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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

COM. SUB. FOR
HOUSE BILL No. 4200

(By Delegates FLEISCHAUER, GALLAGHER, COMPTON,
MEZZATESTA, AMORES AND PETERSEN)



Passed MARCH 9, 1996

In Effect NINETY DAYS FROM Passage

RECEIVED
COMMISSIONER
MAY 1 1996

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4200

(BY DELEGATES FLEISCHAUER, GALLAGHER, COMPTON, MEZZATESTA,
AMORES AND PETERSEN)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-five, relating to requiring licensing for acupuncturists; definitions; creating an acupuncture board; board membership; officers; quorum; meetings; reimbursement; staff; rule making authority; powers and duties; acupuncture board fund; fees; expenses; disposition of funds; license required; exemptions; qualifications of applicants; applications for licenses; issuance of license; scope of license; term and renewal of licenses; advertisements; reciprocity; inactive status; reinstatement of expired license; surrender of license; reprimands, probations, suspensions and revocation; grounds; due process procedure.

Be it enacted by the Legislature of West Virginia:

That chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirty-five, to read as follows:

ARTICLE 35. ACUPUNCTURISTS.

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MARCH 11 1996

§30-35-1. License required to practice.

1 In order to protect the life, health and safety of the
2 public, any person practicing or offering to practice as an
3 acupuncturist is required to submit evidence that he or she
4 is qualified to practice, and is licensed as provided in this
5 article. After the thirtieth day of June, one thousand nine
6 hundred ninety-seven, it shall be unlawful for any person
7 not licensed under the provisions of this article to practice
8 acupuncture in this state, or to use any title, sign, card or
9 device to indicate that he or she is an acupuncturist. The
10 provisions of this article are not intended to limit, preclude
11 or otherwise interfere with the practice of other health care
12 providers working in any setting and licensed by
13 appropriate agencies or boards of the state of West
14 Virginia whose practices and training may include
15 elements of the same nature as the practice of a licensed
16 acupuncturist.

§30-35-2. Definitions.

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

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

7 (2) "Board" means the West Virginia acupuncture
8 board.

9 (3) "License" means a license issued by the board to
10 practice acupuncture.

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

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

18 (b) "Practice acupuncture" includes:

19 (1) Stimulation of points of the body by the insertion
20 of acupuncture needles;

21 (2) The application of moxibustion; and

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

§30-35-3. Board established.

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

§30-35-4. Board membership.

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

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

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

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

9 (b) Each licensed acupuncturist shall:

10 (1) Be a resident of the state; and

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

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

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

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

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

26 (d) The member from the general public:

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

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

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

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

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

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

42 (f) Before taking office, each appointee to the board
43 shall take and subscribe to the oath prescribed by section
44 5, article IV of the constitution of this state.

45 (g) Tenure; vacancies.

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

47 (2) The terms of members are staggered from the first
48 day of July, one thousand nine hundred ninety-six. The
49 terms of the members first appointed shall expire as
50 designated by the governor at the time of the nomination,
51 one at the end of the first year, two at the end of the
52 second year, and two at the end of the third year. As these
53 original appointments expire, each subsequent
54 appointment shall be for a full three-year term.

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

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

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

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

§30-35-5. Officers.

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

§30-35-6. Quorum; meetings; reimbursement; staff.

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

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

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

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

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

**§30-35-7. Rule-making authority; miscellaneous powers and
duties.**

1 (a) The board may propose for promulgation
2 legislative rules to carry out the provisions of this article in
3 accordance with the provisions of article three, chapter
4 twenty-nine-a of this code.

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

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

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

11 (2) A list of each currently licensed acupuncturist.

**§30-35-8. Acupuncture board fund; fees; expenses; disposition
of funds.**

1 (a) There is hereby established an acupuncture board
2 fund in the state treasurer's office.

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

8 (c) The board shall pay all fees collected under the
9 provisions of this article to the state treasurer.

10 (d) The fund shall be used exclusively to cover the
11 actual documented direct and indirect costs of fulfilling
12 the statutory and regulatory duties of the board as
13 provided by the provisions of this article. The fund is a
14 continuing, nonlapsing fund. Any unspent portions of the
15 fund may not be transferred or revert to the general
16 revenue fund of the state, but shall remain in the fund to
17 be used for the purposes specified in this article.

18 (e) The legislative auditor shall audit the accounts and
19 transactions of the fund.

§30-35-9. License required; exemptions.

1 (a) Except as otherwise provided in this article, an

2 individual shall be licensed by the board before he or she
3 may practice acupuncture in this state.

4 (b) This section does not apply to:

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

8 (2) A student, trainee or visiting teacher who is
9 designated as a student, trainee or visiting teacher while
10 participating in a course of study or training under the
11 supervision of a licensed acupuncturist in a program that
12 is approved by the board or the state board of education.

§30-35-10. Qualifications of applicants.

1 To qualify for a license, an applicant shall:

2 (a) Be of good moral character;

3 (b) Be at least 18 years of age;

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

7 (1) Graduation from a course of training of at least
8 one thousand, eight hundred hours, including three
9 hundred clinical hours, that is:

10 (A) Approved by the national accreditation
11 commission for schools and colleges of acupuncture and
12 oriental medicine; or

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

17 (2) Achievement of a passing score on an
18 examination that is:

19 (A) Given by the national commission for the
20 certification of acupuncturists; or

21 (B) Determined by the board to be equivalent to the

22 examination given by the national commission for the
23 certification of acupuncturists;

24 (3) Successful completion of an apprenticeship
25 consisting of at least two thousand, seven hundred hours
26 within a five-year period under the direction of an
27 individual properly approved by that jurisdiction to
28 perform acupuncture; or

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

34 (d) Achievement of any other qualifications that the
35 board establishes in rules.

§30-35-11. Applications for license.

1 To apply for a license, an applicant shall:

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

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

§30-35-12. Issuance of license.

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

§30-35-13. Scope of license.

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

§30-35-14. Term and renewal of licenses; advertisements.

1 (a) Terms of license:

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

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

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

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

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

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

16 (3) The amount of the renewal fee.

17 (c) Applications for renewal. Before the license
18 expires, the licensee periodically may renew it for an
19 additional term, if the licensee:

20 (1) Otherwise is entitled to be licensed;

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

23 (3) Submits to the board:

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

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

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

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

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

§30-35-15. Reciprocal licensure of acupuncturists from other states or countries.

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

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

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

§30-35-16. Inactive status; reinstatement of expired license.

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

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

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

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

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

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

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

§30-35-17. Surrender of license by licensee.

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

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

§30-35-18. Reprimands, probations, suspensions and revocations; grounds.

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

5 (a) Fraudulently or deceptively obtains or attempts to
6 obtain a license for the applicant or licensee or for
7 another;

8 (b) Fraudulently or deceptively:

9 (1) Uses a license; or

10 (2) Solicits or advertises.

11 (c) Is guilty of immoral or unprofessional conduct in
12 the practice of acupuncture;

13 (d) Is professionally, physically or mentally incom-
14 petent;

15 (e) Provides professional services while:

16 (1) Under the influence of alcohol; or

17 (2) Using any narcotic or controlled substance, as
18 defined in section one hundred one, article one, chapter
19 sixty-a of this code, or other drug that is in excess of
20 therapeutic amounts or without a valid medical indication;

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

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

27 (h) Practices acupuncture with an unauthorized
28 person or assists an unauthorized person in the practice of
29 acupuncture;

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

35 (j) Willfully makes or files a false report or record in
36 the practice of acupuncture;

37 (k) Willfully fails to file or record any report as
38 required by law, willfully impedes or obstructs the filing
39 or recording of the report, or induces another to fail to file
40 or record the report;

41 (l) Submits a false statement to collect a fee; or

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

§30-35-19. Due process procedure.

1 (a) Upon filing with the board a written complaint
2 charging a person with being guilty of any of the acts
3 described in section sixteen of this article, the
4 administrative secretary or other authorized employee of
5 the board shall provide a copy of the complaint or list of
6 allegations to the person about whom the complaint was

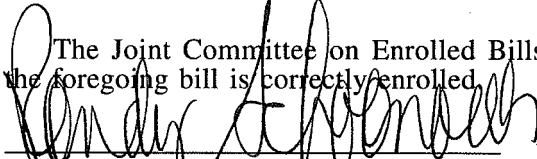
7 filed. That person will have twenty days thereafter to file a
8 written response to the complaint. The board shall
9 thereafter, if the allegations warrant, make an investigation.
10 If the board finds reasonable grounds for the complaint, a
11 time and place for a hearing shall be set, notice of which
12 shall be served on the licensee or applicant at least fifteen
13 calendar days in advance of the hearing date. The notice
14 shall be by personal service or by certified or registered
15 mail sent to the last known address of the person.

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

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

Enr. Com. Sub. for H. B. 4200] 14

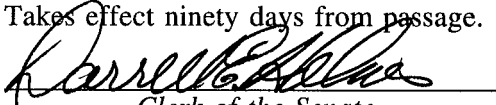
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.


Chairman Senate Committee

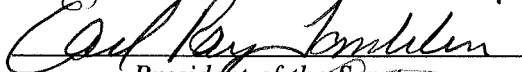

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 1st
day of April, 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date

3/22/46

Time

9:14am