

CHAPTER 316
FORMERLY
HOUSE BILL NO. 387

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO ACUPUNCTURE PRACTITIONERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 24, Chapter 17, Subchapter X as follows:

Subchapter X. Acupuncture and Eastern Medicine Practitioners

Section 2. Amend Title 24, § 1796 as follows:

§ 1796 Acupuncture Advisory Council.

(a) The Acupuncture Advisory Council (Council) consists of 5 voting members, and 1 ex officio member. The 5 voting members shall consist of 1 physician member of the Board of Medical Licensure and Discipline who possesses knowledge of acupuncture and 4 Council members licensed and trained in acupuncture or acupuncture and eastern medicine who have been primarily employed in the practice of acupuncture or acupuncture and eastern medicine in this State for at least 3 years immediately prior to appointment. The ex officio member shall be a Delaware physician who has expertise in acupuncture or acupuncture and eastern medicine. The Council may elect officers as necessary.

(c) The Council shall promulgate rules and regulations governing the practice of acupuncture and eastern medicine, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject within a reasonable amount of time proposed rules or regulations submitted to it by the Council.

Section 3. Amend Title 24, § 1797(a) as follows and redesignate accordingly:

(a) As used in this subchapter:

(1) "Acupuncture" is the stimulation of points on the body by the insertion and manipulation of acupuncture needles using both traditional and modern scientific methods of evaluation and point selection. It also refers to a form of health care, based on a theory of energetic physiology that describes and explains the interrelationship of the body organs or functions with an associated acupuncture point or combination of points located on "channels" or "meridians". Acupuncture points shall include the classical points defined in authoritative acupuncture texts and special groupings of acupuncture points elicited using generally accepted diagnostic techniques of eastern medicine and selected for stimulation in accord with its principles and practices. Acupuncture points are stimulated in order to restore the normal function of the aforementioned organs or sets of functions. Acupuncture shall also include the ancillary techniques of eastern medicine including moxibustion, acupressure or other forms of manual meridian therapy and recommendations that include eastern dietary therapy, supplements and lifestyle modifications.

(2) "Board" means the Board of Medical Licensure and Discipline.

(3) "Council" means the Acupuncture Advisory Council.

(4) "License" means, unless the context requires otherwise, a license issued by the Board to practice acupuncture.

(5) "Eastern Medicine" means the practice of acupuncture, Chinese herbology and Asian bodywork therapy as part of a comprehensive health care system encompassing a variety of traditional health care therapies that have been used for more than 3,000 years to diagnose and treat illness, prevent disease and improve well-being.

(6)a. "Practice of acupuncture" means the use of needles with or without electrical stimulation for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

b. Needles used in the practice of acupuncture shall only be pre-packaged, single use, sterile acupuncture needles. These needles shall only be used on an individual patient in a single treatment session and disposed of according to federal standards for biohazard waste.

(7) "Practice of eastern medicine" includes the practice of acupuncture and further means making recommendations or prescriptions based in eastern dietary therapy, supplements and lifestyle modifications according to the principles of eastern medicine. Eastern dietary therapy shall be defined as recommending, advising or furnishing nonfraudulent information about herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, foods, other food supplements, or dietary supplements. For purposes of this paragraph, "fraud" shall be defined as an intentional misrepresentation for financial gain. Legitimate disagreement about the role of the above-listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud. These supplemental techniques may be used within the public domain or by another licensed or registered healthcare or bodywork professional, according to state law or regulation.

Section 4. Amend Title 24, § 1798 as follows:

(a) All applicants must meet the following requirements for licensure by the Board as an acupuncture and eastern medicine practitioner:

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive any of the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

Section 5. Amend Title 24, § 1798 as follows and redesignating accordingly:

(b) All applicants must meet the following requirements for licensure by the Board as an acupuncture practitioner:

(1) Achievement of a Diplomate in Acupuncture from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(8) An acupuncturist who obtains licensure pursuant to this section may go on to become a licensed acupuncture and eastern medicine practitioner by achieving a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized

by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board.

Section 6. Amend Title 24, § 1798 as follows:

(f) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and Board may take necessary action against a licensee who is unable to render acupuncture or eastern medicine services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against a licensee must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a licensee consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members.

(2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning the activity of a licensee and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may recommend that the Board issue an order temporarily suspending the licensee's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Board, unless the licensee or the licensee's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the licensee or the licensee's attorney can be heard in opposition to the proposed suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended licensee requests a continuance of the hearing date. If the licensee requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A licensee whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the licensee or sent by certified mail, return receipt requested, to the licensee's last known address.

c. A licensee whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the licensee received notification of the decision of the Board, to temporarily suspend the licensee's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a licensee's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the licensee pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the

receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended licensee requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

Section 7. Amend Title 24, § 1798A as follows:

§ 1798A Procedure or action not described.

This subchapter governs the practice of acupuncture and eastern medicine practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of acupuncture and eastern medicine practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

Section 8. Amend Title 24, § 1799 as follows:

§ 1799 Fees; license renewal.

The Division of Professional Regulation shall establish reasonable fees for licensing and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to acupuncture pursuant to the continuing education requirements for acupuncture practitioners established by the Acupuncture Advisory Council.

Section 9. Amend Title 24, Chapter 17 as follows:

§ 1799A [Repealed.]

Section 10. Amend Title 24, § 1799B(a) as follows:

(a) Acupuncture or supplemental or eastern medicine techniques may be performed by 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 supervision of a licensed acupuncturist or acupuncture and eastern medicine practitioner in a program that the Council has recommended to the Board for approval. This includes continuing education programs and any acupuncture or eastern medicine programs that are a recognized route to certification as an acupuncturist by the NCCAOM or any Board-approved agency.

Section 11. Amend Title 24, § 1799E as follows and redesignating accordingly:

(b) No person in this State shall use the title "eastern medicine practitioner" or use in connection with that person's name any letters, words, or symbols indicating or implying that the person is a licensed eastern medicine practitioner, or advertise services under the description of "licensed eastern medicine practitioner", unless that person holds a license issued pursuant to this subchapter. Nothing in this subsection shall be construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

Section 12. Amend Title 24, § 1799F as follows and redesignating accordingly:

§ 1799E Acupuncture detoxification specialist (ADS); license required.

(a) An individual who is not licensed as an acupuncturist under this subchapter shall not practice as an acupuncture detoxification specialist using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol for the purpose of preventing and treating alcoholism, nicotine dependency, substance abuse, or chemical dependency in the State without first obtaining a license issued by the Board upon the recommendation of the Council. Applications for licensure shall be upon written forms provided by the Council and Board and upon payment of a fee established by the Division of Professional Regulation. An

applicant for a license to practice as an acupuncture detoxification specialist pursuant to the NADA or equivalent organization auricular point protocol in Delaware must meet the following criteria:

(1) Has successfully completed the NADA auricular point protocol training program or an equivalent training program satisfactory to the Council and Board for the treatment of alcoholism, nicotine dependency, substance abuse, or chemical dependency that meets or exceeds the standards of training set by the NADA including instruction in clean needle technique;

(2) Must provide evidence of a current license or certificate in good standing in a healthcare related profession as approved by the Council and the Board.

(3) Is in good standing as defined in § 1798(a)(4)-(7) of this title.

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board, may waive the requirements of subsection (a)(4) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as an acupuncture detoxification specialist in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare; and

(4) For waiver of a crime substantially related to the practice of acupuncture, more than 5 years have elapsed since the applicant has fully discharged all imposed sentences. As used herein, the term "sentence" includes, but is not limited to, all periods of modification of a sentence, probation, parole or suspension. However, "sentence" does not include fines, restitution or community service, as long as the applicant is in substantial compliance with such fines, restitution and community service.

(c) ADS are prohibited from needling any body acupuncture points and may not advertise themselves as acupuncturists.

(d) ADS shall be subject to the disciplinary provisions of § 1798(e) of this title.

(e) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division and proof of continued competency as established in the Board's regulations.

Section 13. This Act shall take effect 90 days after its enactment into law.

Approved July 19, 2016