

SENATE BILL No. 351

By Committee on Public Health and Welfare

1-21

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.
4

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
35 examinations.

36 (j) "Physician" means a person licensed to practice medicine and

1 surgery in Kansas.

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

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

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

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

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

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

24 (2) Oriental medicine therapies do not include:

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

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

30 (C) osteopathic medicine and surgery or osteopathic manipulative
31 treatment; or

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

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

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

43 (2) Only a person licensed as an acupuncturist under the acupuncture

1 and oriental medicine practice act shall be entitled to use the following
2 titles, as appropriate: "Licensed acupuncturist," "oriental medicine
3 practitioner," "practitioner of oriental medicine," abbreviations thereof or
4 words similar to such titles or the designated letters "L.Ac."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (A) Has the active status of a NCCAOM certified diplomate of
25 acupuncture;

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

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

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

33 (4) has good moral character; and

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

36 (b) Notwithstanding subsection (a), the board may issue a license to a
37 person who has been in the active practice of acupuncture or oriental
38 medicine in some other state, territory, the District of Columbia or other
39 country upon certificate of the proper licensing authority of that state,
40 territory, District of Columbia or other country certifying that the applicant
41 is duly licensed, certified or registered, that the applicant's license,
42 certification or registration has never been limited, suspended or revoked,
43 that the licensee, certification or registration holder has never been

1 censured or had other disciplinary action taken and that, so far as the
2 records of such authority are concerned, the applicant is entitled to its
3 endorsement. The applicant shall also present proof satisfactory to the
4 board:

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

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

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

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

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

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

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

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

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

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

39 (A) Two affidavits from office partners, clinic supervisors,
40 accountants or other individuals approved by the board, who have personal
41 knowledge of the years of practice and number of patients visiting the
42 applicant for acupuncture and oriental medicine services; and

43 (B) notarized copies of appointment books, patient charts, financial

1 records or other documentation as required by the board, except that no
2 personally identifiable patient health information in violation of or
3 protected by the provisions of the health insurance portability and
4 accountability act of 1996 shall be disclosed;

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

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

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

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

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

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

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

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

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

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

41 New Sec. 7. (a) Licenses issued annually under this act shall be
42 canceled on March 31 of each year unless renewed in the manner
43 prescribed by the board. A license issued or reinstated from January 1

1 through March 31 shall be cancelled on March 31 of the following year. A
2 request for the renewal of a license shall be on a form provided by the
3 board and shall be accompanied by the renewal fee established pursuant to
4 section 8, and amendments thereto, which shall be paid not later than the
5 renewal date of the license.

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

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

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

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

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

35	Initial application for licensure.....	\$700
36	Annual renewal of license:	
37	Paper renewal.....	\$300
38	On-line renewal.....	\$250
39	Late renewal of licensure:	
40	Late paper renewal.....	\$100
41	Late on-line renewal.....	\$100
42	Application for reinstatement of revoked license.....	\$800
43	Application for inactive license.....	\$30

1 Renewal of inactive license.....\$150
 2 Conversion of inactive license to active:
 3 Paper conversion.....\$300
 4 On-line conversion.....\$250
 5 Certified copy of license.....\$25
 6 Written verification of license.....\$25

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

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

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

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

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

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

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

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

38 (3) the governor shall appoint one member from the public sector
 39 who is not engaged, directly or indirectly, in the provision of health
 40 services. Insofar as possible, persons appointed to the council shall be
 41 from different geographic areas. If a vacancy occurs on the council, the
 42 appointing authority of the position which has become vacant shall appoint
 43 a person of like qualifications to fill the vacant position for the unexpired

1 term, if any.

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

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

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

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

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

25 New Sec. 11. The acupuncture advisory council shall advise the
26 board regarding:

27 (a) Examination, licensing and other fees;

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

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

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

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

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

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

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

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

- 1 (d) establish criteria for continuing education;
- 2 (e) establish standards of professional conduct, procedure for the
- 3 discipline of licensees and keep a record of all such proceedings; and
- 4 (f) establish standards for clean needle technique.

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

- 9 (1) The licensee has committed an act of unprofessional conduct as
- 10 defined by rules and regulations adopted by the board;
- 11 (2) the licensee has obtained a license by means of fraud,
- 12 misrepresentations or concealment of material facts;
- 13 (3) the licensee has committed an act of professional incompetency as
- 14 defined by rules and regulations adopted by the board;
- 15 (4) the licensee has been convicted of a felony;
- 16 (5) the licensee has violated any provision of this act;
- 17 (6) the licensee has violated any lawful order or rule and regulation of
- 18 the board;
- 19 (7) the licensee has been found to be mentally ill, disabled, not guilty
- 20 by reason of insanity, not guilty because the licensee suffers from a mental
- 21 disease or defect or incompetent to stand trial by a court of competent
- 22 jurisdiction;
- 23 (8) the licensee has failed to report to the board any adverse action
- 24 taken against the licensee by another state or licensing jurisdiction, a peer
- 25 review body, a health care facility, a professional association or society, a
- 26 governmental agency, a law enforcement agency or a court for acts or
- 27 conduct similar to acts or conduct which would constitute grounds for
- 28 disciplinary action under this section;
- 29 (9) the licensee has surrendered a license or authorization to practice
- 30 as an acupuncturist in another state or jurisdiction, has agreed to a
- 31 limitation to or restriction of privileges at any medical care facility or has
- 32 surrendered the licensee's membership on any professional staff or in any
- 33 professional association or society while under investigation for acts or
- 34 conduct similar to acts or conduct which would constitute grounds for
- 35 disciplinary action under this section;
- 36 (10) the licensee has failed to report to the board the surrender of the
- 37 licensee's license or authorization to practice as an acupuncturist in another
- 38 state or jurisdiction or the surrender of the licensee's membership on any
- 39 professional staff or in any professional association or society while under
- 40 investigation for acts or conduct similar to acts or conduct which would
- 41 constitute grounds for disciplinary action under this section;
- 42 (11) the licensee has an adverse judgment, award or settlement
- 43 against the licensee resulting from a medical liability claim related to acts

1 or conduct similar to acts or conduct which would constitute grounds for
2 disciplinary action under this section;

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

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

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

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

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

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

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

40 (c) The board may temporarily suspend or temporarily limit the
41 license of any licensee in accordance with the emergency adjudicative
42 proceedings under the Kansas administrative procedure act if the board
43 determines that there is cause to believe that grounds exist for disciplinary

1 action against the licensee and that the licensee's continuation of practice
2 would constitute an imminent danger to public health and safety.

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

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

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

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

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

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

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

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

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

42 (b) For the purpose of all investigations and other administrative
43 proceedings under this act, the board may issue subpoenas compelling the

1 attendance and testimony of witnesses or the production for examination
2 or copying of documents or any other physical evidence if such evidence
3 relates to the competence, unprofessional conduct or the mental or
4 physical ability of a licensee to safely practice acupuncture and oriental
5 medicine. Any member of the board, or any agent designated by the board,
6 may administer oaths or affirmations, examine witnesses and receive such
7 evidence.

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

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

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

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

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

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

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

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

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

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

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

16 (c) This provision regarding confidentiality shall expire on July 1,
17 2022. The state legislature shall review such provision before July 1, 2022.

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

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

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

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

41 New Sec. 21. (a) The confidential relations and communications
42 between a licensed acupuncturist and the acupuncturist's patient are placed
43 on the same basis as provided by law as those between a physician and a

1 physician's patient in K.S.A. 60-427, and amendments thereto.

2 (b) The provisions of this section shall take effect on and after July 1,
3 2017.

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

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

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

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

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

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

22 (b) Persons gratuitously administering ordinary household remedies.

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

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

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

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

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

39 (h) Persons in the general fields of psychology, education and social
40 work, dealing with the social, psychological and moral well-being of
41 individuals or groups, or both, provided they do not use drugs and do not
42 hold themselves out to be the physicians, surgeons, osteopathic physicians
43 or chiropractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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