

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2324

BY DELEGATE SUMMERS AND PUSHKIN

[Passed February 21, 2019; in effect ninety days from
passage.]

AN ACT to amend and reenact §30-36-2, §30-36-7, §30-36-9, §30-36-10, §30-36-14, §30-36-17, and §30-36-18 of the Code of West Virginia, 1931, as amended, all relating to authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy; defining terms; providing rulemaking and emergency rule-making authority; requiring certificates; establishing qualifications for certificate holders; providing for the surrender of certificates; limiting scope; prohibiting advertising; and providing for the suspension or revocation of certificates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. ACUPUNCTURISTS.

§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.

§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.

§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.

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

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

(1) Be of good moral character;

(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;

(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; or

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

(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.

§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.

(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.

§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.

§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 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.