

HOUSE BILL NO. HB0165

Acupuncture and Oriental Medicine Practice Act.

Sponsored by: Representative(s) Barlow, Allen, Brown, Flitner, Kirkbride, Larsen, Northrup, Pelkey, Schwartz, Sweeney and Zwonitzer and Senator(s) Christensen and Peterson

A BILL

for

1 AN ACT relating to professions and occupations; creating
2 the Acupuncture and Oriental Medicine Practice Act;
3 establishing the board of acupuncture and oriental
4 medicine; regulating the practice of acupuncture and
5 oriental medicine in this state; providing rulemaking
6 authority; providing penalties; establishing an account;
7 providing an appropriation; and providing for an effective
8 date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 33-49-101 through 33-49-112 are
13 created to read:

14

1

CHAPTER 49

2

ACUPUNCTURE AND ORIENTAL MEDICINE PRACTICE ACT

3

4

33-49-101. Short title.

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This chapter shall be known and may be cited as the

7

"Wyoming Acupuncture and Oriental Medicine Practice Act".

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33-49-102. Definitions.

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11

(a) As used in this chapter:

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(i) "ACAOM" means the accreditation commission for acupuncture and oriental medicine educational institutions, or its equivalent as determined by the board;

(ii) "Acupuncture" means the insertion of acupuncture needles into the body, with or without the application of electric current or heat to the needles, for the therapeutic purpose of promoting, maintaining and restoring health, including the treatment of dysfunctions of the body involving pain;

1 (iii) "Acupuncturist" means any person to whom a
2 license to practice acupuncture and oriental medicine in
3 this state has been issued under this chapter;

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5 (iv) "Auricular acupuncture" means a practice
6 certified by a nationally recognized auricular acupuncture
7 program for the purpose of treating mental and emotional
8 health, post and acute trauma, substance abuse and chemical
9 dependency;

10

11 (v) "Board" means the Wyoming board of
12 acupuncture and oriental medicine created under this
13 chapter;

14

15 (vi) "License" means a license to practice
16 acupuncture and oriental medicine in this state issued by
17 the board pursuant to this chapter and consistent with the
18 scope of practice a person is qualified to perform as a
19 result of their NCCAOM diplomate status, post graduate
20 training, NADA certification or as otherwise authorized by
21 the board;

22

1 (vii) "Licensee" means a person licensed by the
2 board under this chapter;

3

4 (viii) "NADA" means the national acupuncture
5 detoxification association, or its equivalent as determined
6 by the board;

7

8 (ix) "NCCAOM" means the national certification
9 commission for acupuncture and oriental medicine, or its
10 equivalent as determined by the board;

11

12 (x) "Oriental medicine" means a form of primary
13 health care based upon traditional oriental medical
14 concepts that employs oriental diagnostic techniques,
15 acupuncture, Chinese herbal medicine and other therapies
16 for the promotion, maintenance and restoration of health
17 and the prevention of disease or the treatment of any
18 ailment, disease, pain, injury, deformity or physical
19 condition.

20

21 **33-49-103. Board created; members; appointment;**
22 **terms; qualification; removal; vacancies.**

23

1 (a) The Wyoming board of acupuncture and oriental
2 medicine is created to implement and administer the
3 provisions of this chapter. The board shall consist of five
4 (5) members who are legal residents of Wyoming. The board
5 shall consist of one (1) member of the public, three (3)
6 members who have been engaged in the practice of
7 acupuncture and oriental medicine for a period of not less
8 than five (5) years immediately preceding appointment to
9 the initial board and one (1) member who is a health care
10 professional licensed pursuant to this title other than
11 this chapter.

12

13 (b) The governor shall appoint the members of the
14 board. Of the initial members appointed to the board, two
15 (2) members shall be appointed for a term of two (2) years
16 and three (3) members shall be appointed for a term of four
17 (4) years. Thereafter, the terms of office shall be four
18 (4) years. Each member shall serve until the member's
19 successor is appointed and qualified. No member shall serve
20 more than two (2) consecutive full terms.

21

22 (c) Any vacancy on the board shall be filled by the
23 governor for the balance of the unexpired term.

1

2 (d) The governor may remove any member from the board
3 pursuant to W.S. 9-1-202.

4

5 **33-49-104. Board meetings; elections; quorum.**

6

7 The board shall meet at least once each year and elect a
8 chairman at the first meeting each year. The board may
9 convene at the request of the chairman or as determined by
10 the board for any other meeting as may be deemed necessary
11 to transact its business. Meetings may be carried out via
12 telecommunications. Three (3) board members shall
13 constitute a quorum.

14

15 **33-49-105. Reimbursement of expenses and immunity.**

16

17 (a) Members of the board shall not receive
18 compensation for their services but shall receive mileage
19 and per diem as provided in W.S. 33-1-302(a)(vii) while
20 engaged in the discharge of official duties.

21

22 (b) Members of the board shall have the same
23 immunities from personal liability as state employees for

1 actions taken in the performance of their duties under this
2 chapter, as provided in W.S. 1-39-104.

3

4 **33-49-106. Board responsibilities and duties.**

5

6 (a) The board shall:

7

8 (i) Administer this chapter;

9

10 (ii) Determining the following standards for
11 licensees:

12

13 (A) Continuing education requirements;

14

15 (B) Professional conduct standards;

16

17 (C) Ethical standards of practice.

18

19 (iii) Approve or disapprove applications for
20 licensure and issue licenses, renewals and reinstatements;

21

22 (iv) Establish tiered licensing as necessary for
23 the purpose of differentiating auricular acupuncture;

1

2 (v) Censure, suspend or revoke licenses as
3 provided in this chapter and the Wyoming Administrative
4 Procedure Act;

5

6 (vi) Initiate and conduct investigations,
7 hearings and proceedings concerning alleged violations of
8 this chapter and board rules;

9

10 (vii) Keep a record of all proceedings and make
11 available to licensees and other concerned parties an
12 annual report of all board action;

13

14 (viii) Establish application and licensure fee
15 requirements for licensees regulated under this chapter;

16

17 (ix) Prescribe fees in accordance with W.S.
18 33-1-201 for implementing this chapter;

19

20 (x) Promulgate rules and regulations as
21 necessary to carry out this chapter.

22

1 (b) The board may employ or contract with individuals
2 it determines necessary to administer its affairs and
3 provide support services.

4
5 (c) All fees collected by the board shall be
6 deposited by the state treasurer to the credit of the
7 Wyoming board of acupuncture and oriental medicine account.
8 Disbursements from the account shall not exceed the monies
9 credited to it. The account shall be used by the board to
10 defray costs incurred in the administration of this
11 chapter.

12
13 **33-49-107. Licensure required; components;**
14 **exemptions; other licensed health care professionals.**

15
16 (a) Beginning January 1, 2018, unless the person is
17 licensed to practice acupuncture and oriental medicine in
18 compliance with this chapter and the rules and regulations
19 adopted pursuant thereto, no person shall:

20
21 (i) Practice acupuncture or oriental medicine or
22 hold himself out as an acupuncturist or as being able to
23 practice acupuncture in Wyoming;

1

2 (ii) Use the title of acupuncturist or any
3 variant thereof; or

4

5 (iii) Use any configuration of letters,
6 including L. Ac., after his name indicating a degree in
7 acupuncture.

8

9 (b) Any license issued under this chapter shall:

10

11 (i) Be issued in the name of the licensed
12 acupuncturist;

13

14 (ii) State the licensing and expiration dates;
15 and

16

17 (iii) Be displayed at all times in a conspicuous
18 manner in the place of business or employment of the
19 licensee.

20

21 (c) The following persons are exempt from this
22 chapter's licensure requirements:

23

1 (i) An acupuncturist licensed to practice
2 acupuncture and oriental medicine in another jurisdiction
3 while teaching or demonstrating or providing acupuncture or
4 oriental medicine in connection with teaching or
5 participating in an educational seminar in Wyoming. Any
6 exemption under this paragraph shall not exceed sixty (60)
7 days cumulatively in a calendar year;

8
9 (ii) An acupuncturist licensed in another
10 jurisdiction who enters this state to provide acupuncture
11 during a natural disaster or a public health emergency, as
12 declared by the governor pursuant to W.S. 35-4-115(a) (i);

13
14 (iii) With board approval, a person in training
15 may practice acupuncture and oriental medicine, provided
16 all services are performed under the direct supervision of
17 an acupuncturist licensed in this state.

18
19 (e) Nothing in this chapter shall be construed to
20 prohibit or restrict any other licensed health care
21 provider in this state from practicing acupuncture within
22 their statutory scope of practice, provided the relevant
23 licensing board has adopted rules and regulations regarding

1 acupuncture within the context of the profession's
2 recognized standards. However, no person may represent
3 themselves as an acupuncturist in any manner unless
4 licensed in accordance with this chapter.

5

6 **33-49-108. Application for license; renewal and**
7 **reinstatement; qualifications; fees; reporting.**

8

9 (a) An applicant for licensure to practice
10 acupuncture and oriental medicine under this chapter shall:

11

12 (i) Apply for licensure with the board by
13 providing an application in the form and manner prescribed
14 by the board;

15

16 (ii) Pay the required fees established by the
17 board; and

18

19 (iii) Furnish to the board evidence that the
20 applicant has:

21

22 (A) Graduated from an accredited ACAOM
23 program and passed NCCAOM examination;

1

2 (B) Graduated from an accredited ACAOM
3 program and continuously practiced acupuncture and oriental
4 medicine in this state for at least ten (10) years before
5 January 1, 2018;

6

7 (C) Completed other examination, education
8 or apprenticeship processes the board considers
9 substantively qualifying; or

10

11 (D) Current NADA certification.

12

13 (b) Licenses shall be renewed or reinstated according
14 to a schedule established by the board pursuant to this
15 chapter. If a licensee fails to renew a license pursuant to
16 the schedule established by the board, the license shall
17 expire and the licensee shall not practice acupuncture in
18 this state.

19

20 (c) An applicant for licensure or licensee shall
21 report any pending or final administrative or disciplinary
22 actions, or other judgments, as well as the terms of any
23 settlement or other disposition of an action or judgment,

1 against the applicant or licensee involving malpractice or
2 improper practice of acupuncture and oriental medicine,
3 whether occurring in Wyoming or in any other jurisdiction
4 upon application for licensure, renewal or reinstatement,
5 or not later than thirty (30) days after the licensee
6 becomes aware of such actions or judgments.

7

8 **33-49-109. Licensure by endorsement.**

9

10 (a) The board may issue a license by endorsement to
11 practice acupuncture and oriental medicine in Wyoming to an
12 applicant who is licensed to practice acupuncture and
13 oriental medicine in another state subject to the
14 following:

15

16 (i) The other state shall have substantially
17 equivalent acupuncture and oriental medicine licensure
18 requirements as Wyoming, including similar licensure by
19 endorsement provisions for licensees of this state;

20

21 (ii) The applicant shall not have any
22 disciplinary actions pending at the time of application;

23

1 (iii) The applicant shall not have had a license
2 to practice acupuncture and oriental medicine suspended or
3 revoked in this state or any other; and

4

5 (iv) The person shall adhere to all requirements
6 of continuing education and ethical standards established
7 by the board.

8

9 **33-49-110. Hearings and investigations.**

10

11 (a) Upon receiving a complaint charging a licensee
12 with any act prohibited by this chapter, the board may
13 conduct an investigation. If the board finds reasonable
14 grounds to substantiate the allegations of the complaint, a
15 time and place for a hearing shall be set, notice of which
16 shall be served on the licensee or applicant at least
17 fifteen (15) calendar days prior to the hearing. The notice
18 shall be by personal service or by certified or registered
19 mail sent to the last known address of the person.

20

21 (b) The board may issue subpoenas for the attendance
22 of witnesses and the production of necessary evidence in
23 any hearing before it. Upon request of the respondent or

1 his counsel, the board shall issue subpoenas on behalf of
2 the respondent.

3

4 (c) Hearings under this section shall be held in
5 accordance with, and a person aggrieved by a decision of
6 the board may take an appeal pursuant to, the Wyoming
7 Administrative Procedure Act.

8

9 **33-49-111. Disciplinary action; suspension and**
10 **revocation of license; application for reinstatement.**

11

12 (a) After any hearing conducted pursuant to W.S.
13 33-49-110, the board may approve, deny, suspend, revoke or
14 refuse to renew a license or impose probationary conditions
15 on the license if the licensee or applicant has engaged in
16 unprofessional conduct. For purposes of this section,
17 unprofessional conduct includes any of the following:

18

19 (i) Obtaining a license by means of fraud,
20 misrepresentation or concealment of material facts;

21

1 (ii) Violating the ethical standards of practice
2 or rules of professional conduct as adopted and published
3 by the board;

4

5 (iii) Being convicted of a felony;

6

7 (iv) Being convicted of an offense involving a
8 controlled substance;

9

10 (v) Being negligent in the practice of
11 acupuncture or oriental medicine;

12

13 (vi) Violating any lawful order, rule or
14 regulation rendered or adopted by the board;

15

16 (vii) Violating any provision of this chapter.

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18 (b) An application for reinstatement may be made to
19 the board not earlier than one (1) year after the date of
20 the revocation of the license. The board may accept or
21 reject an application for reinstatement and may hold a
22 hearing to consider reinstatement. An applicant for
23 reinstatement aggrieved by any final action of the board

1 may appeal to the district court pursuant to the Wyoming
2 Administrative Procedure Act.

3

4 (c) Upon receipt from the department of family
5 services of a certified copy of an order from a court to
6 withhold, suspend or otherwise restrict a license issued by
7 the board, the board shall notify the party named in the
8 court order of the withholding, suspension or restriction
9 of the license in accordance with the terms of the court
10 order. No appeal under the Wyoming Administrative Procedure
11 Act shall be allowed for a license withheld, suspended or
12 restricted under this subsection.

13

14 **33-49-112. Violations; penalties; proceedings.**

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16 (a) Any person who violates any provision of this
17 chapter is guilty of a misdemeanor and upon conviction
18 shall be subject to the fines and penalties prescribed in
19 W.S. 6-10-103. If the board has reason to believe that any
20 individual is liable under this section, it may certify the
21 facts to the prosecuting attorney of the jurisdiction in
22 which the offense was committed.

23

1 (b) The attorney general, the board, any county or
2 district attorney or any citizen may obtain an injunction
3 in the name of the state of Wyoming upon the relation of a
4 complainant enjoining any person from engaging in the
5 practice of acupuncture and oriental medicine without a
6 license. The district court of the district in which the
7 offending person resides or the district court of Laramie
8 county has original jurisdiction of any such injunction
9 proceedings. An injunction may be issued without proof of
10 actual damage sustained and upon proof of one (1) or more
11 acts constituting the practice of acupuncture or oriental
12 medicine without a license. The standard of proof of any
13 violation of this subsection shall be by a preponderance of
14 the evidence.

15
16 (c) Nothing in this section shall limit any
17 additional civil or criminal liability under the laws of
18 this state.

19
20 **Section 2.** For the period beginning with the
21 effective date of this act through June 30, 2018, there is
22 appropriated twenty thousand dollars (\$20,000.00) from the
23 general fund to the department of administration and

1 information. This appropriation shall be expended only for
2 the purpose of providing necessary support and executive
3 secretary services for the licensing board created under
4 section 1 of this act. Notwithstanding any other provision
5 of law, this appropriation shall not be transferred or
6 expended for any other purpose and any unexpended,
7 unobligated funds remaining from this appropriation shall
8 revert as provided by law on June 30, 2018. The board shall
9 submit through the normal budget process a standard budget
10 request for the fiscal biennium beginning July 1, 2018, and
11 for subsequent biennia.

12

13 **Section 3.** This act is effective immediately upon
14 completion of all acts necessary for a bill to become law
15 as provided by Article 4, Section 8 of the Wyoming
16 Constitution.

17

18

(END)