

2020 South Dakota Legislature

House Bill 1136**AMENDMENT 1136H FOR THE INTRODUCED BILL**

1 **An Act to provide for the licensure and regulation of practitioners of acupuncture**
2 **and Oriental medicine and to establish the acupuncture regulation fund.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That a NEW SECTION be added:

5 **36-39-1. Definitions.**

6 Terms used in this Act mean:

- 7 (1) "Acupressure," the applications of pressure to acupuncture points;
8 (2) "Acupuncture needle," a sterile single-use needle designed exclusively for
9 acupuncture purposes with a solid core and a tapered point, being constructed of
10 stainless steel, gold, silver, or other materials approved by the board with or
11 without the use of electrical stimulation;
12 (3) "Acupuncture points," specific anatomical locations used in the practice of
13 acupuncture;
14 (4) "Asian Bodywork Therapy," pressure or manipulation of the body, primarily with
15 the hands, along meridians or acupuncture points; external application of medicinal
16 plants or food; and exercise suggestions;
17 (5) "Board," the Acupuncture Licensing Board established in § 36-39-2;
18 (6) "Electrical stimulation," a method of stimulating acupuncture points with an
19 electrical current that may be performed by attaching a device to an acupuncture
20 needle or may be performed transcutaneously without penetrating the skin;
21 (7) "Licensed acupuncturist," any person licensed to practice acupuncture pursuant to
22 this chapter;
23 (8) "NCCAOM," the National Certification Commission for Acupuncture and Oriental
24 Medicine, a not-for-profit corporation granting certification to a person who has
25 met the standards of competence established for either NCCAOM certification in

1 acupuncture or NCCAOM certification in Oriental medicine and is current with the
 2 required continuing education;

3 (9) "Oriental dietary and lifestyle therapy," utilizing herbs, foods, food concentrated,
 4 food supplements, or dietary supplements, while advising a patient regarding
 5 lifestyle modifications according to the principles of Oriental medicine;

6 (10) "Oriental medicine," a system of healing arts using well-established Oriental
 7 medical therapies and procedures for the purpose of normalizing physiological
 8 functions including pain control; the promotion, maintenance and restoration of
 9 health and well-being; strengthening the body; and improving energy balance.
 10 Treatment of the patient is achieved through specialized methods, diagnosing
 11 imbalances within the body and treating the body with acupuncture and other
 12 related Oriental medicine therapies and techniques.

13 **Section 2.** That a NEW SECTION be added:

14 **36-39-2. Board--Membership--Terms of service--~~Duties~~--Meetings.**

15 There is hereby established the Acupuncture Licensing Board within the
 16 Department of Health. The board shall submit records, information, and reports in the
 17 form and as required by the secretary of health. The board shall report at least annually
 18 to the Department of Health.

19 The board consists of five members appointed by the Governor. Three members
 20 shall be licensed acupuncturists, one member shall be a licensed health care professional
 21 certified to perform acupuncture, and one member shall represent the consumer. Each
 22 member shall serve a three-year term and may serve no more than three consecutive
 23 three-year terms. The board shall meet up to twice a year to:

24 (1) ~~determine~~ Determine and finalize any refusal to grant a license or cancellation,
 25 revocation, or suspension of a license;

26 (2) Hold examinations of candidates for licensure; and

27 (3) Conduct such business as may properly come before the board.

28 Board members shall serve without compensation, but shall be reimbursed for per
 29 diem and travel for up to two meetings per year.

30 At the expiration of a term, or if a vacancy occurs, the Governor shall appoint a
 31 new board member. The Governor may stagger terms to enable the board to have
 32 different terms expire each year. The Governor may remove any member from the board
 33 for neglect of any duty required by law or for incompetency or unprofessional or
 34 dishonorable conduct.

1 **Section 3.** That a NEW SECTION be added:

2 **36-39-3. Officers of board--Rules and regulations--Bond of secretary-**
3 **treasurer.**

4 The Board shall organize annually by electing a president, vice-president, and
5 secretary-treasurer, and the board shall have the power to adopt rules and regulations in
6 compliance with chapter 1-26 as shall be reasonably necessary to carry out and make
7 effective the provisions and purposes of this chapter. The secretary-treasurer of the board
8 may be required to give a bond in such sum and with such conditions as the board may
9 direct.

10 **Section 4.** That a NEW SECTION be added:

11 **36-39-4. Acupuncture and Oriental medicine--Defined.**

12 For the purposes of this chapter, acupuncture and Oriental medical practice is a
13 comprehensive system of health care using traditional and modern Oriental medical theory
14 and its unique methods of diagnosis and treatment. The treatment techniques of
15 acupuncture practice include the insertion of acupuncture needles through the skin and
16 the use of other biophysical methods of acupuncture point stimulation, including the use
17 of heat or cold, Asian bodywork therapy techniques, Oriental medicine, electrical
18 stimulation, Oriental dietary and lifestyle therapies, breathing techniques, and exercise
19 based on Oriental medicine principles.

20 **Section 5.** That a NEW SECTION be added:

21 **36-39-5. Acupuncture and Oriental medicine--Practices and diagnostic**
22 **techniques.**

23 The practice of acupuncture and Oriental medicine shall include the following
24 practices and diagnostic techniques:

25 (1) Acupuncture, the invasive and noninvasive stimulation of anatomical locations of
26 the body, alone and in combination, including the practice of:

27 (a) Auricular, hand, nose, face, foot or scalp microsystem therapy;

28 (b) Stimulation of points, areas of the body, ~~substances topically applied to the~~
29 ~~body,~~ and channels by the use of any of the following:

30 (i) Needles, lancets, moxibustion, Qi Gong, thermal methods, heat,
31 cold, herbal preparations, laser, light, sound, vibration, pressure,

- 1 magnetism, electricity, suction, water, or other devices or means;
2 and
3 (ii) Manual therapy including massage, acupressure, acupuncture,
4 trigger point dry needling, reflexology, shiatsu, mobilization,
5 manipulation, tui-na and acutotement or stimulation that does not
6 pierce the skin; and
7 ~~(iii) Injection therapy including the injection of inert substances which~~
8 ~~include injectable saline, vitamin B12, and homeopathics for the~~
9 ~~purpose of the stimulation of acupuncture points, including painful~~
10 ~~trigger points. Injection therapy of any of the substances mentioned~~
11 ~~above is limited by training approved by the National Certification~~
12 ~~Commission for Acupuncture and Oriental Medicine and subject to~~
13 ~~federal regulation;~~
14 (2) Diagnostic techniques including:
15 (a) The use of observation, listening, smelling, inquiring, palpation,
16 electrodermal screenings, and thermography;
17 (b) Diagnostic examination, testing and procedures as limited by training; and
18 (c) The use of routine functional testing, either physical or laboratory tests,
19 may be employed; and
20 (3) Adjunct therapies including:
21 (a) Dietary and nutritional counseling and the prescription or administration of
22 food, beverages, dietary supplements, and herbal medicines
23 therapeutically;
24 (b) Recommendation of breathing techniques and therapeutic exercises; and
25 (c) Lifestyle, behavioral, and stress counseling.

26 **Section 6.** That a NEW SECTION be added:

27 **36-39-6. Acupuncture practice--Persons not requiring a license.**

28 The following persons, within the person's scope of practice, may practice
29 acupuncture without a license under § 36-39-2:

- 30 (1) A physician or osteopath licensed under chapter 36-4;
31 (2) ~~A chiropractor licensed under chapter 36-5~~ Any person otherwise licensed under
32 title 36; and

1 (3) Any acupuncturist licensed to practice in another state or country who is in the
2 state for the sole purpose of providing a tutorial or workshop not to exceed thirty
3 days in one calendar year; and

4 ~~(4) Any acupuncturist licensed to practice in another state or country may practice~~
5 ~~acupuncture in this state without a license if the acupuncturist is conducting~~
6 ~~treatment in relation to disaster relief for a period of time not to exceed three~~
7 ~~consecutive months.~~

8 **Section 7.** That a NEW SECTION be added:

9 **36-39-7. Advertising or practicing without license or annual license**
10 **renewal--Misdemeanor.**

11 Any person who advertises, practices, or attempts to practice acupuncture or who
12 uses the title acupuncturist or any other authorized title to induce any person to believe
13 that the person is an acupuncturist without first having secured a license from the Board
14 or an annual license renewal from the Board is guilty of a Class 1 misdemeanor.

15 **Section 8.** That a NEW SECTION be added:

16 **36-39-8. Authorized titles.**

17 Only a person licensed or otherwise authorized under this chapter may use the title
18 acupuncturist, licensed acupuncturist, ~~doctor of acupuncture and Oriental medicine,~~ or
19 Oriental medicine practitioner.

20 **Section 9.** That a NEW SECTION be added:

21 **36-39-9. Requirements for licensure--Fees.**

22 Each applicant for licensure under this chapter shall:

23 (1) Have successfully completed a graduate level educational program that is offered
24 by an institution of higher education and accredited by a national or regional
25 agency recognized by the United States Department of Education, or another
26 equivalent program approved by the board. In the case of an applicant who has
27 completed education and training outside of the United States, the applicant shall
28 document education and clinical experience that meets the standard established in
29 this section in a manner determined by the board;

- 1 (2) Pass a nationally recognized examination approved by the board or have current
2 active status as a Diplomate of Chinese Herbology, Diplomate of Oriental Medicine,
3 or Diplomate of Acupuncture of the NCCAOM;
- 4 (3) Pass a nationally recognized ethics course administered or approved by the
5 NCCAOM;
- 6 (4) Meet the NCCAOM professional development activity requirements to maintain
7 NCCAOM certification, or equivalent certification. The NCCAOM shall serve as a
8 verifying entity, providing to the board the proof of continuing education and
9 recertification of all acupuncturists licensed in the state, as well as any reported
10 ethical or criminal disciplinary actions involving any applicant;
- 11 (5) Complete an application for licensure provided by the board; ~~and~~
- 12 (6) Submit the required fee for licensure established by the board in rules promulgated
13 under § 36-39-13; and
- 14 (7) Pass a board-administered exam on the laws governing the practice of acupuncture
15 in the state.

16 **Section 10.** That a NEW SECTION be added:

17 **36-39-10. License renewal.**

18 Each licensee shall renew the acupuncture license every two years, prior to the
19 date established by the board, by submitting the following:

- 20 (1) The completed application for license renewal provided by the board;
- 21 (2) Proof of NCCAOM recertification compliance; and
- 22 (3) The required fee for license renewal, established by the board in rules promulgated
23 under § 36-39-13.

24 The board ~~may shall~~ require proof of continuing education ~~or other proof of~~
25 ~~competency~~ as a requirement for renewal. A licensed acupuncturist who provides the
26 board with false information or makes a false statement to the board shall be subject to
27 disciplinary actions, including denial, suspension, or revocation of licensure.

28 Each person receiving a license under the provisions of this chapter shall procure
29 from the secretary-treasurer of the board on or before the thirty-first day of December of
30 each year, a renewal of license. The renewal shall be issued by the secretary-treasurer
31 upon payment of the fee set by rule, promulgated by the board pursuant to chapter 1-26.
32 The renewal license shall be in the form of a receipt acknowledging payment of the
33 required fee and signed by the secretary-treasurer.

1 **Section 11.** That a NEW SECTION be added:

2 **36-39-11. License renewal--Sixty-day grace period.**

3 Any licensee who fails to renew the license prior to the end of the licensing period
4 may, within sixty days, renew the license by submitting the following:

- 5 (1) The completed application for licensure renewal form provided by the board;
6 (2) The required fee for annual license renewal, and
7 (3) Proof of NCCAOM recertification compliance; and
8 (4) The required late fee established by the board in rules promulgated under § 36-
9 39-13.

10 Any license not renewed at the end of the sixty-day grace period is expired and
11 the licensee is not eligible to practice within the state. For reinstatement of an expired
12 license within one year of the date of renewal, the board may establish requirements or
13 fees in addition to the fee for license renewal and may require the former licensee to
14 reapply as a new applicant.

15 **Section 12.** That a NEW SECTION be added:

16 **36-39-12. Sterilized equipment required.**

17 An acupuncturist shall use sterilized equipment that has been sterilized under
18 standards of the National Centers for Disease Control and Prevention.

19 **Section 13.** That a NEW SECTION be added:

20 **36-39-13. Promulgation of rules.**

21 The board may promulgate rules pursuant to chapter 1-26 to establish:
22 (1) The application form and other requirements for license application and renewal;
23 (2) The amount of license fees and license renewal fees, neither of which may exceed
24 a maximum of one thousand ~~two-five~~ hundred dollars; and
25 (3) Any additional requirements or conditions for the reinstatement of an expired
26 license.

27 **Section 14.** That a NEW SECTION be added:

28 **36-39-14. Proceedings--Right to appeal.**

29 Any proceeding relative to the cancellation, revocation, or suspension of a license
30 shall conform to the procedures set forth in chapter 1-26.

1 Any party who is aggrieved by an act, ruling, or decision of the Acupuncture
2 Licensing Board relating to refusal to grant a license or cancellation, revocation, or
3 suspension of a license may appeal pursuant to chapter 1-26.

4 **Section 15.** That a NEW SECTION be added:

5 **36-39-15. Acupuncture regulation fund--Establishment--Continuous**
6 **appropriation.**

7 There is hereby established in the state treasury the acupuncture regulation fund.
8 All fees received by the board shall be forwarded to the state treasurer for deposit into
9 the acupuncture regulation fund. Any money in the fund is continuously appropriated to
10 the board for the purposes of the operation of the board and the implementation and
11 administration of this chapter. The total expenses incurred by the board may not exceed
12 the total amount of funds collected.

13 **Section 16.** The Governor is not required to appoint members to the board and the board is
14 not required to begin issuing licenses pursuant to this Act until the balance in the acupuncture
15 regulation fund is greater than twenty thousand dollars.

16 **Section 17.** That a NEW SECTION be added:

17 **36-39-16. Signature, seal and display of license.**

18 The license to practice acupuncture shall be signed by each member of the Board
19 and authenticated by the seal of the board, and the license and renewal certificate shall
20 be conspicuously displayed at the office of the practitioner.

21 **Section 18.** That a NEW SECTION be added:

22 **36-39-17. Grounds for refusal or revocation of license--Procedure.**

23 The board may, in compliance with chapter 1-26, refuse to grant a license to any
24 person otherwise qualified, and may revoke the license of any acupuncturist who is not of
25 good moral character; who solicits professional patronage by agents; who is guilty of
26 unprofessional conduct, incompetency, habitual intoxication, the use of narcotics, fraud,
27 or deception; who shall be convicted of a felony; or who practices contrary to the
28 provisions of this chapter or the rules of the board. The board shall define by rule, in
29 compliance with chapter 1-26, the foregoing grounds for revocation and refusal.

30 **Section 19.** That a NEW SECTION be added:

1 **36-39-18. Criminal background investigation of applicants for licensure.**

2 Each applicant for licensure in this state shall submit to a state and federal criminal
3 background investigation by means of fingerprint checks by the Division of Criminal
4 Investigation and the Federal Bureau of Investigation. Upon application, the Board shall
5 submit completed fingerprint cards to the Division of Criminal Investigation. Upon
6 completion of the criminal background check, the Division of Criminal Investigation shall
7 forward to the board all information obtained as a result of the criminal background check.
8 This information shall be obtained prior to permanent licensure of the applicant. The Board
9 may require a state and federal criminal background check for any licensee who is the
10 subject of a disciplinary investigation by the board. Failure to submit or cooperate with
11 the criminal background investigation is grounds for denial of an application or may result
12 in revocation of a license. The applicant shall pay for any fees charged for the cost of
13 fingerprinting or the criminal background investigation.

14 **Section 20.** This Act is effective January 1, 2022.