WEST VIRGINIA CODE CHAPTER 30 ARTICLE 36

WV Legislature

§30-36-1. License required to practice.

In order to protect the life, health and safety of the public, any person practicing or offering to practice as an acupuncturist is required to submit evidence that he or she is qualified to practice, and is licensed as provided in this article. After June 30, 1997, it shall be unlawful for any person not licensed under the provisions of this article 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 this article are not intended to limit, preclude or otherwise interfere with the practice of other health care providers working in any setting and licensed by appropriate agencies or boards of the State of West Virginia whose practices and training may include elements of the same nature as the practice of a licensed acupuncturist.

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§30-36-2. Definitions.

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Acupuncture" means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) "Auricular acudetox" means auricular detoxification therapy, as approved by the board or as stipulated by the National Acupuncture Detoxification Association (NADA) for the treatment of substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery.

(3) "Board" means the West Virginia Acupuncture Board.

(4) "Certificate holder" means an authorization issued by the board to persons trained in auricular acudetox who meet the qualifications, established pursuant to this article and by board rules, to be certified as an auricular detoxification specialist (ADS).

(5) "License" means a license issued by the board to practice acupuncture.

(6) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the acupuncture point.

(7) "NADA" means the National Acupuncture Detoxification Association.

(8) "NADA protocol" means the National Acupuncture Detoxification Association protocol for auricular detoxification therapy.

(9) "Practice acupuncture" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

(b) (1) "Practice acupuncture" includes:

(A) Stimulation of points of the body by the insertion of acupuncture needles;

(B) The application of moxibustion; and

(C) Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

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§30-36-3. Board established.

There is hereby created a state board to be known and designated as the "West Virginia Acupuncture Board."

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§30-36-4. Board membership.

(a) The board shall consist of five members appointed by the Governor with the advise and consent of the Senate.

(1) Three shall be licensed acupuncturists appointed from a list submitted as provided in subsection (c) of this section;

(2) One shall be a member of the general public; and

(3) One shall be a physician licensed to practice medicine in the State of West Virginia.

(b) Each licensed acupuncturist shall:

(1) Be a resident of the state; and

(2) For at least three years immediately prior to appointment have been engaged in the practice of acupuncture in the state.

(c) For each vacancy of an acupuncture member, the board shall compile a list of names to be submitted to the Governor in the following manner:

(1) The board shall notify all licensed acupuncturists in the state of the vacancy to solicit nominations to fill the vacancy;

(2) Each professional association of acupuncturists in the state shall nominate at least two persons for every vacancy; and

(3) Each educational institution that provides acupuncture training in the state shall nominate at least two persons for every vacancy.

(d) The member from the general public:

(1) May not be or ever have been an acupuncturist or in training to become an acupuncturist;

(2) May not have a household member who is an acupuncturist or in training to become an acupuncturist;

(3) May not participate or ever have participated in a commercial or professional field related to acupuncture;

(4) May not have a household member who participates in a commercial or professional field related to acupuncture; and

(5) May not have had within two years prior to appointment a substantial financial interest in a person regulated by the board.

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(e) While a member of the board, the member from the general public may not have a substantial financial interest in a person regulated by the board.

(f) Before taking office, each appointee to the board shall take and subscribe to the oath prescribed by section 5, article IV of the Constitution of this state.

(g) Tenure; vacancies.

(1) The term of a member is three years.

(2) The terms of members are staggered from July 1, 1996. The terms of the members first appointed shall expire as designated by the Governor at the time of the nomination, one at the end of the first year, two at the end of the second year, and two at the end of the third year. As these original appointments expire, each subsequent appointment shall be for a full three-year term.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member may not serve more than two consecutive full terms.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(h) The Governor may remove any member from the board for neglect of any duty required by law or for incompetence or unethical or dishonorable conduct.

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§30-36-5. Officers.

From among its members, the board shall elect officers in a manner and for terms that the board determines.

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§30-36-6. Quorum; meetings; reimbursement; staff.

(a) A majority of the full authorized membership of the board constitutes a quorum.

(b) The board shall meet at least twice a year, at the times and places that it determines.

(c) Each member of the board is entitled to reimbursement of travel and other necessary expenses actually incurred while engaging in board activities. All reimbursement of expenses shall be paid out of the acupuncture board fund created by the provisions of this article.

(d) The board may employ such staff as necessary to perform the functions of the board, including an administrative secretary, and pay all personnel from the acupuncture board fund in accordance with the state budget.

(e) The board may contract with other state boards or state agencies to share offices, personnel and other administrative function as authorized under this article.

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§30-36-7. Rule-making authority; miscellaneous powers and duties.

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of §29A-3-1 et seq. of this code.

(b) The board may adopt a code of ethics for licensure.

(c) In addition to the powers set forth elsewhere in this article, the board shall keep:

(1) Records and minutes necessary for the orderly conduct of business; and

(2) A list of each currently licensed acupuncturist.

(d) The board may propose emergency legislative rules upon the effective date of the reenactment of this article during the 2019 regular session of the Legislature to effectuate the provisions necessary to issue certificates to persons trained in auricular acudetox, and to establish fees for certificate holders pursuant to this article.

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§30-36-8. Acupuncture board fund; fees; expenses; disposition of funds.

(a) There is hereby established an acupuncture board fund in the State Treasurer's office.

(b) The board may set reasonable fees for the issuance and renewal of licenses and its other services. All funds to cover the compensation and expenses of the board members or staff shall be generated by the fees set under this subsection.

(c) The board shall pay all fees collected under the provisions of this article to the State Treasurer.

(d) The fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board as provided by the provisions of this article. The fund is a continuing, nonlapsing fund. Any unspent portions of the fund may not be transferred or revert to the General Revenue Fund of the state, but shall remain in the fund to be used for the purposes specified in this article.

(e) The Legislative Auditor shall audit the accounts and transactions of the fund.

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§30-36-9. License or certificate required; exemptions.

(a) Except as otherwise provided in this article, an individual shall be licensed or certified by the board before he or she may practice acupuncture or auricular acudetox in this state.

(b) This section does not apply to:

(1) An individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; or

(2) A student, trainee, or visiting teacher who is designated as a student, trainee, or visiting teacher while participating in a course of study or training under the supervision of a licensed acupuncturist in a program that is approved by the board or the State Board of Education.

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§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.

(a) To qualify for a license, an applicant shall:

(1) Be free of a felony conviction bearing a rational nexus to the profession pursuant to §30-1-24 of this code;

(2) Be at least 18 years of age;

(3) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training, or demonstrated experience:

(A) Graduation from a course of training of at least 1,800 hours, including 300 clinical hours, that is:

(i) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

(ii) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

(B) Achievement of a passing score on an examination that is:

(i) Given by the national commission for the certification of acupuncturists; or

(ii) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

(C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(D) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least 500 patient visits per year; and

(4) Achievement of any other qualifications that the board establishes in rules.

(b) Notwithstanding any other provisions of this code to the contrary, to qualify for a certificate as an auricular detoxification specialist, an applicant shall:

(1) Be at least 18 years old;

(2) Be authorized in this state to engage in any of the following:

(A) Physician assistant, pursuant to §30-3E-1 *et seq.* of this code;

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(B) Dentist, pursuant to §30-4-1 *et seq.* of this code;

(C) Registered professional nurse, pursuant to §30-7-1 *et seq.* of this code;

(D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this code;

(E) Psychologist, pursuant to §30-21-1 *et seq.* of this code;

(F) Occupational therapist, pursuant to §30-28-1 *et seq.* of this code;

(G) Social worker, pursuant to §30-30-1 *et seq.* of this code;

(H) Professional counselor, pursuant to §30-31-1 *et seq.* of this code;

(I) Emergency medical services provider, pursuant to §16-4C-1 *et seq.* of this code;

(J) Corrections medical providers, pursuant to §15A-1-1 *et seq.* of this code; or

(K) Any other profession the board determines is eligible to engage in the practice of auricular acudetox.

(3) Provide evidence of successful completion of a board-approved auricular acudetox program;

(4) Submit a completed application as prescribed by the board; and

(5) Submit the appropriate fees as provided for by legislative rule.

(c) A certificate may be issued to a retired or inactive professional as described in §30-36-10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder and the last three years of professional activity were performed in good standing: *Provided, however*, That a person who holds a certificate or its equivalent in another jurisdiction as an auricular detoxification specialist may be approved by the board to practice auricular acudetox during a public health emergency or state of emergency for a duration to be provided for in legislative rules of the board.

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§30-36-11. Applications for license.

To apply for a license, an applicant shall:

(a) Submit an application to the board on the form that the board requires; and

(b) Pay to the board the application fee set by the board.

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§30-36-12. Issuance of license.

The board shall issue a license to any applicant who meets the requirements of this article and the rules adopted by the board pursuant to this article.

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§30-36-13. Scope of license.

Except as otherwise provided in this article, a license authorizes the licensee to practice acupuncture while the license is effective.

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§30-36-14. Term and renewal of licenses and certificates; restrictions; and advertisements.

(a) Terms of license and certificate:

(1) The board shall provide for the term and renewal of licenses and certificates under this section;

(2) The term of a license or certificate may not be more than three years;

(3) A license or a certificate expires at the end of its term, unless the license or certificate is renewed for a term as provided by the board.

(b) Renewal notice. At least one month before the license or certificate expires, the board shall send to the licensee or certificate holder, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Applications for renewal. Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the board a renewal fee set by the board; and

(3) Submits to the board:

(A) A renewal application on the form that the board requires; and

(B) Satisfactory evidence of compliance with any continuing education requirements set under this section for license or certificate renewal.

(d) In addition to any other qualifications and requirements established by the board, the board may establish continuing education requirements as a condition to the renewal of licenses and certificates under this section.

(e) The board shall renew the license of and issue a renewal certificate to each licensee and certificate holder who meets the requirements of this section.

(f) A licensee may advertise only as permitted by rules adopted by the board.

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(g) A certificate holder recognized as an auricular detoxification specialist is prohibited from needling any acupuncture body points beyond the scope of auricular acudetox, and may not advertise themselves as an acupuncturist: Provided, That nothing contained in this section prohibits a person from practicing within his or her scope of practice as authorized by law.

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§30-36-15. Reciprocal licensure of acupuncturists from other states or countries.

(a) The acupuncture board may by reciprocity license acupuncturists in this state who have been legally registered or licensed acupuncturists in another state: Provided, That the applicant for such licensure shall meet the requirements of the rules for reciprocity promulgated by the board in accordance with the provisions of chapter twenty-nine-a of this code: Provided, however, That reciprocity is not authorized for acupuncturists from another state where that state does not permit reciprocity to acupuncturists licensed in West Virginia.

(b) The board may refuse reciprocity to acupuncturists from another country unless the applicant qualifies under such rules as may be promulgated by the board for licensure of foreign applicants.

(c) Applicants for licensure under this section shall, with their application, forward to the board the established fee.

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§30-36-16. Inactive status; reinstatement of expired license.

(a) The board shall place a licensee on inactive status if the licensee submits to the board:

(1) An application for inactive status on the form required by the board; and

(2) The inactive status fee set by the board.

(b) The board shall issue a license to an individual who is on inactive status if the individual complies with the renewal requirements that exist at the time the individual changes from inactive to active status.

(c) The board shall reinstate the license of a former licensee who has failed to renew the license for any reason if the former licensee:

(1) Meets the renewal requirements of section fourteen of this article; and

(2) Pays to the board a reinstatement fee set by the board.

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§30-36-17. Surrender of license by licensee or certificate by certificate holder.

(a) Unless the board agrees to accept the surrender of a license or certificate, a licensee or certificate holder may not surrender the license or certificate nor may the license or certificate lapse by operation of law while the licensee or certificate holder is under investigation or while charges are pending against the licensee or certificate holder.

(b) The board may set conditions on its agreement with the licensee or certificate holder under investigation or against whom charges are pending to accept surrender of the license or certificate.

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§30-36-18. Reprimands, probations, suspensions and revocations; grounds.

The board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee or certificate holder, place any licensee or certificate holder on probation, or suspend or revoke a license or certificate if the licensee or certificate holder:

(1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant or licensee or certificate holder or for another;

(2) Fraudulently or deceptively:

(A) Uses a license or certificate; or

(B) Solicits or advertises.

(3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture or auricular acudetox;

(4) Is professionally, physically, or mentally incompetent;

(5) Provides professional services while:

(A) Under the influence of alcohol; or

(B) Using any narcotic or controlled substance, as defined in §60A-1-101 of this code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

(6) Knowingly violates any provision of this article or any rule of the board adopted under this article;

(7) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(8) Practices acupuncture or auricular detoxification therapy with an unauthorized person or assists an unauthorized person in the practice of acupuncture or auricular detoxification therapy;

(9) Is disciplined by the licensing or disciplinary authority of this state or any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;

(10) Willfully makes or files a false report or record in the practice of acupuncture or auricular detoxification therapy;

(11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the

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report;

(12) Submits a false statement to collect a fee; or

(13) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists and other licensed health care professionals in cases of this nature.

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§30-36-19. Due process procedure.

(a) Upon filing with the board a written complaint charging a person with being guilty of any of the acts described in section sixteen of this article, the administrative secretary or other authorized employee of the board shall provide a copy of the complaint or list of allegations to the person about whom the complaint was filed. That person will have twenty days thereafter to file a written response to the complaint. The board shall thereafter, if the allegations warrant, make an investigation. If the board finds reasonable grounds for the complaint, a time and place for a hearing shall be set, notice of which shall be served on the licensee or applicant at least fifteen calendar days in advance of the hearing date. The notice shall be by personal service or by certified or registered mail sent to the last known address of the person.

(b) The board may petition the circuit court for the county within which the hearing is being held to issue subpoenas for the attendance of witnesses and the production of necessary evidence in any hearing before it. Upon request of the respondent or of his or her counsel, the board shall petition the court to issue subpoenas in behalf of the respondent. The circuit court upon petition may issue such subpoenas as it deems necessary.

(c) Unless otherwise provided in this article, hearing procedures shall be promulgated in accordance with, and a person who feels aggrieved by a decision of the board may take an appeal pursuant to, the administrative procedures in this state as provided in chapter twenty-nine-a of this code.

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§30-36-20.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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