a program of studies in an institution approved by the board for teaching the practice of acupuncture if the person is designated an acupuncture intern or student in training and his or her activities are performed under supervision and constitute a part of the supervised program of study;*
- (3) *Activities of visiting acupuncturists, who are legally qualified to perform acupuncture in another state, in performing their duties as teachers at a board-approved institution or board-approved workshop or tutorial. As used in this subsection, "duties" means classroom instruction and demonstration of relevant techniques. It does not include the provision of any services to a patient in exchange for a fee; or*

- (4) *Activities, services, and use of title on the part of a person as part of their employment by the federal government.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

An acupuncturist shall obtain informed consent from each patient in a manner consistent with the acceptable and prevailing standards of practice within this Commonwealth and, at a minimum, the acupuncturist shall disclose to the patient the following written information prior to or during the patient's initial visit:

- (1) *The acupuncturist's qualifications, including his or her education, certification information, and the definition and scope of the practice of acupuncture in the Commonwealth; and*
- (2) *Possible outcomes of the treatment to be given, including any pain, bruising, infection, needle sickness, or other side effects that may occur.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An acupuncturist shall comply with all applicable state and municipal reporting requirements imposed on health care professionals regarding public health;*
- (2) *An acupuncturist shall maintain a record for each patient treated, in a manner consistent with the acceptable and prevailing standards of practice within the Commonwealth. At a minimum, the record for each patient shall include:*
 - (a) *A signed copy of the information disclosed by the acupuncturist to the patient under Section 8 of this Act;*
 - (b) *Evidence that the acupuncturist has conducted or overseen an interview concerning the patient's medical history and current physical condition;*
 - (c) *Evidence of the acupuncturist having conducted a traditional acupuncture examination;*
 - (d) *A record of the treatment, including the acupuncture points treated; and*
 - (e) *The evaluation and instructions given.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Every certified acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to appropriate health care facilities or to other health care practitioners operating within the scope of their authorized practices, which meets the requirements contained in administrative regulations promulgated by the board. The written plan shall be filed with the board and maintained at the acupuncturist's practice location and updated as appropriate to meet current regulatory requirements.*
- (2) *If, in the course of conducting an interview regarding the patient's medical history, the patient discloses that he or she suffers from one (1) of the potentially serious disorders or conditions listed in subsection (3) of this section, the acupuncturist shall verify that the patient is currently under the care of a physician and consult with the treating physician before providing acupuncture treatment. If the patient refuses to provide a medical history or disclose information regarding any of the conditions listed below, acupuncture treatment shall not be provided.*
- (3) *For purposes of this section, "potentially serious disorder or condition" means:*
 - (a) *Hypertension and cardiac conditions;*
 - (b) *Acute, severe abdominal pain;*
 - (c) *Undiagnosed neurological changes;*
 - (d) *Unexplained weight loss or gain in excess of fifteen percent (15%) of the patient's body weight in less than a three (3) month period;*
 - (e) *Suspected fracture or dislocation;*
 - (f) *Suspected systemic infections;*
 - (g) *Serious hemorrhagic disorder;*
 - (h) *Acute respiratory distress without a previous history;*

- (i) *Pregnancy;*
- (j) *Diabetes; or*
- (k) *Cancer.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person certified as an acupuncturist shall renew his or her certificate every two (2) years. He or she shall pay to the board a renewal fee established by the board in administrative regulations. The fee shall be paid on or before June 1 of the year in which the certificate expires. A certificate that is not renewed within sixty (60) days after June 1 shall expire for failure to renew in a timely manner.*
- (2) *The board shall notify the certified acupuncturist of the renewal date at the acupuncturist's last known address. The notice shall include an application and notice of renewal fees. The certified acupuncturist's failure to receive the renewal notice shall not be considered an excuse to waive a late-payment fee.*
- (3) *A sixty (60) day grace period shall be allowed after June 1 of each year during which the acupuncturist may continue to practice. The acupuncturist may renew his or her certification upon payment of the renewal fee and a late renewal fee as established by the board in administrative regulation.*
- (4) *Any certification not renewed by the end of the grace period shall terminate and the acupuncturist shall no longer be eligible to practice acupuncture in the Commonwealth. An individual with a terminated certification may have his or her certification reinstated upon payment of the renewal fee and a reinstatement fee as established by the board in administrative regulations. A person who applies for reinstatement shall not be required to take an examination as a condition of reinstatement if the person's reinstatement application is made within five (5) years of the date of termination.*
- (5) *A suspended certificate shall expire and terminate if not renewed. Renewal of a suspended certificate shall not entitle the certified practitioner to practice until the suspension has ended or the right to practice has been restored by the board.*
- (6) *A revoked certificate shall terminate and may not be renewed. If a revoked certificate is reinstated, the certified practitioner shall pay the renewal fee and the reinstatement fee under subsections (1) and (4) of this section.*
- (7) *If a person fails to reinstate his or her certificate within five (5) years of its termination, the certificate shall not be renewed, restored, reissued, or reinstated. The person shall obtain a new certificate under the conditions established in Section 4 of this Act.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The board shall by administrative regulation prescribe continuing education requirements, not to exceed thirty (30) hours biennially, as a condition for renewal of a certificate. All education programs that contribute to the advancement, extension, or enhancement of professional skills and knowledge related to the practice of acupuncture, whether conducted by a nonprofit or profit-making entity, are eligible for approval. The continuing professional education requirements must be in acupuncture or oriental medicine subjects, including but not limited to anatomy, biological sciences, adjunctive therapies, sanitation and sterilization, emergency protocols, and diseases. The board shall have the authority to set a fee for each continuing education provider. The certified practitioner shall retain in his or her records the certificates of completion of continuing professional education requirements to prove compliance with this section. All national and state acupuncture and oriental medicine organizations and acupuncture and oriental medicine schools are approved to provide continuing professional education in accordance with this section.

SECTION 13. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person certified under Sections 4 and 5 of this Act may apply for inactive status upon submitting an application and paying an inactive-status fee.*
- (2) *An inactive certificate may be reactivated upon application to the board. If a certificate has been inactive for more than five (5) consecutive years, the certified practitioner shall apply for a new certificate and shall meet all the requirements in existence for a certification under Sections 4 and 5 of this Act. That application for certification shall require:*
 - (a) *Evidence of the certificate holder's payment of an inactive-status fee; and*

(b) Payment of the initial certification fee.

SECTION 14. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) The board may revoke a certificate; suspend a certificate for a period not to exceed five (5) years; deny an application for a certificate; decline to renew a certificate; indefinitely restrict or limit a certificate; issue a fine of up to two thousand dollars (\$2,000) per violation and/or the costs of the proceedings; place a certificate on probation for a period not to exceed five (5) years; reprimand the acupuncturist; or impose any combination of such sanctions, upon proof that the acupuncturist has:*
- (a) Knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statements, writing, certificate, diploma, or other document relating to an application for certification;*
 - (b) Practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy relating to an examination for certification;*
 - (c) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is or would be a felony under the laws of the Commonwealth of Kentucky, or of the United States;*
 - (d) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of any misdemeanor offense which has dishonesty as a fundamental and necessary element, including but not limited to crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;*
 - (e) Become addicted to or is an abuser of alcohol, drugs, or any illegal substance;*
 - (f) Developed a physical or mental disability or other condition that presents a danger in continuing to practice acupuncture to patients, the public, or other health care personnel;*
 - (g) Knowingly made or caused to be made or aided or abetted in the making of a false statement in any document executed in connection with the practice of acupuncture;*
 - (h) Aided assisted or abetted the unlawful practice of medicine or acupuncture;*
 - (i) Willfully violated a confidential communication;*
 - (j) Performed the services of an acupuncturist in an unprofessional, incompetent, or grossly or chronically negligent manner;*
 - (k) Been removed, suspended, expelled, or placed on probation by any health care facility or professional society for unprofessional conduct, incompetence, negligence, or violation of any provision of this section;*
 - (l) Violated any applicable provision of a statute or administrative regulation relating to acupuncture practice;*
 - (m) Violated any term of a final order or agreed order issued by the board; or*
 - (n) Failed to complete the required number of hours of approved continuing education.*
- (2) All disciplinary proceedings against an acupuncturist shall be conducted in accordance with the provisions of KRS 311.591, 311.592, 311.593, 311.599 and KRS Chapter 13B and related administrative regulations promulgated under KRS Chapter 311.*
- (3) (a) The board may issue a written admonishment to the certified acupuncturist, when in the judgment of the board:*
- 1. An alleged violation is not of a serious nature; and*
 - 2. The evidence presented to the board after the investigation, including an appropriate opportunity for the certified acupuncturist to respond, provides a clear indication that the alleged violation did in fact occur.*
- (b) A copy of the admonishment shall be placed in the permanent file of the certified acupuncturist.*

- (c) *The certified acupuncturist shall have the right to file a response to the admonishment within thirty (30) days of its receipt and to have the response placed in the permanent certification file.*
- (d) *The certified acupuncturist may alternatively, within thirty (30) days of the admonishment's receipt, file a request for a hearing with the board.*
- (e) *Upon receipt of a request for a hearing the board shall set aside the written admonishment and set the matter for a hearing under the provisions of KRS Chapter 13B.*
- (4) *At any time during the investigative or hearing processes, the board may enter into an agreed order or accept an assurance of voluntary compliance with the certified acupuncturist which effectively deals with the complaint.*
- (5) *The board may, upon the agreement of the aggrieved party, use mediation to handle disciplinary matters. The board may appoint any member or members of the board, any staff member, or any other person or combination thereof to serve in the mediation process.*
- (6) *The board may reconsider, modify, or reverse its disciplinary actions.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The board, before suspending, revoking, imposing probationary or supervisory conditions upon a certified acupuncturist, imposing an administrative fine, issuing a written reprimand, or any combination of these actions regarding any certified acupuncturist under the provisions of Sections 1 to 16 of this Act, shall set the matter for a hearing under the provisions of KRS Chapter 13B.*
- (2) *After denying an application under the provisions of Sections 1 to 16 of this Act or issuing a written admonishment, the board at the request of the aggrieved party shall grant a hearing under the provisions of KRS Chapter 13B.*
- (3) *Except for final orders denying an initial application or renewal for certification or final orders issued pursuant to KRS 13B.125(3), all final orders of the board affecting an acupuncturist's certificate shall become effective thirty (30) days after notice is given to the certificate holder unless otherwise agreed; however, the board's panels may provide that a final order be effective immediately when, in the panel's opinion, based upon sufficient reasonable cause, the health, welfare, and safety of patients or the general public would be endangered by delay.*
- (4) *Any acupuncturist who is aggrieved by a final order of the board denying an initial or renewal application for certification or rendering disciplinary action against a certificate holder may seek judicial review of the order by filing a petition with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B. Decisions of the board's panels relating to petitions for reinstatement of revoked certificates are not final orders for purposes of this statute, and are not subject to judicial review.*
- (5) *The court shall not award injunctive relief against the board without providing the board with the reasonable opportunity to be heard.*
- (6) *An acupuncturist whose certificate has been revoked may, after five (5) years from the effective date of the revocation order, petition the board to reissue the certificate to again practice acupuncture in the Commonwealth of Kentucky.*
- (7) *The board shall not be required to issue a new certificate, and a decision of the board not to reissue a certificate shall not be subject to judicial review. A certificate shall not be reissued following a petition under subsection (6) of this section unless the former certificate holder satisfies the board that he or she is presently of good moral character and qualified both physically and mentally to resume the practice of medicine without undue risk or danger to patients or the public.*
- (8) *In the event the board reissues a revoked certificate under the circumstances as described in this section, the reissued certificate shall be under probation for a period of not less than two (2) years nor more than five (5) years, with conditions fixed by the board, including a condition that any violation of the remaining conditions of probation shall result in automatic revocation of the certificate.*

SECTION 16. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *At any time when an inquiry panel established under KRS 311.591 has probable cause to believe that an acupuncturist has violated the terms of an agreed order as defined in KRS 311.550(19), or violated the terms of a disciplinary order, or that an acupuncturist's practice constitutes a danger to the health, welfare, or safety of patients or the general public, the inquiry panel may issue an emergency order in accordance with KRS 13B.125 suspending, limiting or restricting the acupuncturist's certificate.*
- (2) *For the purposes of a hearing conducted under KRS 311.592 on an emergency order issued under this section, the findings of fact in the emergency order shall constitute a rebuttable presumption of substantial evidence of a violation of law that constitutes immediate danger to the health, welfare, or safety of patients or the general public. For the purposes of this hearing only, hearsay shall be admissible and may serve as a basis of the board's findings.*
- (3) *An emergency order as described in subsection (1) of this section shall not be issued unless grounds exist for the issuance of a complaint. The inquiry panel shall issue a complaint prior to the date of the emergency hearing or the emergency order shall become void.*
- (4) *An emergency order suspending, limiting or restricting a certificate shall not be maintained after a final order as defined in KRS 311.550(20) is served on the charged acupuncturist pursuant to the proceeding on the complaint. An appeal of an emergency order shall not prejudice the board from proceeding with the complaint.*

Approved April 24, 2006.