

2020 South Dakota Legislature

House Bill 1136**AMENDMENT 1136J FOR THE HOUSE HEALTH AND HUMAN SERVICES BILL**

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

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

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

6 **36-39-1. Definitions.**

7 Terms used in this Act mean:

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

26 (2) Conduct any business that may properly come before the board.

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

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

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

2 **36-39-3. Officers of the board--Bond of secretary-treasurer.**

3 The board shall organize annually by electing a president, vice-president, and
4 secretary-treasurer. The secretary-treasurer of the board may be required to give a bond
5 in any sum and with any conditions as the board directs.

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

7 **36-39-4. Acupuncture and Oriental medicine--Definition.**

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

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

17 **36-39-5. Acupuncture and Oriental medicine--Practices and diagnostic**
18 **techniques.**

19 The practice of acupuncture and Oriental medicine shall include the following
20 practices and diagnostic techniques:

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

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

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

26 (i) Needles, lancets, moxibustion, Qi Gong, thermal methods, heat,
27 cold, herbal preparations, laser, light, sound, vibration, pressure,
28 magnetism, electricity, suction, water, or other devices or means;
29 and

30 (ii) Manual therapy including massage, acupressure, acupuncture,
31 trigger point dry needling, reflexology, shiatsu, mobilization, tui-na
32 and acutotement or stimulation that does not pierce the skin;

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2 (2) Diagnostic techniques including:3 (a) The use of observation, listening, smelling, inquiring, palpation,
4 electrodermal screenings, and thermography;5 (b) Diagnostic examination, testing and procedures as limited by training; and6 (c) The use of routine functional testing, either physical or laboratory tests,
7 may be employed; and8 (3) Adjunct therapies including:9 (a) Dietary and nutritional counseling and the prescription or administration of
10 food, beverages, dietary supplements, and herbal medicines
11 therapeutically;12 (b) Recommendation of breathing techniques and therapeutic exercises; and13 (c) Lifestyle, behavioral, and stress counseling.14 **Section 6.** That a NEW SECTION be added:15 **36-39-6. Acupuncture practice--Persons not requiring a license.**16 The following persons, within the person's scope of practice, may practice
17 acupuncture without a license under § 36-39-2:18 (1) A physician or osteopath licensed under chapter 36-4;19 (2) Any person otherwise licensed under title 36; and20 (3) Any acupuncturist licensed to practice in another state or country who is in the
21 state for the sole purpose of providing a tutorial or workshop not to exceed thirty
22 days in one calendar year.23 **Section 7.** That a NEW SECTION be added:24 **36-39-7. Advertising or practicing without valid license--Violation as**
25 **misdemeanor.**26 Any person who advertises, practices, or attempts to practice acupuncture or who
27 uses the title, acupuncturist, or any other authorized title as provided in § 36-39-8 to
28 induce any person to believe that the person is an acupuncturist without having a valid
29 license or renewal certificate is guilty of a Class 1 misdemeanor.30 **Section 8.** That a NEW SECTION be added:

1 **36-39-8. Authorized titles.**

2 Only a person licensed or otherwise authorized under this chapter may use the title
3 acupuncturist, licensed acupuncturist, or Oriental medicine practitioner.

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

5 **36-39-9. Requirements for licensure--Fees.**

6 Each applicant for licensure under this chapter shall:

- 7 (1) Have successfully completed a graduate level educational program that is offered
8 by an institution of higher education and accredited by a national or regional
9 agency recognized by the United States Department of Education, or another
10 equivalent program approved by the board. In the case of an applicant who has
11 completed education and training outside of the United States, the applicant shall
12 document education and clinical experience that meets the standard established in
13 this section in a manner determined by the board;
- 14 (2) Pass a nationally recognized examination approved by the board or have current
15 active status as a Diplomate of Oriental Medicine or Diplomate of Acupuncture of
16 the NCCAOM;
- 17 (3) Pass a nationally recognized ethics course administered or approved by the
18 NCCAOM;
- 19 (4) Meet the NCCAOM professional development activity requirements to maintain
20 NCCAOM certification, or equivalent certification. The NCCAOM shall serve as a
21 verifying entity, providing to the board the proof of continuing education and
22 recertification of all acupuncturists licensed in the state;
- 23 (5) Complete an application for licensure provided by the board; and
- 24 (6) Submit the required fee for licensure established by the board in rules promulgated
25 under § 36-39-13.

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

27 **36-39-10. License renewal.**

28 Each licensee shall renew the acupuncture license every two years, in the even-
29 numbered years, prior to the date established by the board, by submitting the following:

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

1 The board shall require proof of continuing education as a requirement for renewal.
2 A licensed acupuncturist who provides the board with false information or makes a false
3 statement to the board shall be subject to disciplinary actions, including denial,
4 suspension, or revocation of licensure.

5 Each person licensed under this chapter who wants to renew the license shall obtain
6 a renewal of license from the secretary-treasurer of the board on or before the thirty-first
7 day of December of each odd-numbered year. The secretary-treasurer shall issue the
8 renewal upon payment of the fee established in rules promulgated by the board under
9 § 36-39-13. The renewal license shall be in the form of a receipt acknowledging payment
10 of the required fee and signed by the secretary-treasurer.

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

12 **36-39-11. License renewal--Sixty-day grace period.**

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

15 (1) The completed application for licensure renewal form provided by the board;

16 (2) The required fee for annual license renewal, and

17 (3) Proof of NCCAOM recertification compliance; and

18 (4) The required late fee established by the board in rules promulgated under § 36-
19 39-11.

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

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

26 **36-39-12. Sterilized equipment required.**

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

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

30 **36-39-13. Promulgation of rules.**

31 The board may promulgate rules pursuant to chapter 1-26 to establish:

- 1 (1) The application form and other requirements for license application and renewal;
2 (2) The amount of license fees and license renewal fees, neither of which may exceed
3 a maximum of one thousand five hundred dollars; and
4 (3) Any additional requirements or conditions for the reinstatement of an expired
5 license.

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

7 **36-39-14. Proceedings--Right to appeal.**

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

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

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

14 **36-39-15. Acupuncture regulation fund--Establishment--Continuous**
15 **appropriation.**

16 There is hereby established in the state treasury the acupuncture regulation fund.
17 All fees received by the board shall be forwarded to the state treasurer for deposit into
18 the acupuncture regulation fund. Any money in the fund is continuously appropriated to
19 the board for the purposes of the operation of the board and the implementation and
20 administration of this chapter. The total expenses incurred by the board may not exceed
21 the total amount of funds collected.

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

23 **36-39-16. License signatures and seal--Display of license.**

24 A license to practice acupuncture shall be signed by two members of the board and
25 authenticated by the seal of the board. The license and renewal certificate shall be
26 conspicuously displayed at the office of the practitioner.

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

28 **36-39-17. Grounds for license refusal or revocation--Promulgation of rules.**

29 The board may, in compliance with chapter 1-26, refuse to grant a license to any
30 person otherwise qualified, and may revoke the license of any acupuncturist who is not of

1 good moral character; who solicits professional patronage by agents; who is guilty of
2 unprofessional conduct, incompetency, habitual intoxication, the use of narcotics, fraud,
3 or deception; who is convicted of a felony; or who practices contrary to the provisions of
4 this chapter or the rules of the board. The board shall define by rule, pursuant to chapter
5 1-26, the grounds for refusing to license or for license revocation.

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

7 **36-39-18. Required state and federal criminal background check.**

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

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

21 **36-39-19. Appointment of board--Issuing licenses--Fund balance required.**

22 Notwithstanding the provisions of §§ 36-39-2 and 36-39-9, the Governor is not
23 required to appoint any members to the board and the board is not required to begin
24 issuing licenses until the balance of the acupuncture regulation fund established in § 36-
25 39-15 is equal to or greater than twenty thousand dollars.

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