

CHAPTER 24

(SB 29)

AN ACT relating to acupuncture.

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

➔Section 1. KRS 311.671 is amended 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 *licensed*~~certified~~ as provided in KRS 311.671 to 311.686. ~~After July 12, 2006,~~ It shall be unlawful for any person not *licensed*~~certified~~ under KRS 311.671 to 311.686 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 KRS 311.671 to 311.686 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 *licensed*~~certified~~ acupuncturist.

➔Section 2. KRS 311.672 is amended to read as follows:

In KRS 311.671 to 311.686, the following words and phrases shall have the meanings given to them, unless the context clearly indicates otherwise:

- (1) "Acupuncturist" means an individual *licensed*~~certified~~ to practice acupuncture by the board;
- (2) "Board" means the State Board of Medical Licensure;
- (3) "Committee" means the Acupuncture Advisory Committee under the State Board of Medical Licensure;
- (4) "*Licensure*"~~"Certification"~~ means *licensure*~~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. KRS 311.673 is amended to read as follows:

- (1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the *licensure*~~certification~~ and regulation, including temporary *licensure*~~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 *licensure*~~certification~~;
 - (b) *Licensure*~~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; and
 - (d) Four (4) acupuncture practitioners *licensed*~~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. KRS 311.674 is amended to read as follows:

- (1) To be *licensed*~~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 *licensure*~~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 *licensed*~~certified~~ by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth.~~[An applicant who submits his or her application for certification within the six (6) months immediately following July 12, 2006, shall be certified by the board as an acupuncturist if the applicant meets the requirements of subsection (1)(a) to (e) 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 *license*~~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 *licensure*~~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 *licensure*~~[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 *licensure*~~[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 *license*~~[certificate]~~ may be appealed pursuant to KRS 311.593.

➔Section 5. KRS 311.675 is amended 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 *license*~~[certificate]~~ to practice as an acupuncturist is eligible under the applicable provisions of KRS 311.671 to 311.686, the executive director may issue to the applicant, on behalf of the board, a temporary *license*~~[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 *license*~~[certificate]~~ is canceled by the executive director. The executive director may cancel the temporary *license*~~[certificate]~~ at any time without a hearing, for reasons deemed sufficient with appropriate consultation with the *board*~~[president]~~, and the executive director shall cancel the temporary *license*~~[certificate]~~ immediately upon direction by the board or upon the board's denial of the application for a *license*~~[certificate]~~. The temporary *license*~~[certificate]~~ shall not be renewable.
- (2) The executive director shall present to the board the application for *licensure*~~[certification]~~ made by the holder of the temporary *license*~~[certificate]~~. If the board issues a regular *license*~~[certificate]~~ to the holder of a temporary *license*~~[certificate]~~, the fee paid in connection with the temporary *license*~~[certificate]~~ shall be applied to the regular *license*~~[certificate]~~ fee.
- (3) If the executive director cancels a temporary *license*~~[certificate]~~, he or she shall promptly notify, by United States certified mail, the holder of the temporary *license*~~[certificate]~~ at the last known address on file with the board. The temporary *license*~~[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. KRS 311.676 is amended to read as follows:

- (1) An acupuncture practitioner shall use the designation "*licensed*~~[certified]~~ acupuncturist" or "*L.Ac.*"~~["C.Ac."]~~ following his or her name in all advertisements, professional literature, and billings used in connection with his or her practice.
- (2) The *license*~~[certification]~~ issued by the board shall be conspicuously displayed in the *licensed*~~[certified]~~ acupuncture practitioner's place of business.
- (3) A person who is not *licensed*~~[certified]~~ under KRS 311.671 to 311.686 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. KRS 311.678 is amended 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, *license*~~[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 8. KRS 311.680 is amended to read as follows:

- (1) Every *licensed*~~[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 9. KRS 311.681 is amended to read as follows:

- (1) Any person **licensed**~~[certified]~~ as an acupuncturist shall renew his or her **license**~~[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 **license**~~[certificate]~~ expires. A **license**~~[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 **licensed**~~[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 **licensed**~~[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 **license**~~[certification]~~ upon payment of the renewal fee and a late-renewal fee as established by the board in administrative regulation.
- (4) Any **license**~~[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 **license**~~[certification]~~ may have his or her **license**~~[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 **license**~~[certificate]~~ shall expire and terminate if not renewed. Renewal of a suspended **license**~~[certificate]~~ shall not entitle the **licensed**~~[certified]~~ practitioner to practice until the suspension has ended or the right to practice has been restored by the board.
- (6) A revoked **license**~~[certificate]~~ shall terminate and may not be renewed. If a revoked **license**~~[certificate]~~ is reinstated, the **licensed**~~[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 **license**~~[certificate]~~ within five (5) years of its termination, the **license**~~[certificate]~~ shall not be renewed, restored, reissued, or reinstated. The person shall obtain a new **license**~~[certificate]~~ under the conditions established in KRS 311.674.

➔Section 10. KRS 311.682 is amended to read as follows:

- (1) The board shall, by administrative regulation, prescribe continuing education requirements not to exceed thirty (30) hours biennially, as a condition for renewal of a *license*~~[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.
- (2) The board shall have the authority to set a fee for each continuing education provider.
- (3) The *licensed*~~[certified]~~ practitioner shall retain in his or her records the certificates of completion of continuing professional education requirements to prove compliance with this section.
- (4) 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 11. KRS 311.683 is amended to read as follows:

- (1) A person *licensed*~~[certified]~~ under KRS 311.674 and 311.675 may apply for inactive status upon submitting an application and paying an inactive-status fee.
- (2) An inactive *license*~~[certificate]~~ may be reactivated upon application to the board. If a *license*~~[certificate]~~ has been inactive for more than five (5) consecutive years, the *licensed*~~[certified]~~ practitioner shall apply for a new *license*~~[certificate]~~ and shall meet all the requirements in existence for a *license*~~[certificate]~~ under KRS 311.674 and 311.675. That application for *licensure*~~[certification]~~ shall require:
 - (a) Evidence of the *license*~~[certificate]~~ holder's payment of an inactive-status fee; and
 - (b) Payment of the initial *licensure*~~[certification]~~ fee.

➔Section 12. KRS 311.684 is amended to read as follows:

- (1) The board may:
 - (a) Revoke a *license*~~[certificate]~~;
 - (b) Suspend a *license*~~[certificate]~~ for a period not to exceed five (5) years;
 - (c) Deny an application for a *license*~~[certificate]~~;
 - (d) Decline to renew a *license*~~[certificate]~~;
 - (e) Indefinitely restrict or limit a *license*~~[certificate]~~;
 - (f) Issue a fine of up to two thousand dollars (\$2,000) per violation and/or the costs of the proceedings;
 - (g) Place a *license*~~[certificate]~~ on probation for a period not to exceed five (5) years;
 - (h) Reprimand the acupuncturist; or
 - (i) Impose any combination of such sanctions, upon proof that the acupuncturist has:
 1. Knowingly made or presented or caused to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other document relating to an application for *licensure*~~[certification]~~;
 2. Practiced, aided, or abetted in the practice of fraud, forgery, deception, collusion, or conspiracy relating to an examination for *licensure*~~[certification]~~;
 3. 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;
 4. 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;
 5. Become addicted to, or is an abuser of, alcohol, drugs, or any illegal substance;

6. 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;
 7. Knowingly made, 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;
 8. Aided, assisted, or abetted the unlawful practice of medicine or acupuncture;
 9. Willfully violated a confidential communication;
 10. Performed the services of an acupuncturist in an unprofessional, incompetent, or grossly or chronically negligent manner;
 11. 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;
 12. Violated any applicable provision of a statute or administrative regulation relating to acupuncture practice;
 13. Violated any term of a final order or agreed order issued by the board; or
 14. 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 KRS 311.591, 311.592, 311.593, ~~and~~ 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 *licensed*~~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 *licensed*~~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 *licensed*~~certified~~ acupuncturist.
- (c) The *licensed*~~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 *licensure*~~certification~~ file.
- (d) The *licensed*~~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 *licensed*~~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 13. KRS 311.685 is amended to read as follows:
- (1) The board, before suspending, revoking, imposing probationary or supervisory conditions upon a *licensed*~~certified~~ acupuncturist, imposing an administrative fine, issuing a written reprimand, or any combination of these actions regarding any *licensed*~~certified~~ acupuncturist under KRS 311.671 to 311.686, shall set the matter for a hearing under the provisions of KRS Chapter 13B.
 - (2) After denying an application under KRS 311.671 to 311.686 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 *licensure*~~{certificate}~~ or final orders issued pursuant to KRS 13B.125(3), all final orders of the board affecting an acupuncturist's *license*~~{certificate}~~ shall become effective thirty (30) days after notice is given to the *license*~~{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 *licensure*~~{certificate}~~ or rendering disciplinary action against a *license*~~{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 *licenses*~~{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 *license*~~{certificate}~~ has been revoked may, after five (5) years from the effective date of the revocation order, petition the board to reissue the *license*~~{certificate}~~ to again practice acupuncture in the Commonwealth of Kentucky.
- (7) The board shall not be required to issue a new *license*~~{certificate}~~, and a decision of the board not to reissue a *license*~~{certificate}~~ shall not be subject to judicial review. A *license*~~{certificate}~~ shall not be reissued following a petition under subsection (6) of this section unless the former *license*~~{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 *license*~~{certificate}~~ under the circumstances as described in this section, the reissued *license*~~{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 *license*~~{certificate}~~.

➔Section 14. KRS 311.686 is amended 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 *license*~~{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 *license*~~{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.

Signed by Governor April 2, 2014.