

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2324

BY DELEGATE SUMMERS AND PUSHKIN

[Originating in the Committee on Government

Organization, January 25, 2019.]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-2. Definitions.

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

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

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

10 ~~(2)~~ (3) "Board" means the West Virginia Acupuncture Board.

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

14 ~~(3)~~ (5) "License" means a license issued by the board to practice acupuncture.

15 ~~(4)~~ (6) "Moxibustion" means the burning of mugwort on or near the skin to stimulate the
16 acupuncture point.

17 (7) “NADA” means the National Acupuncture Detoxification Association.

18 (8) “NADA protocol” means the National Acupuncture Detoxification Association protocol
19 for auricular detoxification therapy.

20 ~~(5)~~ (9) “Practice acupuncture” means the use of oriental medical therapies for the purpose
21 of normalizing energetic physiological functions including pain control, and for the promotion,
22 maintenance, and restoration of health.

23 (b) (1) “Practice acupuncture” includes:

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

25 (B) The application of moxibustion; and

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

28 ~~(2) The practice of acupuncture does not include the procedure of auricular acupuncture~~
29 ~~when used in the context of a chemical dependency treatment program when the person is trained~~
30 ~~and approved by the National Acupuncture Detoxification Association or an equivalent certifying~~
31 ~~body.~~

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

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

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

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

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

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

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

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

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

3 (b) This section does not apply to:

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

6 (2) A student, trainee or visiting teacher who is designated as a student, trainee or visiting
7 teacher while participating in a course of study or training under the supervision of a licensed
8 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.

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

2 ~~(a)~~ (1) Be of good moral character;

3 ~~(b)~~ (2) Be at least 18 years of age;

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

6 ~~(4)~~ (A) Graduation from a course of training of at least 1800 hours, including 300 clinical
7 hours, that is:

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

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

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

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

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

16 ~~(3)~~ (C) Successful completion of an apprenticeship consisting of at 2700 hours within a
17 five-year period under the direction of an individual properly approved by that jurisdiction to
18 perform acupuncture; or

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

22 ~~(4)~~ (4) Achievement of any other qualifications that the board establishes in rules.

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

25 (1) Be at least 18 years old;

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

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

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

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

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

31 (E) Chiropractor, pursuant to §30-16-1 et seq. of this code;

32 (F) Physical therapist, pursuant to §30-20-1 et seq. of this code;

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

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

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

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

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

38 (L) Correctional officer, pursuant to §25-1-1 et seq. of this code.

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

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

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

43 (c) A certificate may be issued to a retired or inactive professional as described in §30-36-
44 10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder
45 and the last three years of professional activity was performed in good standing: *Provided*,
46 *however*, That a person who holds a certificate or its equivalent in another jurisdiction as an
47 auricular detoxification specialist, may be approved by the board to practice auricular acudetox
48 during a public health emergency or state of emergency, for a duration to be provided for in
49 legislative rules of the board.

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

1 (a) Terms of license:

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

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

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

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

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

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

13 (3) The amount of the renewal fee.

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

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

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

19 (3) Submits to the board:

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

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

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

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

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

29 (g) A certificate holder, recognized as an auricular detoxification specialist, is prohibited
30 from needling any acupuncture body points beyond the scope of auricular acudetox, and may not
31 advertise themselves as an acupuncturist.

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

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

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

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

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

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

6 ~~(b)~~ (2) Fraudulently or deceptively:

7 ~~(1)~~ (A) Uses a license or certificate; or

8 ~~(2)~~ (B) Solicits or advertises.

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

11 ~~(d)~~ (4) Is professionally, physically or mentally incompetent;

12 ~~(e)~~ (5) Provides professional services while:

13 ~~(1)~~ (A) Under the influence of alcohol; or

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

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

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

21 ~~(h)~~ (8) Practices acupuncture or auricular detoxification therapy with an unauthorized
22 person or assists an unauthorized person in the practice of acupuncture or auricular detoxification
23 therapy;

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

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

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

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

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

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.