

## SENATE BILL No. 363

By Senators O'Donnell, Arpke, Baumgardner, Bruce, Fitzgerald, Francisco, Haley, Hawk, Holland, Holmes, Kelly, Kerschen, King, LaTurner, Longbine, Love, Masterson, McGinn, Olson, Petersen, Pettey, Powell, Smith, Wagle, Wilborn and Wolf

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1 AN ACT concerning the state board of healing arts; relating to the  
2 licensure of acupuncturists; amending K.S.A. 2015 Supp. 65-2872 and  
3 repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Sections 1 through 24, and amendments thereto, shall  
7 be known and may be cited as the acupuncture and oriental medicine  
8 practice act.

9 New Sec. 2. As used in sections 1 through 24, and amendments  
10 thereto:

11 (a) "Act" means the acupuncture and oriental medicine practice act.

12 (b) "Acupuncture" means a distinct system of health care, based on  
13 traditional and modern oriental medical concepts, to examine, evaluate,  
14 diagnose, manage or treat disease, illness, injury, pain or other physical or  
15 mental conditions in order to promote the restoration and maintenance of  
16 health and wellness.

17 (c) "Licensed acupuncturists" means any person licensed by the board  
18 in the practice of acupuncture and oriental medicine.

19 (d) "Auricular detox technician" means a person trained solely in, and  
20 who performs only, auricular detox treatment.

21 (e) "Auricular detox treatment" means a very limited procedure  
22 consisting of acupuncture needles inserted into specified points in the  
23 outer ear of a person undergoing treatment for drug or alcohol abuse or  
24 both drug and alcohol abuse.

25 (f) "Board" means the state board of healing arts.

26 (g) "Council" means the acupuncture advisory council.

27 (h) "Oriental medicine" means Chinese medicine, traditional Chinese  
28 medicine, Asian medicine, East Asian medicine and the other names used  
29 to describe such medical model and the therapies taught within such  
30 medical model.

31 (i) "NCCAOM" means the national certification commission for  
32 acupuncture and oriental medicine. NCCAOM is a national organization  
33 that validates entry-level competency in the practice of acupuncture and  
34 oriental medicine through the administration of professional certification

1 examinations.

2 (j) "Physician" means a person licensed to practice medicine and  
3 surgery in Kansas.

4 (k) "Practice of acupuncture and oriental medicine" means the use,  
5 recommendation and application of oriental medicine therapies, within the  
6 scope of and based on oriental medicine concepts.

7 (1) Oriental medicine therapies include, but are not limited to:

8 (A) Acupuncture treatment and those related techniques which  
9 involve the insertion and removal of needles through the skin at specific  
10 points on the body with or without the palpation of specific points on the  
11 body, with or without manipulation of the needles and with or without the  
12 application of heat sources or electrical current. This includes, but is not  
13 limited to, the techniques sometimes called "dry needling," "trigger point  
14 therapy," "intramuscular therapy," "auricular detox treatment" and similar  
15 terms;

16 (B) mechanical, thermal, pressure, suction, friction, electrical,  
17 magnetic, light, sound, vibration, manual treatment and electromagnetic  
18 treatment;

19 (C) the use, application or recommendation of therapeutic exercises,  
20 breathing techniques, meditation and dietary and nutritional counseling  
21 based on oriental medicine principles; and

22 (D) the use and recommendation of herbal products and nutritional  
23 supplements, according to the acupuncturist's level of training and  
24 certification as a diplomate in oriental medicine or diplomate in herbology  
25 by NCCAOM.

26 (2) Oriental medicine therapies do not include:

27 (A) Dispensing or administering of any controlled substances as  
28 defined in K.S.A. 65-4101, and amendments thereto, or any prescription-  
29 only drugs;

30 (B) medicine and surgery including the use of lasers for surgical  
31 purposes as practiced by physicians and surgeons;

32 (C) osteopathic medicine and surgery or osteopathic manipulative  
33 treatment; or

34 (D) the practice of chiropractic as defined by article 28 of chapter 65  
35 of the Kansas Statutes Annotated, and amendments thereto.

36 New Sec. 3. (a) On and after July 1, 2017, except as otherwise  
37 provided in this act, no person shall practice acupuncture unless such  
38 person possesses a current and valid acupuncture license issued under this  
39 act, is licensed to practice medicine and surgery, is a licensed chiropractor  
40 or is a licensed naturopathic doctor.

41 (b) (1) No person shall depict oneself orally or in writing, expressly  
42 or by implication, as a holder of a Kansas acupuncture license who does  
43 not hold a current and valid acupuncture and oriental medicine license

1 under this act.

2 (2) Only a person licensed as an acupuncturist under the acupuncture  
3 and oriental medicine practice act shall be entitled to use the following  
4 titles, as appropriate: "Licensed acupuncturist," "oriental medicine  
5 practitioner," "practitioner of oriental medicine," abbreviations thereof or  
6 words similar to such titles or the designated letters "L.Ac."

7 (3) Nothing in this section shall be construed to prohibit an  
8 acupuncturist licensed under this act from listing or using in conjunction  
9 with their name any letters, words, abbreviations or other insignia to  
10 designate any educational degrees, certifications or credentials which such  
11 licensed acupuncturist has earned. Each licensee, when using the letters or  
12 term "Dr." or "Doctor" in conjunction with such licensee's professional  
13 practice, whether in any written or oral communication, shall identify  
14 oneself as a doctor of oriental medicine.

15 (4) Only a person licensed as an acupuncturist under this act shall be  
16 entitled, as appropriate, to represent oneself, in any manner, as specializing  
17 in or practicing any form of oriental medicine in the state of Kansas.

18 (c) Needles used in the practice of acupuncture shall only be  
19 prepackaged, single use and sterile needles. These needles shall only be  
20 used on an individual patient in a single treatment session.

21 New Sec. 4. (a) The following shall be exempt from the requirement  
22 of an acupuncture license pursuant to this act:

23 (1) A person licensed to practice medicine and surgery, a licensed  
24 chiropractor or a licensed naturopathic doctor if the person confines the  
25 person's acts or practice to the scope of practice authorized by the other  
26 health professional licensing laws and does not represent to the public,  
27 directly or indirectly, that under this act:

28 (A) The person is licensed under this act; or

29 (B) through the usage of a name, title or other designation, the person  
30 indicates licensure;

31 (2) any herbalist or herbal retailer who does not hold oneself out to be  
32 a licensed acupuncturist;

33 (3) health care providers in the United States armed forces, federal  
34 facilities and other military service when acting in the line of duty in this  
35 state;

36 (4) any student, trainee or visiting teacher of acupuncture, oriental  
37 medicine or herbology who is designated as a student, trainee or visiting  
38 teacher while participating in a course of study or training under the  
39 supervision of a licensed acupuncturist licensed under this act in a program  
40 that the council has approved. This includes continuing education  
41 programs and any acupuncture, oriental medicine or herbology programs  
42 that are a recognized route by the NCCAOM to certification in  
43 acupuncture, oriental medicine or herbology;

1 (5) persons rendering assistance in the case of an emergency or  
2 disaster relief;

3 (6) self-care by a patient or gratuitous care by a family member who  
4 does not represent or hold oneself out to the public to be a licensed  
5 acupuncturist;

6 (7) persons who massage, so long as such persons do not practice  
7 acupuncture and oriental medicine or hold themselves out to be licensed  
8 acupuncturists or oriental medicine practitioners;

9 (8) any team acupuncturist, oriental medicine or herbology  
10 practitioner, who is traveling with and treating those associated with an  
11 out-of-state or national team that is temporarily in the state for training or  
12 competition purposes; and

13 (9) any person who is an auricular detox technician, provided that  
14 such person performs only auricular detox treatments under the  
15 supervision of a licensed acupuncturist.

16 (b) This section shall take effect on and after July 1, 2017.

17 New Sec. 5. (a) An applicant for licensure as an acupuncturist shall  
18 file an application, on forms provided by the board, showing to the  
19 satisfaction of the board that the applicant meets the following  
20 requirements:

21 (1) At the time of application such applicant is at least 21 years of  
22 age;

23 (2) has graduated from a school or an apprenticeship program  
24 recognized by the NCCAOM, or its equivalent, and approved by the board  
25 and satisfies one of the following requirements:

26 (A) Has the active status of a NCCAOM certified diplomate of  
27 acupuncture;

28 (B) has the active status of a NCCAOM certified diplomate of  
29 oriental medicine; or

30 (C) has an equivalent status as recognized by the council and  
31 approved by the board;

32 (3) demonstrates the ability to communicate in the English language  
33 as determined by rules and regulations adopted by the board if English is a  
34 second language for the applicant;

35 (4) has good moral character; and

36 (5) has paid all the fees required for licensure prescribed in section 8,  
37 and amendments thereto, which shall be nonrefundable.

38 (b) Notwithstanding subsection (a), the board may issue a license to a  
39 person who has been in the active practice of acupuncture or oriental  
40 medicine in some other state, territory, the District of Columbia or other  
41 country upon certificate of the proper licensing authority of that state,  
42 territory, District of Columbia or other country certifying that the applicant  
43 is duly licensed, certified or registered, that the applicant's license,

1 certification or registration has never been limited, suspended or revoked,  
2 that the licensee, certification or registration holder has never been  
3 censured or had other disciplinary action taken and that, so far as the  
4 records of such authority are concerned, the applicant is entitled to its  
5 endorsement. The applicant shall also present proof satisfactory to the  
6 board:

7 (1) (A) That the state, territory, District of Columbia or country in  
8 which the applicant last practiced maintains standards at least equal to  
9 those maintained by Kansas;

10 (B) that the applicant's original license, certification or registration  
11 was based upon licensure, certification or registration requirements at least  
12 equal in quality to the state of Kansas licensure requirements pursuant to  
13 this section;

14 (C) of the date of the applicant's original and any and all endorsed  
15 licenses, certifications or registrations and the date and place from which  
16 any license, certification or registration was attained; and

17 (D) that the applicant has been actively engaged in acupuncture and  
18 oriental medicine under such license, certification or registration since  
19 issued, and if not, indicate the time when and reason why the applicant  
20 was out of practice.

21 An applicant for license by endorsement shall not be granted a license  
22 unless such applicant's individual qualifications meet the state of Kansas  
23 requirements;

24 (2) the applicant shall demonstrate the ability to communicate in the  
25 English language, if English is a second language for such applicant, as  
26 determined by rules and regulations adopted by the board; and

27 (3) the applicant shall pay all fees required for licensure as prescribed  
28 by section 8, and amendments thereto, which shall be nonrefundable.

29 (c) The board may issue a license to a person who does not meet the  
30 qualifications listed in subsection (a), but who has practiced acupuncture  
31 and oriental medicine in Kansas during three of the last five years  
32 preceding the effective date of this act. Such applicant shall meet the  
33 following requirements:

34 (1) The applicant shall provide proof of a minimum of 1,350 hours of  
35 study, excluding online study, in the field of acupuncture obtained on or  
36 before July 1, 2017;

37 (2) the applicant's practice shall include a minimum of 1,500 patient  
38 visits to the applicant for the purpose of acupuncture and oriental medicine  
39 services for three of the last five years preceding application for licensure.  
40 Documentation shall include:

41 (A) Two affidavits from office partners, clinic supervisors,  
42 accountants or other individuals approved by the board, who have personal  
43 knowledge of the years of practice and number of patients visiting the

1 applicant for acupuncture and oriental medicine services; and

2 (B) notarized copies of appointment books, patient charts, financial  
3 records or other documentation as required by the board, except that no  
4 personally identifiable patient health information in violation of or  
5 protected by the provisions of the health insurance portability and  
6 accountability act of 1996 shall be disclosed;

7 (3) the applicant must show that any complaints against the applicant  
8 have been absolved or resolved to the satisfaction of the board;

9 (4) the applicant's application for licensure shall be submitted on or  
10 before January 1, 2018;

11 (5) the applicant shall demonstrate the ability to communicate in the  
12 English language, if English is a second language for such applicant, as  
13 determined by rules and regulations adopted by the board; and

14 (6) the applicant shall pay all fees required for licensure as prescribed  
15 by section 8, and amendments thereto, which shall be nonrefundable.

16 (d) Notwithstanding subsections (a) and (c), the board may issue a  
17 license to a person who successfully passes the NCCAOM board  
18 examinations and who submits an application for license under the act on  
19 or before January 1, 2018.

20 (e) A person whose license has been revoked may make written  
21 application to the board requesting reinstatement of the license in a manner  
22 prescribed by the board. An application for reinstatement of a license shall  
23 be accompanied by the fee provided for in section 8, and amendments  
24 thereto, and as established in the rules and regulations adopted by the  
25 board.

26 New Sec. 6. (a) There is hereby created the designation of inactive  
27 license. The board is authorized to issue an inactive license to any licensee  
28 who makes written application for such license on a form provided by the  
29 board and remits the fee for an inactive license established pursuant to  
30 section 8, and amendments thereto.

31 (b) The board may issue an inactive license only to a person who  
32 meets all the requirements for a license to practice as an acupuncturist and  
33 who does not engage in the active practice of acupuncture and oriental  
34 medicine in the state of Kansas.

35 (c) An inactive license shall not entitle the holder to engage in active  
36 practice. The provisions of section 7, and amendments thereto, relating to  
37 expiration, renewal and reinstatement of a license shall be applicable to an  
38 inactive license issued under this subsection. Each inactive licensee may  
39 apply to engage in active practice by presenting a request required by  
40 section 5, and amendments thereto. The request shall be accompanied by  
41 the fee established pursuant to section 8, and amendments thereto.

42 (d) This section shall take effect on and after July 1, 2017.

43 New Sec. 7. (a) Licenses issued annually under this act shall be

1 canceled on March 31 of each year unless renewed in the manner  
 2 prescribed by the board. A license issued or reinstated from January 1  
 3 through March 31 shall be cancelled on March 31 of the following year. A  
 4 request for the renewal of a license shall be on a form provided by the  
 5 board and shall be accompanied by the renewal fee established pursuant to  
 6 section 8, and amendments thereto, which shall be paid not later than the  
 7 renewal date of the license.

8 (b) At least 60 days before the renewal date of a licensee's license, the  
 9 board shall notify the licensee of the licensure renewal date by mail  
 10 addressed to the licensee's last mailing address as noted upon the office  
 11 records. If the licensee fails to submit an application for renewal of  
 12 licensure on a form provided by the board, or fails to pay the renewal fee  
 13 by the date of cancellation, the board shall give notice to the licensee that  
 14 the license has been canceled and the license may be renewed only if an  
 15 application for active status reinstatement, a renewal fee, and a late  
 16 renewal fee are received by the board. If cancelled for at least one year but  
 17 not more than five years, an active status license shall be reinstated when  
 18 an appropriate fee has been paid and proof of NCCAOM current  
 19 credentials has been presented, or an equivalent status as recognized by the  
 20 council and approved by the board in lieu of the NCCAOM credentials.

21 (c) The board may require any licensee to submit to a continuing  
 22 education audit and provide to the board evidence of satisfactory  
 23 completion of a program of continuing education required by rules and  
 24 regulations of the board. The board may accept a licensee's current active  
 25 status as a NCCAOM diplomate of acupuncture or NCCAOM diplomate  
 26 of oriental medicine as proof of satisfactory completion of continuing  
 27 education requirements.

28 (d) The board, prior to renewal of a license, shall require the licensee,  
 29 if in the active practice of acupuncture and oriental medicine within the  
 30 state, to submit to the board evidence satisfactory to the board that the  
 31 licensee is maintaining a policy of professional liability insurance. The  
 32 board may require any licensee to provide to the board evidence of  
 33 malpractice insurance.

34 (e) This section shall take effect on and after July 1, 2017.

35 New Sec. 8. (a) The board shall charge and collect in advance fees for  
 36 acupuncturists, as follows, through March 31, 2018:

37 Initial application for licensure.....	\$700
38 Annual renewal of license:	
39 Paper renewal.....	\$300
40 On-line renewal.....	\$250
41 Late renewal of licensure:	
42 Late paper renewal.....	\$100
43 Late on-line renewal.....	\$100

1	Application for reinstatement of revoked license.....	\$800
2	Application for inactive license.....	\$30
3	Renewal of inactive license.....	\$150
4	Conversion of inactive license to active:	
5	Paper conversion.....	\$300
6	On-line conversion.....	\$250
7	Certified copy of license.....	\$25
8	Written verification of license.....	\$25

9       (b) After March 31, 2018, the board shall charge and collect in  
10 advance fees for acupuncturists as established by the board by rules and  
11 regulations not to exceed the amounts in subsection (a).

12       (c) If an examination is not administered by the board, the board may  
13 require that fees paid for any examination under the acupuncture and  
14 oriental medicine practice act be paid directly to the examination service  
15 by the person taking the examination.

16       New Sec. 9. The board shall remit all moneys received by or for the  
17 board from fees, charges or penalties to the state treasurer in accordance  
18 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon  
19 receipt of each such remittance, the state treasurer shall deposit the entire  
20 amount in the state treasury. Twenty percent of such amount shall be  
21 credited to the state general fund and the balance shall be credited to the  
22 healing arts fee fund. All expenditures from the healing arts fee fund shall  
23 be made in accordance with appropriation acts upon warrants of the  
24 director of accounts and reports pursuant to vouchers approved by  
25 the president of the board or by a person or persons designated by the  
26 president.

27       New Sec. 10. (a) There is established the acupuncture advisory  
28 council to assist the state board of healing arts in carrying out the  
29 provisions of this act. The council shall consist of five members, all  
30 citizens and residents of the state of Kansas, appointed as follows:

31       (1) The board, with recommendation from the Kansas association of  
32 oriental medicine, shall appoint:

33       (A) Two members who are actively licensed as acupuncturists under  
34 this act; and

35       (B) one member who is actively licensed as an acupuncturist under  
36 this act and holds a current NCCAOM certification in herbology or  
37 oriental medicine;

38       (2) one member shall be the president of the state board of healing  
39 arts or a person designated by the president; and

40       (3) the governor shall appoint one member from the public sector  
41 who is not engaged, directly or indirectly, in the provision of health  
42 services. Insofar as possible, persons appointed to the council shall be  
43 from different geographic areas. If a vacancy occurs on the council, the

1 appointing authority of the position which has become vacant shall appoint  
2 a person of like qualifications to fill the vacant position for the unexpired  
3 term, if any.

4 (b) The member of the council appointed by the governor shall be  
5 appointed for a term of three years and until a successor is appointed. The  
6 members appointed by the state board of healing arts shall serve at the  
7 pleasure of the state board of healing arts. If a member is designated by the  
8 president of the state board of healing arts, the member shall serve at the  
9 pleasure of the president.

10 (c) Acupuncturists initially appointed to the council must be eligible,  
11 as appropriate, for licensure pursuant to section 5, and amendments  
12 thereto. On and after July 1, 2017, new appointees, as appropriate, shall be  
13 licensed under the provisions of this act.

14 (d) The council shall meet at least once each year at a time and place  
15 of its choosing and at such other times as may be necessary on the  
16 chairperson's call or on the request of a majority of the council's members.  
17 At the first meeting, the council shall select a chairperson and vice-  
18 chairperson, and annually thereafter. The first meeting shall be called by  
19 the president of the state board of healing arts or such person's designee.

20 (e) A majority of the council constitutes a quorum. No action may be  
21 taken by the council except by affirmative vote of the majority of the  
22 members present and voting.

23 (f) Members of the council attending meetings of the council, or  
24 attending a subcommittee meeting thereof authorized by the council, shall  
25 be paid amounts provided in K.S.A. 75-3223(e), and amendments thereto,  
26 from the healing arts fee fund.

27 New Sec. 11. The acupuncture advisory council shall advise the  
28 board regarding:

29 (a) Examination, licensing and other fees;

30 (b) rules and regulations to be adopted to carry out the provisions of  
31 this act;

32 (c) the number of yearly continuing education hours required to  
33 maintain active licensure;

34 (d) changes and new requirements taking place in the areas of  
35 acupuncture and oriental medicine; and

36 (e) such other duties and responsibilities as the board may assign.

37 New Sec. 12. The board, with the advice and assistance of the  
38 acupuncture advisory council, shall:

39 (a) Duly license and regulate applicants for licensure and keep a  
40 roster of all such licensed individuals;

41 (b) adopt rules and regulations as may be necessary to administer the  
42 provisions of this act and prescribe forms which shall be issued in the  
43 administration of this act;

1 (c) establish standards for approval of an educational course of study  
2 and clinical experience;

3 (d) establish criteria for continuing education;

4 (e) establish standards of professional conduct, procedure for the  
5 discipline of licensees and keep a record of all such proceedings; and

6 (f) establish standards for clean needle technique.

7 New Sec. 13. (a) A licensee's license may be revoked, suspended or  
8 limited, or the licensee may be publicly or privately censured, or an  
9 application for a license or for reinstatement of a license may be denied  
10 upon a finding of the existence of any of the following grounds:

11 (1) The licensee has committed an act of unprofessional conduct as  
12 defined by rules and regulations adopted by the board;

13 (2) the licensee has obtained a license by means of fraud,  
14 misrepresentations or concealment of material facts;

15 (3) the licensee has committed an act of professional incompetency as  
16 defined by rules and regulations adopted by the board;

17 (4) the licensee has been convicted of a felony;

18 (5) the licensee has violated any provision of this act;

19 (6) the licensee has violated any lawful order or rule and regulation of  
20 the board;

21 (7) the licensee has been found to be mentally ill, disabled, not guilty  
22 by reason of insanity, not guilty because the licensee suffers from a mental  
23 disease or defect or incompetent to stand trial by a court of competent  
24 jurisdiction;

25 (8) the licensee has failed to report to the board any adverse action  
26 taken against the licensee by another state or licensing jurisdiction, a peer  
27 review body, a health care facility, a professional association or society, a  
28 governmental agency, a law enforcement agency or a court for acts or  
29 conduct similar to acts or conduct which would constitute grounds for  
30 disciplinary action under this section;

31 (9) the licensee has surrendered a license or authorization to practice  
32 as an acupuncturist in another state or jurisdiction, has agreed to a  
33 limitation to or restriction of privileges at any medical care facility or has  
34 surrendered the licensee's membership on any professional staff or in any  
35 professional association or society while under investigation for acts or  
36 conduct similar to acts or conduct which would constitute grounds for  
37 disciplinary action under this section;

38 (10) the licensee has failed to report to the board the surrender of the  
39 licensee's license or authorization to practice as an acupuncturist in another  
40 state or jurisdiction or the surrender of the licensee's membership on any  
41 professional staff or in any professional association or society while under  
42 investigation for acts or conduct similar to acts or conduct which would  
43 constitute grounds for disciplinary action under this section;

1 (11) the licensee has an adverse judgment, award or settlement  
2 against the licensee resulting from a medical liability claim related to acts  
3 or conduct similar to acts or conduct which would constitute grounds for  
4 disciplinary action under this section;

5 (12) the licensee has failed to report to the board any adverse  
6 judgment, settlement or award against the licensee resulting from a  
7 medical malpractice liability claim related to acts or conduct similar to acts  
8 or conduct which would constitute grounds for disciplinary action under  
9 this section; or

10 (13) the licensee's ability to practice with reasonable skill and safety  
11 to patients is impaired by reason of physical or mental illness, or condition  
12 or use of alcohol, drugs or controlled substances. All information, reports,  
13 findings and other records relating to impairment shall be confidential and  
14 not subject to discovery by or release to any person or entity outside of a  
15 board proceeding. The provision regarding confidentiality shall expire on  
16 July 1, 2022. The state legislature shall review such provision before July  
17 1, 2022.

18 (b) The denial, refusal to renew, suspension, limitation, probation or  
19 revocation of a license or other sanction may be ordered by the board upon  
20 a finding of a violation of the acupuncture and oriental medicine practice  
21 act. All administrative proceedings conducted pursuant to this act shall be  
22 in accordance with the provisions of the Kansas administrative procedure  
23 act and shall be reviewable in accordance with the Kansas judicial review  
24 act.

25 (c) A person whose acupuncture license is suspended, limited or  
26 revoked shall not engage in any conduct or activity in violation of the  
27 order.

28 (d) This section shall take effect on and after July 1, 2017.

29 New Sec. 14. (a) The board shall have jurisdiction of proceedings to  
30 take disciplinary action against any licensee practicing under the  
31 acupuncture and oriental medicine practice act. Any such action shall be  
32 taken in accordance with the provisions of the Kansas administrative  
33 procedure act.

34 (b) Either before or after formal charges have been filed, the board  
35 and the licensee may enter into a stipulation which shall be binding upon  
36 the board and the licensee entering into such stipulation, and the board  
37 may enter its findings of fact and enforcement order based upon such  
38 stipulation without the necessity of filing any formal charges or holding  
39 hearings in the case. An enforcement order based upon a stipulation may  
40 order any disciplinary action against the licensee entering into such  
41 stipulation.

42 (c) The board may temporarily suspend or temporarily limit the  
43 license of any licensee in accordance with the emergency adjudicative

1 proceedings under the Kansas administrative procedure act if the board  
2 determines that there is cause to believe that grounds exist for disciplinary  
3 action against the licensee and that the licensee's continuation of practice  
4 would constitute an imminent danger to public health and safety.

5 (d) Judicial review and civil enforcement of any agency actions under  
6 this act shall be in accordance with the Kansas judicial review act.

7 New Sec. 15. (a) The board or a committee of the board as a non-  
8 disciplinary resolution, may enter into a written agreement with a licensee  
9 for a professional development plan, make written recommendations to a  
10 licensee or issue a written letter of concern to a licensee if the board,  
11 committee of the board or peer review committee determines that the  
12 licensee:

13 (1) Seeks to establish continued competency for renewal of licensure  
14 other than through continued education requirements;

15 (2) has been absent from clinical practice for an extended period of  
16 time and seeks to resume clinical practice;

17 (3) has failed to adhere to the applicable standard of care; or

18 (4) has engaged in an act or practice that, if continued, would  
19 reasonably be expected to result in future violations of this act.

20 (b) Notwithstanding any other provision of law, a meeting of the  
21 board or a committee of the board for the purpose of discussing or  
22 adopting a non-disciplinary resolution authorized by this section shall not  
23 be subject to the Kansas administrative procedure act, K.S.A. 77-501 et  
24 seq., and amendments thereto, and shall not be subject to the Kansas open  
25 meetings act as provided in K.S.A. 75-4317 et seq., and amendments  
26 thereto. A non-disciplinary resolution authorized by this section shall not  
27 be deemed disciplinary action or other order or adjudication. No failure to  
28 adhere to the applicable standard of care or violation of this act may be  
29 implied by the adoption of a non-disciplinary resolution.

30 (c) A non-disciplinary resolution authorized by this section shall be  
31 confidential and shall not be admissible in any civil, criminal or  
32 administrative action, except that such resolution shall be admissible in  
33 any disciplinary proceeding by the board.

34 New Sec. 16. (a) In connection with any investigation by the board,  
35 the board or its duly authorized agents or employees shall at all reasonable  
36 times have access to, for the purpose of examination, and the right to copy  
37 any document, report, record or other physical evidence of any person  
38 being investigated, or any document, report, record or other evidence  
39 maintained by and in possession of any clinic, office of a practitioner of  
40 acupuncture and oriental medicine or other public or private agency if such  
41 document, report, record or evidence relates to the competence,  
42 unprofessional conduct or the mental or physical ability of a licensee to  
43 safely practice acupuncture and oriental medicine.

1 (b) For the purpose of all investigations and other administrative  
2 proceedings under this act, the board may issue subpoenas compelling the  
3 attendance and testimony of witnesses or the production for examination  
4 or copying of documents or any other physical evidence if such evidence  
5 relates to the competence, unprofessional conduct or the mental or  
6 physical ability of a licensee to safely practice acupuncture and oriental  
7 medicine. Any member of the board, or any agent designated by the board,  
8 may administer oaths or affirmations, examine witnesses and receive such  
9 evidence.

10 (1) Within five days after the service of the subpoena on any person  
11 requiring the production of any evidence in the person's possession or  
12 under the person's control, such person may petition the board to revoke,  
13 limit or modify the subpoena.

14 (2) The board shall revoke, limit or modify such subpoena if in its  
15 opinion the evidence required does not relate to practices which may be  
16 grounds for disciplinary action, is not relevant to the charge which is the  
17 subject matter of the proceeding or investigation, or does not describe with  
18 sufficient particularity the physical evidence which is required to be  
19 produced.

20 (3) The district court, upon application by the board or by the person  
21 subpoenaed, shall have jurisdiction to issue an order:

22 (A) Requiring such person to appear before the board or the board's  
23 duly authorized agent to produce evidence relating to the matter under  
24 investigation; or

25 (B) revoking, limiting or modifying the subpoena if in the court's  
26 opinion the evidence demanded does not relate to practices which may be  
27 grounds for disciplinary action, is not relevant to the charge which is the  
28 subject matter of the hearing or investigation or does not describe with  
29 sufficient particularity the evidence which is required to be produced.

30 New Sec. 17. The board, in addition to any other penalty prescribed  
31 pursuant to this act, may assess a civil fine, after proper notice and an  
32 opportunity to be heard, against a licensee for a violation of this act in an  
33 amount not to exceed \$2,000 for the first violation, \$5,000 for the second  
34 violation and \$10,000 for the third violation and for each subsequent  
35 violation. All fines assessed and collected under this section shall be  
36 remitted to the state treasurer in accordance with the provisions of K.S.A.  
37 75-4215, and amendments thereto. Upon receipt of each such remittance,  
38 the state treasurer shall deposit the entire amount in the state treasury to  
39 the credit of the state general fund.

40 New Sec. 18. (a) Any complaint or report, record or other information  
41 relating to a complaint which is received, obtained or maintained by the  
42 board shall be confidential and shall not be disclosed by the board or its  
43 employees in a manner which identifies or enables identification of the

1 person who is the subject or source of the information, except the  
2 information may be disclosed:

3 (1) In any proceeding conducted by the board under the law or in an  
4 appeal of an order of the board entered in a proceeding, or to any party to a  
5 proceeding or appeal or the party's attorney;

6 (2) to the person who is the subject of the information or to any  
7 person or entity when requested by the person who is the subject of the  
8 information, but the board may require disclosure in such a manner that  
9 will prevent identification of any other person who is the subject or source  
10 of the information; or

11 (3) to a state or federal licensing, regulatory or enforcement agency  
12 with jurisdiction over the subject of the information or to an agency with  
13 jurisdiction over acts or conduct similar to acts or conduct which would  
14 constitute grounds for action under this act.

15 (b) Any confidential complaint or report, record or other information  
16 disclosed by the board as authorized by this section shall not be re-  
17 disclosed by the receiving agency except as otherwise authorized by law.

18 (c) This provision regarding confidentiality shall expire on July 1,  
19 2022. The state legislature shall review such provision before July 1, 2022.

20 New Sec. 19. (a) No person reporting to the state board of healing  
21 arts in good faith any information such person may have relating to alleged  
22 incidents of malpractice, or the qualifications, fitness or character of, or  
23 disciplinary action taken against a person licensed, registered or certified  
24 by the board shall be subject to a civil action for damages as a result of  
25 reporting such information.

26 (b) Any state, regional or local association composed of persons  
27 licensed to practice acupuncture and oriental medicine and the individual  
28 members of any committee thereof, which in good faith investigates or  
29 communicates information pertaining to the alleged incidents of  
30 malpractice, or the qualifications, fitness or character of, or disciplinary  
31 action taken against any licensee, registrant or certificate holder to the  
32 state board of healing arts or to any committee or agent thereof, shall be  
33 immune from liability in any civil action that is based upon such  
34 investigation or transmittal of information if the investigation and  
35 communication was made in good faith and did not represent as true any  
36 matter not reasonably believed to be true.

37 New Sec. 20. (a) Professional liability insurance coverage shall be  
38 maintained in effect by each licensed acupuncturist and as a condition to  
39 rendering professional services as a licensed acupuncturist in the state of  
40 Kansas. The board shall fix by rules and regulations the minimum level of  
41 coverage for such professional liability insurance.

42 (b) This section shall take effect on and after July 1, 2017.

43 New Sec. 21. (a) The confidential relations and communications

1 between a licensed acupuncturist and the acupuncturist's patient are placed  
2 on the same basis as provided by law as those between a physician and a  
3 physician's patient in K.S.A. 60-427, and amendments thereto.

4 (b) The provisions of this section shall take effect on and after July 1,  
5 2017.

6 New Sec. 22. (a) When it appears that any person is violating any  
7 provision of this act, the board may bring an action in the name of the  
8 state in a court of competent jurisdiction for an injunction against such  
9 violation without regard as to whether proceedings have been or may be  
10 instituted before the board or whether criminal proceedings have been or  
11 may be instituted.

12 (b) This section shall take effect on and after July 1, 2017.

13 New Sec. 23. On and after July 1, 2017, any violation of sections 1  
14 through 23, and amendments thereto, shall constitute a class B  
15 misdemeanor.

16 New Sec. 24. If any section of sections 1 through 23, and  
17 amendments thereto, or any part thereof, is adjudged by any court of  
18 competent jurisdiction to be invalid, such judgment shall not affect, impair  
19 or invalidate the remainder or any other section or part thereof.

20 Sec. 25. K.S.A. 2015 Supp. 65-2872 is hereby amended to read as  
21 follows: 65-2872. The practice of the healing arts shall not be construed to  
22 include the following persons:

23 (a) Persons rendering gratuitous services in the case of an emergency.

24 (b) Persons gratuitously administering ordinary household remedies.

25 (c) The members of any church practicing their religious tenets  
26 provided they shall not be exempt from complying with all public health  
27 regulations of the state.

28 (d) Students while in actual classroom attendance in an accredited  
29 healing arts school who after completing one year's study treat diseases  
30 under the supervision of a licensed instructor.

31 (e) Students upon the completion of at least three years study in an  
32 accredited healing arts school and who, as a part of their academic  
33 requirements for a degree, serve a preceptorship not to exceed 180 days  
34 under the supervision of a licensed practitioner.

35 (f) Persons who massage for the purpose of relaxation, muscle  
36 conditioning, or figure improvement, provided no drugs are used and such  
37 persons do not hold themselves out to be physicians or healers.

38 (g) Persons whose professional services are performed under the  
39 supervision or by order of or referral from a practitioner who is licensed  
40 under this act.

41 (h) Persons in the general fields of psychology, education and social  
42 work, dealing with the social, psychological and moral well-being of  
43 individuals or groups, or both, provided they do not use drugs and do not

1 hold themselves out to be the physicians, surgeons, osteopathic physicians  
2 or chiropractors.

3 (i) Practitioners of the healing arts in the United States army, navy, air  
4 force, public health service, and coast guard or other military service when  
5 acting in the line of duty in this state.

6 (j) Practitioners of the healing arts licensed in another state when and  
7 while incidentally called into this state in consultation with practitioners  
8 licensed in this state.

9 (k) Dentists practicing their professions, when licensed and practicing  
10 in accordance with the provisions of article 14 of chapter 65 of the Kansas  
11 Statutes Annotated, and amendments thereto, and any interpretation  
12 thereof by the supreme court of this state.

13 (l) Optometrists practicing their professions, when licensed and  
14 practicing under and in accordance with the provisions of article 15 of  
15 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and  
16 any interpretation thereof by the supreme court of this state.

17 (m) Nurses practicing their profession when licensed and practicing  
18 under and in accordance with the provisions of article 11 of chapter 65 of  
19 the Kansas Statutes Annotated, and amendments thereto, and any  
20 interpretation thereof by the supreme court of this state.

21 (n) Podiatrists practicing their profession, when licensed and  
22 practicing under and in accordance with the provisions of article 20 of  
23 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and  
24 any interpretation thereof by the supreme court of this state.

25 (o) Every act or practice falling in the field of the healing arts, not  
26 specifically excepted herein, shall constitute the practice thereof.

27 (p) Pharmacists practicing their profession, when licensed and  
28 practicing under and in accordance with the provisions of article 16 of  
29 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and  
30 any interpretation thereof by the supreme court of this state.

31 (q) A dentist licensed in accordance with the provisions of article 14  
32 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto,  
33 who administers general and local anesthetics to facilitate medical  
34 procedures conducted by a person licensed to practice medicine and  
35 surgery if such dentist is certified by the board of healing arts under K.S.A.  
36 65-2899, and amendments thereto, to administer such general and local  
37 anesthetics.

38 (r) Practitioners of the healing arts duly licensed under the laws of  
39 another state who do not open an office or maintain or appoint a place to  
40 regularly meet patients or to receive calls within this state, but who order  
41 services which are performed in this state in accordance with rules and  
42 regulations of the board. The board shall adopt rules and regulations  
43 identifying circumstances in which professional services may be

1 performed in this state based upon an order by a practitioner of the healing  
2 arts licensed under the laws of another state.

3 (s) *Acupuncturists, when licensed and practicing in accordance with*  
4 *sections 1 through 24, and amendments thereto, rules and regulations*  
5 *adopted thereto, and interpretations thereof by the supreme court of this*  
6 *state.*

7 (t) Persons licensed by the state board of cosmetology practicing their  
8 professions, when licensed and practicing under and in accordance with  
9 the provisions of article 19 of chapter 65 of the Kansas Statutes Annotated,  
10 and amendments thereto, and any interpretation thereof by the supreme  
11 court of this state.

12 Sec. 26. K.S.A. 2015 Supp. 65-2872 is hereby repealed.

13 Sec. 27. This act shall take effect and be in force from and after its  
14 publication in the statute book.