

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO OFFICE OF ACUPUNCTURISTS REGISTRATION

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## 2001 SUNSET REVIEW



# STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES  
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Bill Owens  
Governor

October 15, 2001

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Office of Acupuncturists Registration. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

*"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."*

*The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination...."*

The report discusses the question of whether there is a need for the regulation provided under Article 29.5 of Title 12, C.R.S. The report also discusses the effectiveness of the Office of Acupuncturists Registration and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke  
Executive Director

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## **Background**

### *The Sunset Process*

The regulatory functions of the Office of Acupuncturists Registration (Office) shall terminate on July 1, 2002 unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the Office pursuant to §24-34-104 (9)(b), C.R.S.

The review was conducted in accordance with the statutory criteria contained in §24-34-104, C.R.S., which are included in this report as Appendix A. The purpose of this review is to determine whether the Act is the least restrictive regulation consistent with the public interest and whether it should be continued for the protection of the public. DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly.

### *Methodology*

The sunset process includes a review and analysis of applicable statutes and rules. Interviews were conducted with Office staff, a practicing acupuncturist, representatives of state and national professional associations, representatives of educational institutions, health insurers, an assistant attorney general and other interested parties. Other states' statutes were studied regarding their regulation of acupuncturists. An on-site visit to an acupuncturist's office was made to tour the facility and observe aspects of the practice.

### *History of Regulation*

Regulation of the practice of acupuncture in Colorado began on July 1, 1990, following the passage of Senate Bill 89-009 by the General Assembly. Acupuncturists were given until January 1, 1991, to comply with the new law.

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SB 89-009 placed the regulatory responsibility for the program with the Director of the Division of Registrations in the Department of Regulatory Agencies (DORA). The Office of Acupuncturists Registration was created to handle registration, rule making and disciplinary actions for the program.

The Department of Public Health and Environment was charged with establishing the sterilization standards of equipment used in the practice of acupuncture (needles, instruments, probes or other devices) and the sanitary conditions of the premises used.

At the recommendation of a sunset review conducted by DORA in 1991, the Acupuncturist Registration Program was continued. Among the changes to the program was a provision to make facility inspections complaint-based rather than mandatory. Also adopted was a requirement that an acupuncturist provide a statement at the initial patient contact affirming that sexual intimacy is never appropriate in a professional relationship and that any such action should be reported to the Director of the Division of Registrations in DORA. The repeal date for the program was extended to July 1, 2002,

In 1995, the statutes were updated by HB 95-1182, to recognize the practice of acupuncture as "A system of health care based upon traditional Oriental medical concepts . . ." Also added at this time was a requirement that every acupuncturist purchase and maintain commercial professional liability insurance.

### *Profile of the Profession*

The practice of acupuncture, as defined in §12-29.5-102(3.5) C.R.S., is "the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and the traditional Oriental adjunctive therapies." Such therapies that are "within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of Oriental therapeutic exercises, and, subject to federal law, the recommendation of herbs and dietary guidelines."

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Acupuncture is one of several therapies that make up the field of Oriental medicine. Treatment in this framework has been practiced in China and other parts of Asia for over 3,000 years. Acupuncture is based on the theory that blood and vital energy run through the body along pathways called meridians. This energy flows continuously from one meridian to another, and any break in the flow indicates an imbalance, making a person ill or vulnerable to disease. Restoring the natural balance within the meridian system is the ultimate goal of treatment.

Needles are inserted into points along the meridians to unblock and restore the body's healthy balance. Sometimes the needles are twirled by hand or charged with a low-voltage electrical impulse.

Moxibustion, or moxa, is a treatment method frequently used in conjunction with acupuncture. It is performed by placing a stick or cone of burning mugwort, an herb, over certain points of the body, generally the same points as those used in acupuncture. Generally, points near large blood vessels, eyes and ears are treated by moxibustion, because acupuncture at these points may be deemed inadvisable.

### Education and Training for the Profession

Since 1987, the Accreditation Commission for Colleges of Acupuncture and Oriental Medicine (ACAOM) has been authorized by the U.S. Department of Education to accredit college curricula for a Master of Science in Oriental Medicine degree. Today there are more than 60 schools either accredited or in candidate status with ACAOM. Discussed below are several facilities in Colorado where acupuncture can be studied.

- Southwest Acupuncture College in Boulder is the only ACAOM-accredited school in the state. Its academic program consists of over 2,800 hours of training with the greatest number of hours devoted to the study and practice of acupuncture and herbal medicine. The remaining hours are in graduate level studies in Oriental medicine and Western science.
- International Institute of Chinese Medicine in Denver has attained ACAOM candidate status and expects accreditation by November 2001. Its curriculum includes 2,700 hours of course work and training.

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- Colorado School of Traditional Chinese Medicine in Denver has ACAOM candidate status and is expecting accreditation by February 2002. Its program, incorporating 1,100 lab hours, provides 2,475 hours of theoretical studies, clinic forums and practice.
  - Institute of Taoist Education and Acupuncture in Louisville is planning to apply for ACAOM candidate status in January 2002. It has a four-year program in which the actual class time is contained within four 15-day intensive instruction periods each year. The school places a larger focus on apprenticeship than on classroom instruction.
  - Rueto College of Acupuncture & Chinese Medicine in Boulder is planning to apply for ACAOM candidate status at some point in the future. It is in the process of changing from a three-year to a four-year program. The school follows a less traditional philosophy and accepts 10 or fewer students per year.

Accredited schools offer a four-year Master of Science in Oriental Medicine degree program that is often accelerated into three years. All accredited schools require at least two years of undergraduate study, such as community college, prior to entry. Many schools prefer applicants to have a bachelor's degree.

The curriculum followed at Southwest Acupuncture College, Colorado's only ACAOM-accredited school, is shown below as representative of the courses and clinical experience required for a Master of Science in Oriental Medicine degree.

#### Curriculum for Master of Science in Oriental Medicine

##### *Biomedical Clinical Sciences Curriculum*

- Botany
- Clean Needle Technique
- Survey of Western Therapeutics
- Biology
- Human Anatomy and Physiology
- Cardiopulmonary Resuscitation
- Western Pathology and Diagnosis
- Psychology for Patient Counseling/Medical Ethics
- Pharmacology
- Western Pathology and Diagnosis

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*Oriental Herbal Medicine Curriculum*

- Pharmacopeia - Chinese, Latin and pharmaceutical names, identification, properties, categories
- Formulas - Classical formulas, dispensing, contraindications, differentiations
- Patents - Use of over-the-counter preparations
- Classics - historical and contemporary applications
- Clinic - Adjusting and tailoring classical formulas
- Pharmacy - internship in pharmacy, filling formulas, making substitutions
- Nutrition - Therapeutic use of foods and condiments

*Clinical Education* - Early and gradual exposure to actual clinical practice, culminates in over 1,200 hours of combined observation and actual practice.

Source: Southwest Acupuncture College, Boulder.



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## **Summary of Statute and Regulations**

### Legislative Declaration

The legislative declaration for this article is found in §12-29.5-101, C.R.S., and it states, "While recognizing that the rendering of acupuncture services is not part of the traditional practice of western medicine, it is the intent of the general assembly that those citizens who wish to obtain acupuncture services be allowed to do so and, in addition, that such citizens have available certain information to assist them in making informed choices when seeking such services. It is also the intent of the general assembly that the providers or practitioners of acupuncture should not misrepresent their qualifications, harm their clients, practice in an unhealthy manner, or otherwise deceive insurers or the recipients of acupuncture services."

### Powers and Duties of the Director

The statutory responsibility for regulating acupuncturists in Colorado rests with the Director of the Division of Registrations (Director) in the Department of Regulatory Agencies.

The Director is charged with adopting necessary rules and regulations to carry out the article and establishing fees for registration and renewal of registration. The Director has the authority to inspect, on a complaint basis, any location where acupuncture is conducted to ensure compliance with rules and regulations.

When complaints are made against registrants and the Director has probable cause to believe provisions are being violated, he/she has the power to investigate, hold hearings, take evidence, subpoena witnesses, administer oaths and compel testimony of witnesses and production of relevant documents. The Director is authorized to employ administrative law judges to conduct any required hearings and to seek injunctions through the Attorney General's office to enjoin any persons from committing prohibited acts.

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## Registration Requirements

In order to register with the Office and be permitted to practice acupuncture in Colorado, an applicant must have earned a Master of Science in Oriental Medicine degree from an accredited college. The applicant must have passed board exams given by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) and be certified by that organization.

An applicant must also disclose any administrative action or judgment against him/her that involved malpractice or improper practice, as well as the terms of any settlement or other disposition, whether occurring in Colorado or in any other jurisdiction. Proof of commercial professional liability insurance is also required.

An applicant must supply the Office of Acupuncturists Registration (Office) with a copy of his/her "mandatory disclosure statement," a document that must be provided to each patient at the initial contact. Depicted below are the components that must be included in the statement.

- Name, business address and telephone number.
- Fee schedule.
- Statement indicating that patient is entitled to receive information about the methods of therapy, techniques used, and duration of therapy; that the patient may seek a second opinion from another health care professional or may terminate therapy at any time; and that sexual intimacy in a professional relationship is never appropriate and any such intimacy should be reported to the Director of the Division of Registrations.
- List of education, experience, degrees, memberships in professional organizations, and credentials related to acupuncture.
- Statement indicating any license, certificate or registration in acupuncture or any other health care profession issued by any local, state or national health care agency and indicating any suspension or revocation of any of them.

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- Statement of compliance with Dept. of Public Health & Environment's rules and regulations pertaining to sterilization of needles and sanitation of offices.
  - Statement informing patients that the practice of acupuncture is regulated by the Division of Registrations in DORA and providing the Director's name, address and telephone number.
  - Statement indicating training and experience in the recommendation and application of adjunctive therapies and herbs as defined by traditional Oriental medical concepts.

### Title Protection

It is unlawful for any person to use the title "registered acupuncturist" or "diplomate of acupuncture" or use the designations "R.Ac." or "Dipl.Ac." without being a registered acupuncturist.

### Scope of Practice

Nothing shall interfere with or prevent other licensed health care professionals from practicing acupuncture if it falls within their scope of practice. Most licensed physicians who refer to themselves as medical acupuncturists have completed instruction and training in acupuncture, but it is not required by statute. Chiropractors must have completed a minimum of 100 hours of theoretical study and supervised clinical instruction and must have managed 25 cases in which acupuncture was the primary method of treatment.

### Exemptions

Apprentices or interns may practice acupuncture without a valid and current registration on file with the Office of Acupuncturists Registration under the following circumstances:

- The practice is part of a bona fide training program;
- All acts are performed under the direct, on-site supervision of a registered acupuncturist;

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- The names and current addresses of all such participants have been reported to the Director of the Division of Registrations by the supervising registered acupuncturist.

### Grounds for Disciplinary Action

The Director is authorized to deny registration or take disciplinary action against an acupuncturist for numerous acts of unprofessional conduct, including practicing without being registered, providing false or deceptive information, failing to provide the required mandatory disclosure statement, and committing any act of health insurance abuse or fraud.

Other grounds include accepting commissions or rebates for referral of clients and failing to refer a patient to an appropriate practitioner when the condition of the patient is beyond the acupuncturist's training, experience or competence. Sexual contact with a patient at any time during the course of treatment is also grounds for disciplinary action, as is practicing while addicted to drugs or alcohol.

### Summary of Rules and Regulations

Permanent rules of the Office specify that an applicant's proof of NCCAOM certification must be provided directly from the NCCAOM to the Office. Similarly, verification of licensing in another state must be provided directly from that state agency to the Office.

By rule, an acupuncturist may reinstate a lapsed registration if it has been lapsed for a period of less than two years. The acupuncturist must pay the fee in effect at the time of reinstatement, submit a completed renewal application, and provide proof of malpractice insurance.

A rule pertaining to preceptors/instructors and unregistered persons in acupuncture training requires the supervising acupuncturist to notify the Director in writing within 10 days if the tutorial or training program is terminated for any reason.

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## Regulation in Other States

Thirty-four states and the District of Columbia currently regulate the practice of acupuncture. In 11 additional states, legislation has been introduced to regulate acupuncture. The practice is permitted in two others, Kansas and Michigan, through a ruling by their Boards of Medical Examiners.

The majority of the jurisdictions use the examination and certification process offered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). California and Nevada, however, have their own examination process, and Louisiana does not require an examination.

Appendices B, C and D depict a sampling of other states in order to provide an overview of similarities and differences of state regulations. The sampling used in this review includes Arizona, California, Colorado, Florida, Illinois, New Mexico and Texas.

A closer look at several categories shows a broad range in some areas such as the initial fee for licensure or registration. Colorado has the lowest fee for initial registration (\$100), while the equivalent fee in other states ranges as high as \$600 in Arizona and \$800 in New Mexico. In every state, the license is for either one or two years.

Education requirements for the states are comparable, though their statutes use different terminology in reference to graduation from an accredited acupuncture college. Some specify completion of a three or four-year curriculum or program, and others list the areas of study that must be included.

Similarly, all of the states accept certification by the NCCAOM as evidence of graduation from an accredited college. In order to be certified by NCCAOM, a candidate also must have passed knowledge-based board exams and performed practical demonstrations of meridian point location. An additional state-administered examination is required in California, New Mexico and Texas.

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Colorado is the only state in the sampling that has a requirement for malpractice insurance in its statutes. It is also the only state that *registers* acupuncturists. All of the others *license*.

In every state surveyed, the grounds for disciplinary actions are comparable. They all include practicing without a license, knowingly giving false or misleading information to a patient, being convicted of a felony or entering a plea of nolo contendere, practicing while addicted to or dependent upon alcohol or habit-forming drugs, and having his/her license revoked or suspended by another state or jurisdiction.

Most statutes include departing from accepted standards of care, although Colorado refers to minimal standards. Colorado is the only state in the sampling that lists abuse or fraud against health insurers as grounds for a disciplinary action. About half of the sampled states, including Colorado, list engaging in sexual intimacies with patients and accepting or giving commissions or rebates for referrals.

Generally, the powers and duties of regulatory authorities are uniform in the states sampled. Only Colorado and New Mexico have statutory mention of inspection of premises, and Colorado's is on a complaint-basis only.

As acupuncture and alternative therapies become more mainstream in Colorado and other states, individuals who have conventional health insurance coverage have asked that benefit packages be extended to include alternative therapies. Acupuncture is one of several treatments that may be available when an alternative medical benefit is provided.

Insurance coverage is provided in three different ways:

- As a core benefit with limits equal to traditional health care services;
- As an optional rider, such as a complementary and alternative medicine (CAM) rider;
- As a service from a network of providers that offers HMO members a discount.

The Acupuncture and Oriental Medicine Alliance (AOMA) tracks the total number of registered or licensed acupuncturists in each state. In the fall of 2000, it showed a range from just three in Louisiana to 5,321 in California.

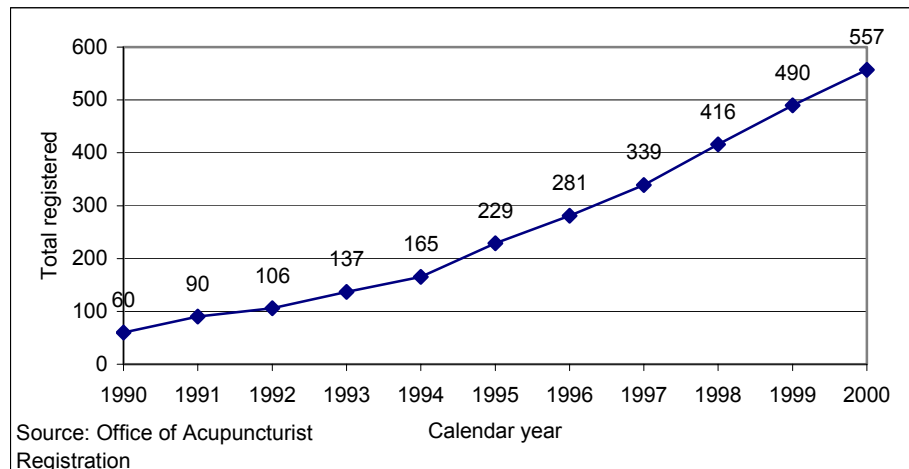
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In Maryland, Nevada and Oregon, states which were the first to regulate acupuncturists (in 1973), there were 720, 29 and 326, respectively. In Arizona, the most recent state to begin regulation (in 1998), there were 142.

Chart 1 shows that the Office of Acupuncturists Registration enrolled 60 acupuncturists in its first year of regulation in Colorado (1990). The number has increased steadily to 557 at the end of 2000.

Chart 1

Acupuncturists Registered in Colorado, 1990 - 2000



Colorado's mandatory disclosure statement is unique, but Arizona and Florida include one of its requirements, mandatory retention of records, in their statutes. Several states require that a practitioner's credentials be posted in his/her office in a readily visible location. Arizona is the only state to specify that its acupuncture statutes do not apply to persons who self-administer acupuncture.

In Illinois, no licensed acupuncturist can practice without a written referral from a physician or dentist also licensed in Illinois, and the physician or dentist maintains management of the patient. In Texas, a licensed acupuncturist can only practice if the patient has already been evaluated by a physician or dentist for the condition being treated or referred by a chiropractor within 30 days of the acupuncture treatment. However, acupuncturists in Texas need no referral to treat smoking addiction, weight loss or substance abuse.

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Florida and New Mexico require licensees to have the ability to communicate in English by passing nationally recognized English proficiency exams. Although Utah is not one of the states used in the sample, its statutes address the topic in this way: “Unprofessional conduct includes the failure to transmit records in the English language to the division, the patient’s practitioner or a third party insurance payer upon request.”

Texas statutes are the only ones in the sample that address public interest information. They state, “The Acupuncture Board shall prepare information of public interest describing the functions of the Acupuncture Board and the procedures by which complaints are filed with and resolved by the Acupuncture Board (and it) shall make the information available to the public and appropriate state agencies.”



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**Program  
Description and  
Administration**

Registration

The Director of the Division of Registrations of the Department of Regulatory Agencies (DORA) administers and enforces the acupuncturists registration program. There is no advisory board.

The initial registration period and each subsequent renewal are valid for two years. All Colorado registrations expire on December 31 of every odd-numbered year. The fee for the initial registration is \$100. The renewal fee, which was \$146 in 2001, is determined by the Department's fee setting process.

All program costs must be covered by the fees collected, and the Division realizes expense efficiencies by sharing administration with several allied health professions regulated by the Director. For the 2001-02 fiscal year, the Office of Acupuncturists Registration (Office) was allocated \$36,268 and .35 FTE (program administrator and administrative assistant).

Examination

The Office does not administer examinations to applicants. It accepts the national certification awarded to acupuncturists by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). To earn national certification, an applicant must have graduated from a college that is accredited by or a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and must have passed the NCCAOM board examination. The examination is given in two parts: one is knowledge-based and the other requires a practical demonstration of meridian point location. The tests are offered once each year in New York and in California.

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## Complaints and Disciplinary Actions

There have been relatively few complaints, 42 in all, filed with the Office since regulation began in 1990. Table 4 shows that the two categories drawing the most complaints were unlicensed practice and sexual misconduct. Six of the 12 sexual misconduct charges were filed against the same person. Table 5 shows disciplinary actions taken from January 1990 through July 2001.

Table 4  
Complaints - 1/90 - 7/01

Order Violation	1
Unlicensed Practice	16
Sexual Misconduct	12
Substandard Care	6
Clean Needle Violations	2
False Information	1
Practice Beyond the Scope	3
Fee Dispute	1
Total Complaints	42
Total Dismissed	18

Source: Office of Acupuncturists Registration

Table 5  
Disciplinary Actions - 1/90 – 7/01

Letter of Admonition	1
Injunction	5
Stipulation/Letter of Admonition	1
Stipulation/Relinquishment	1
Total Actions Taken	8

Source: Office of Acupuncturists Registration

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## **Analysis and Recommendations**

### ***Recommendation 1 - The General Assembly should continue the registration of acupuncturists under the Director of the Division of Registrations until 2013.***

Regulation of the practice of acupuncture helps ensure public health and safety in Colorado, as it does in 34 other states at this time. Acupuncture involves puncturing the skin with fine needles for diagnostic and therapeutic purposes. To protect consumers, invasive techniques must be held to standards of sanitation determined by the Department of Public Health and Environment.

Considering the number of people treated each year and the number of acupuncture needles used, few complications from the use of acupuncture have been reported to DORA. Complications can result from inadequate sterilization of needles and from improper delivery of treatments. When not delivered properly, acupuncture can cause serious adverse effects, including infections and puncturing of organs.

Practitioners must possess credentials proving that they meet or exceed registration requirements established by the Director of the Division of Registrations in the Department of Regulatory Agencies (DORA). They must possess the required education and training, and they must provide the Office of Acupuncturists Registration (Office) with background information concerning experience in the field, other licenses held in other jurisdictions and any suspensions or revocations.

Acupuncture is becoming more accessible to the public as health care benefit plans allow for coverage of alternative therapies. The Office has administered the program with a steadily increasing roster of acupuncturists. It has experienced relatively few complaints and has shown appropriate response to the charges filed during its years of existence.

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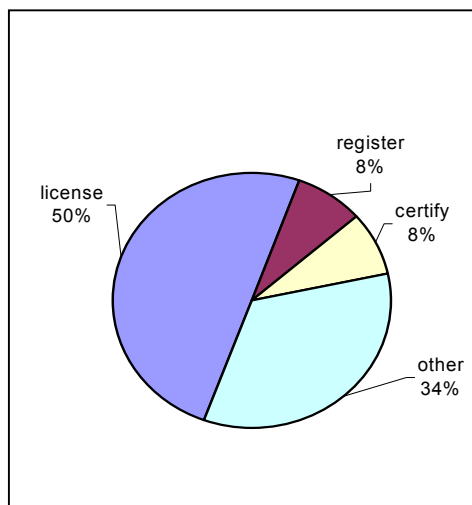
**Recommendation 2 - The General Assembly should amend the acupuncturist practice act by incorporating the term "licensure" in place of "registration."**

A publication by the Pew Health Professions Commission, *Reforming Health Care Workforce Regulation - Policy Considerations for the 21<sup>st</sup> Century*, recommends that the states use standardized language for health professions' regulation. It suggests the term "licensure" for public or state regulation. Calling the program "registration" is misleading. The term implies that merely providing basic personal information is all that is required.

The term "licensure" implies official or legal permission, and it is used for applicants who meet specific education, training and testing requirements. At this time, other states are not uniform in their terminology. Chart 2 shows that exactly half of the states license, four register, four certify and 17 are "other," including those states that permit only physicians to practice and those with no regulation.

Chart 2

How States Regulate Acupuncture



Source: National Acupuncture and Oriental Medicine Alliance

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Another compelling reason to change the regulation terminology from "registration" to "licensure" is that most other health care professionals in Colorado are licensed. As an example, chiropractors, nurses and podiatrists, among others are all licensed.

Section 12-29.5-104, C.R.S., contains the requirements for registration by acupuncturists with the Division of Registrations.

Section 12-29.5-104, C.R.S., should be amended to read:

**12-29.5-104. Requirement for registration LICENSURE with the division of registrations - annual fee - required disclosures.** (1) Every acupuncturist shall ~~register~~ **BE LICENSED** ~~with~~ **BY** the division of registrations by providing an application to the director in the form he shall require.

Make conforming amendments.

***Recommendation 3 - The General Assembly should allow for licensure by endorsement for acupuncture practitioners who are licensed in other states.***

Licensure by endorsement is the assessment of an individual's skills and qualifications independent of where he/she is licensed. Licensure by endorsement is allowed for other health care professionals in Colorado, including podiatrists, optometrists, physical therapists, and mental health professionals (psychologists, social workers, marriage and family therapists, and professional counselors).

By allowing the Office of Acupuncturists Registration to grant licensure by endorsement, the General Assembly makes it possible for the Office to streamline its registration procedures for acupuncturists already licensed in other states.

In order to ensure public health and safety, the statute permitting licensure by endorsement should provide that the applicant should be currently licensed, in practice, and in good standing in another jurisdiction. The applicant should possess credentials and qualifications which are substantially equivalent to the requirements for registration in Colorado.

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Article 29.5 of Title 12, C.R.S., should be amended to include a new section that would allow the Director of the Division of Registrations to issue registration by endorsement to an applicant for registration as an acupuncturist in Colorado if the applicant is currently licensed by and practicing in another jurisdiction.

Article 29.5 of Title 12, C.R.S., should be amended by adding a new section:

**12-29.5-105. LICENSURE BY ENDORSEMENT. (1) THE DIRECTOR OF THE DIVISION OF REGISTRATIONS MAY ISSUE A LICENSE BY ENDORSEMENT TO ENGAGE IN THE PRACTICE OF ACUPUNCTURE IN THIS STATE TO ANY APPLICANT WHO HAS A LICENSE IN GOOD STANDING AS AN ACUPUNCTURIST UNDER THE LAWS OF ANOTHER JURISDICTION IF THE APPLICANT PRESENTS PROOF SATISFACTORY TO THE DIRECTOR THAT, AT THE TIME OF APPLICATION FOR A COLORADO LICENSE BY ENDORSEMENT, THE APPLICANT POSSESSES CREDENTIALS AND QUALIFICATIONS WHICH ARE SUBSTANTIALLY EQUIVALENT TO REQUIREMENTS IN COLORADO FOR LICENSURE. THE DIRECTOR MAY SPECIFY BY RULE AND REGULATION WHAT SHALL CONSTITUTE SUBSTANTIALLY EQUIVALENT CREDENTIALS AND QUALIFICATIONS.**

**(2) A FEE TO BE SET BY THE DIRECTOR SHALL BE CHARGED FOR LICENSURE BY ENDORSEMENT.**

**(3) "IN GOOD STANDING," AS USED IN SUBSECTION (1) OF THIS SECTION, MEANS A LICENSE WHICH HAS NOT BEEN REVOKED OR SUSPENDED OR AGAINST WHICH THERE ARE NO DISCIPLINARY OR ADVERSE ACTIONS.**

Renumber succeeding sections accordingly.

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## **Appendix A - Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

## **Appendix B - General Comparisons of Practice Acts in Sampled States**

	Arizona	California	Colorado	Florida	Illinois	New Mexico	Texas
Registration, Certification or Licensure	Licensure	Licensure	Registration	Licensure	Licensure	Licensure	Licensure
Education: Graduate of Accredited 3 or 4 Year Program or Equivalent	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Natl Exam & Certification Accepted	NCCAOM exam and certification	NCCAOM exam and certification plus CA exam	NCCAOM exam	NCCAOM exam and certification	NCCAOM exam and certification	NCCAOM exam and certification plus NM exam	NCCAOM exam and certification plus TX exam
Minimum Age to Practice	None in statute	18	None in statute	21	None in statute	None in statute	21
Professional Title	L. Ac.	L. Ac.	R. Ac. Dipl. Ac.	L. Ac. R. Ac.	C. A., Act, Lic. Act.	L. Ac.	L. Ac.
Initial Fee to Register	\$600	\$325	\$100	\$400	\$500	\$800	\$250
Duration of License	1 year	2 years	2 years	2 years	1 year	1 year	1 year
Endorsement Provision	Yes	No	No	Yes	Yes	Yes	Yes
Malpractice Insurance Required	No	No	Yes	No	No	No	No



## **Appendix C - Comparison of Grounds for Disciplinary Action Statutes in Sampled States**

	<b>Arizona</b>	<b>California</b>	<b>Colorado</b>	<b>Florida</b>	<b>Illinois</b>	<b>New Mexico</b>	<b>Texas</b>
Practice Without a License	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Knowingly Give False or Misleading Information to Patient	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Abuse or Commit Fraud Against Health Insurers	Not in statute	Not in statute	Yes	Not in statute	Not in statute	Not in statute	Not in statute
Accept or Give Commission or Rebate for Referral	Yes	Not in statute	Yes	Not in statute	Not in statute	Yes	Not in statute
Fail to Follow Sterile Needle Regulations	Yes	Yes	Yes	Yes	Not in statute	Not in statute	Not in statute
Engage in Sexual Intimacies with Patient	Yes	Not in statute	Yes	Yes	Not in statute	Not in statute	Not in statute
Depart from "Accepted Standards of Care"	Yes	Not in statute	"Minimal standards of care"	Yes	Yes	Yes	Yes
Practice when Hindered by Physical or Mental Condition	Not in statute	Not in statute	Yes	Yes	Yes	Yes	Yes
Practice when Dependent on Drugs or Alcohol	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Convicted of Felony or Enter Plea of Nolo Contendre	Yes	Yes	Yes	Yes	Yes	Yes	Yes
License Revoked or Suspended by Another State or Jurisdiction	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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**Appendix D - Comparison of Powers and Duties of Regulatory Authorities in Sampled States**

	<b>Arizona</b>	<b>California</b>	<b>Colorado</b>	<b>Florida</b>	<b>Illinois</b>	<b>New Mexico</b>	<b>Texas</b>
Adopt Rules and Regulations	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Set Fees	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Accept or Deny Applications	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Inspect Premises	Not in statute	Not in statute	Yes, on a complaint basis	Not in statute	Not in statute	Yes	Not in statute
Investigate Complaints, Conduct Hearings, Seek Injunctions	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Order Physical or Mental Exams of Practitioners	Not in statute	Not in statute	Yes	Yes	Yes	Not in statute	Yes
Require Continuing Education Requirement for License Renewal	Yes, 15 hours per year	Yes, 30 hours every 2 years	No	Yes, 30 hours every 2 years	Yes	Yes	Yes

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**Appendix E -  
Acupuncturist  
Practice Act**

**12-29.5-101. Legislative declaration.** While recognizing that the rendering of acupuncture services is not part of the traditional practice of western medicine, it is the intent of the general assembly that those citizens who wish to obtain acupuncture services be allowed to do so and, in addition, that such citizens have available certain information to assist them in making informed choices when seeking such services. It is also the intent of the general assembly that the providers or practitioners of acupuncture should not misrepresent their qualifications, harm their clients, practice in an unhealthy manner, or otherwise deceive insurers or the recipients of acupuncture services.

**12-29.5-102. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Acupuncture" means the insertion of needles into the human body by piercing the skin of the body at specific locations based on traditional oriental concepts of evaluation and treatment.

(1) "Acupuncture" means a system of health care based upon traditional oriental medical concepts that employs oriental methods of diagnosis, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease.

(2) "Acupuncturist" means any person who provides for compensation, or holds himself out to the public as providing, acupuncture services.

(3) "Director" means the director of the division of registrations in the department of regulatory agencies.

(3.2) "Guest acupuncturist" means an acupuncturist who is:

(a) Licensed, registered, certified, or regulated as an acupuncturist in another jurisdiction;

(b) In this state for the purpose of instruction or education for not more than seven days within a three-month period; and

(c) Under the direct supervision of a Colorado registered acupuncturist or licensed chiropractor while performing such instruction or education.

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(3.5) "Practice of acupuncture" means the insertion and removal of acupuncture needles, the application of heat therapies to specific areas of the human body, and traditional oriental adjunctive therapies. Traditional oriental adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, the recommendation of oriental therapeutic exercises, and, subject to federal law, the recommendation of herbs and dietary guidelines. The "practice of acupuncture" shall be defined by traditional oriental medical concepts and shall not include the utilization of western medical diagnostic tests and procedures, such as magnetic resonance imaging, radiographs (x-rays), computerized tomography scans, and ultrasound. "Practice of acupuncture" does not mean:

- (a) Osteopathic medicine and osteopathic manipulative treatment;
  - (b) "Chiropractic" or "chiropractic adjustment" as defined in section 12-33-102 or therapies allowed as part of the practice of chiropractic or chiropractic adjustment;
  - (c) Physical therapy as defined in section 12-41-103 or therapies allowed as part of the practice of physical therapy.
- (4) "Registrant" means an acupuncturist registered pursuant to section 12-29.5-104.

**12-29.5-103. Mandatory disclosure of information to patients - retention of records of disclosure.** (1) Every acupuncturist shall provide the following information in writing to each patient during the initial patient contact:

- a) The name, business address, and business phone number of the acupuncturist;
  - (b) A fee schedule;
  - (c) A statement indicating that:
    - (I) The patient is entitled to receive information about the methods of therapy, the techniques used, and the duration of therapy, if known;
    - (II) The patient may seek a second opinion from another health care professional or may terminate therapy at any time;
    - (III) In a professional relationship, sexual intimacy is never appropriate and should be reported to the director of the division of registrations in the department of regulatory agencies;
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(d) A listing of the acupuncturist's education, experience, degrees, membership in a professional organization whose membership includes not less than one-third of the persons registered pursuant to this article, certificates or credentials related to acupuncture awarded by such organizations, the length of time required to obtain said degrees or credentials, and experience;

(e) A statement indicating any license, certificate, or registration in acupuncture or any other health care profession which was issued to the acupuncturist by any local, state, or national health care agency, and indicating whether any such license, certificate, or registration was suspended or revoked;

(f) A statement that the acupuncturist is complying with any rules and regulations promulgated by the department of public health and environment with respect to this article, including those related to the proper cleaning and sterilization of needles used in the practice of acupuncture and the sanitation of acupuncture offices; and

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director of the division of registrations in the department of regulatory agencies.

(g) A statement indicating that the practice of acupuncture is regulated by the department of regulatory agencies and the address and phone number of the director of the division of registrations in the department of regulatory agencies; and

(h) A statement indicating the acupuncturist's training and experience in the recommendation and application of adjunctive therapies and herbs as defined by traditional oriental medical concepts.

(2) Any changes in the information required by paragraphs (a) to (f) of subsection (1) of this section shall be made in the mandatory disclosure within five days of the said change.

(3) The acupuncturist shall retain a copy of the written information specified in subsection (1) of this section, dated and signed by the patient, from the time of the initial evaluation until at least three years after the termination of treatment.

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**12-29.5-104. Requirement for registration with the division of registrations - annual fee - required disclosures.**

(1) Every acupuncturist shall register with the division of registrations by providing an application to the director in the form he shall require. Said application shall include the information specified in section 12-29.5-103 (1) (a) and (1) (d) to (1) (g), and shall include the disclosure of any act which would be grounds for disciplinary action against a registered acupuncturist under this article.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days of said change to the division of registrations in the manner prescribed by the director.

(3) In order to qualify to register, an acupuncturist shall have:

(a) Successfully completed an education program for acupuncturists which conforms to standards approved by the director, which standards may be established by utilizing the assistance of any professional organization whose membership includes not less than one-third of the persons registered pursuant to this article; or

(b) Qualifications based on education, experience, or training which are substantially similar to those provided by paragraph (a) of this subsection (3) which are documented in the form required by the director and accepted by him in lieu of such education program.

(4) Every applicant for registration shall pay an annual registration fee to be established by the director in the same manner as is authorized by section 24-34-105, C.R.S. The director shall promulgate rules and regulations for the reinstatement of registrations which have lapsed due to nonpayment of such annual fee; except that, if a registrant has not applied for reinstatement within two years after the date of lapse, reinstatement is not available and the registrant must reapply as a new applicant.

(5) Every acupuncturist shall report to the director every judgment or administrative action, as well as the terms of any settlement or other disposition of any such judgment or action, against the acupuncturist involving malpractice or improper practice of acupuncture, whether occurring in Colorado or in any other jurisdiction. The acupuncturist shall make such report either within thirty days of the judgment or action or upon application for registration or reinstatement, whichever occurs earlier.

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(6) As a condition of registration, every acupuncturist shall purchase and maintain commercial professional liability insurance with an insurance company authorized to do business in this state in a minimum indemnity amount of:

(a) Fifty thousand dollars per incident and fifty thousand dollars per year, if practicing as a sole proprietor or general partnership;

(b) Three hundred thousand dollars per incident and three hundred thousand dollars per year, if practicing as a limited liability company or a corporation.

**12-29.5-105. Unlawful acts - exceptions.** (1) Nothing in this article shall interfere with, or be interpreted to interfere with or prevent, any other licensed health care professional from practicing within the scope of his or her practice, as defined in this title.

(1.5) (a) It is unlawful for any person to practice acupuncture without a valid and current registration on file with the division of registrations, unless the acupuncturist is practicing pursuant to section 12-36-106 (3) (l) or has met the requirements of subsection (2) of this section.

(b) It is unlawful for any person to:

(l) Engage in the practice of acupuncture without being registered; or

(ll) Use the title "registered acupuncturist" or "diplomat of acupuncture" or use the designation "R.Ac." or "Dipl. Ac.", unless such person is practicing pursuant to section 12-36-106 (3).

(2) Notwithstanding the provisions of this section to the contrary, a person in training may practice acupuncture without a valid and current registration on file with the division if such practice takes place in the course of a bona fide training program and:

(a) All acupuncture acts and services performed by such persons are performed under the direct, on-site supervision of a registered acupuncturist, who shall be responsible for all such acts and services as though the registered acupuncturist had personally performed them; and

(b) The names and current residence addresses of all of such persons have been reported to the director by or on behalf of the registered acupuncturist supervising such persons.

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**12-29.5-106. Grounds for disciplinary action.** (1) The director may deny registration to or take disciplinary action against an acupuncturist pursuant to section 24-4-105, C.R.S., if he finds that the acupuncturist has committed any of the following acts:

- (a) Violated the provisions of section 12-29.5-105;
- (b) Failed to provide the mandatory disclosure required by section 12-29.5-103 or provided false, deceptive, or misleading information to patients in the said disclosure;
- (c) Failed to provide the information required by section 12-29.5-104 (1) or provided false, deceptive, or misleading information to the division of registrations;
- (d) Committed, or advertised in any manner that he will commit, any act constituting an abuse of health insurance as prohibited by section 18-13-119, C.R.S., or a fraudulent insurance act as defined in section 10-1-127, C.R.S.;
- (e) Failed to refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist;
- (f) Accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;
- (g) Offered or gave commissions, rebates, or other forms of remuneration for the referral of clients; except that, notwithstanding the provisions of this paragraph (g), an acupuncturist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered on his behalf by such agent, including compensation which is paid for the results of performance of such services, on a per patient basis;
- (h) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations adopted by the executive director of the department of public health and environment, including those regulations governing the proper cleaning and sterilization of acupuncture needles or the sanitary conditions of acupuncture offices, or any lawful orders of the department of public health and environment or of court;
- (i) Failed to comply with, or aided or abetted a failure to comply with, the requirements of this article or any lawful rules or regulations governing the practice of acupuncture adopted by the director, or any lawful orders of the director or of court;



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(j) Engaged in sexual contact, sexual intrusion, or sexual penetration, as defined in section 18-3-401, C.R.S., with a patient during the period of time beginning with the initial patient evaluation and ending with the termination of treatment;

(k) Departed from, or failed to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(l) Continued in the practice of acupuncture while subject to any physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety, or continued in the practice of acupuncture while afflicted with a communicable, infectious, or contagious disease of such a serious nature as to render the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety;

(m) Continued in the practice of acupuncture while addicted to or dependent upon alcohol or upon any habit-forming drug, as defined in section 12-22-102 (13), or while abusing or habitually or excessively using any such habit-forming drug or any controlled substance, as defined in section 12-22-303 (7);

(n) Committed and been convicted of a felony or entered a plea of guilty or nolo contendere to a felony; and

(o) Published or circulated, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to acupuncture or to the acupuncturist's practice, capabilities, services, methods, or qualifications.

(2) The director may accept, as prima facie evidence of the commission of any act enumerated in subsection (1) of this section, evidence of disciplinary action taken by another jurisdiction against an acupuncturist's license or other authorization to practice if such disciplinary action was based upon acts or practices substantially similar to those enumerated in subsection (1) of this section.

**12-29.5-107. Disciplinary authority and proceedings.** (1)

A proceeding for discipline of a registrant may be commenced by the director when he has reasonable grounds to believe that a registrant has committed any act prohibited by section 12-29.5-106 (1).

(2) Disciplinary actions may consist of the following:

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(a) Revocation or suspension of registration;

(b) Placement of the registrant on probation and setting the terms of that probation; and

(c) Issuance of letters of admonition. When a complaint or investigation discloses an instance of conduct which, in the opinion of the director, does not warrant formal action by him, but which should not be dismissed without merit, the director may send such a letter of admonition by certified mail to the acupuncturist against whom a complaint was made with a copy to the person making said complaint. When such letter of admonition is sent, the acupuncturist complained against shall be advised that he has the right to request, in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the letter of admonition was based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be adjudicated by formal disciplinary proceedings.

(3) Complaints of record on file with the director and the results of investigations shall be closed to public inspection during the investigatory period and until dismissed or until notice of hearing and charges are served on a registrant. The director's records and papers shall be subject to the provisions of sections 24-72-203 and 24-72-204, C.R.S.

**12-29.5-108. Criminal penalties.** (1) Any person who violates any of the provisions of section 12-29.5-106 (1) (a) to (1) (i) commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S. Any person who subsequently violates any provision of said paragraphs within three years after the date of a conviction for any violation of the said paragraphs commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.

(2) Any person who violates the provision of section 12-29.5-106 (1) (j) by engaging in sexual contact with a patient during the course of patient care commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

(3) Any person who violates the provisions of section 12-29.5-106 (1) (j) by engaging in sexual intrusion or sexual penetration with a patient during the course of patient care commits a class 4 felony and shall be punished as provided in section 18-1-105, C.R.S.

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**12-29.5-109. Civil penalties.** (1) No action may be maintained against a recipient of acupuncture services for breach of a contract involving the rendering of acupuncture services provided under such contract by an acupuncturist who has committed, with respect to such recipient, any act prohibited by section 12-29.5-106 (1).

(2) When a patient, his insurer, or his legal guardian or representative has paid for acupuncture services rendered by an acupuncturist who has committed, with respect to such patient, any act prohibited by section 12-29.5-106 (1), whether or not said patient knew that said act or acts were illegal, he, his insurer, or his legal guardian or representative may recover, in an action at law, the amount of any fees paid for the acupuncture services and reasonable attorney fees.

(3) The criminal and civil penalties specified under this article are not exclusive but cumulative and in addition to any other causes of action, rights, or remedies a patient may have under law.

**12-29.5-109.5. Immunity of complainants or witnesses acting in good faith.** Any person making a complaint or report, acting as a consultant or expert witness on behalf of the director, or participating in any investigation or administrative proceeding authorized under this article shall be immune from suit in any civil action based upon such person's conduct within the scope of such activity or participation if the person acted in good faith, made a reasonable effort to obtain the relevant facts, and acted in the reasonable belief that the actions taken by said person were warranted by the facts.

**12-29.5-110. Director - powers and duties.** (1) In addition to any other powers and duties conferred by this article, the director shall have the following powers and duties:

(a) To adopt such rules and regulations as may be necessary to carry out the provisions of this article;

(b) To establish the fees for registration and renewal of registration in the same manner as is authorized by section 24-34-105, C.R.S.;

(c) To accept or deny applications for registration and to collect the annual registration fees authorized by this article;

(d) To inspect on a complaint basis any premises where acupuncture services are provided to ensure compliance with this article and the rules and regulations adopted pursuant thereto;

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(e) To contract with the department of public health and environment or others to provide appropriate services as needed to carry out the inspections authorized with respect to the proper cleaning and sterilization of needles and the sanitation of acupuncture offices;

(f) To make investigations, hold hearings, and take evidence with respect to any complaint against any registrant when the director has reasonable cause to believe that the registrant is violating any of the provisions of this article and to subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to those investigations or hearings. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(g) To conduct any other meetings or hearings necessary to carry out the provisions of this article;

(h) Through the department of regulatory agencies, and subject to appropriations made to the department of regulatory agencies, to employ administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(i) To seek, through the office of the attorney general, an injunction in any court of competent jurisdiction to enjoin any person from committing any act prohibited by this article. When seeking an injunction under this paragraph (i), the director shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(j) To order the physical or mental examination of an acupuncturist if the director has reasonable cause to believe that the acupuncturist is subject to a physical or mental disability which renders the acupuncturist unable to treat patients with reasonable skill and safety or which may endanger a patient's health or safety; and the director may order such an examination whether or not actual injury to a patient is established;

(k) To report to the United States department of health and human services, pursuant to applicable federal law and regulations, any adverse action taken against the registration of any acupuncturist.

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**12-29.5-111. Powers and duties of the executive director of the department of public health and environment.** The executive director of the department of public health and environment shall promulgate rules and regulations relating to the proper cleaning and sterilization of needles to be used in the practice of acupuncture and the sanitation of acupuncture offices.

**12-29.5-112. Insurance coverage - not affected.** Nothing in this article shall be construed to affect any present or future provision of law or contract or other agreement concerning insurance or insurance coverage with respect to the provision of acupuncture services.

**12-29.5-113. Scope of article.** The provisions of this article shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the provision of acupuncture services is within the scope of such licensure.

**12-29.5-113. Scope of article.** The provisions of this article shall not apply to those persons who are otherwise licensed by the state of Colorado under this title if the provision of acupuncture services is within the scope of such licensure. It is not intended nor shall it be interpreted that the practice of acupuncture constitutes the practice of medicine within the scope of the "Colorado Medical Practice Act", article 36 of this title.

**12-29.5-114. Division of registrations cash fund.** It is the intention of the general assembly that all direct and indirect costs incurred in the implementation of this article be funded by annual registration fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, created by section 24-34-105, C.R.S.

**12-29.5-115. Effective date - applicability.** This article shall take effect July 1, 1989, and shall apply to practicing acupuncturists on or after January 1, 1990.

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**12-29.5-116. Repeal of article - termination of functions.**

(1) This article is repealed, effective July 1, 2002.

(2) The registration functions of the director of the division of registrations as set forth in this article are terminated on July 1, 2002. Prior to such termination, the registration functions shall be reviewed as provided for in section 24-34-104, C.R.S.