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By: **Delegate Menes**

Introduced and read first time: February 11, 2004

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **State Acupuncture Board - Maryland Acupuncture Act - Revisions**

3 FOR the purpose of requiring that certain prosecutions under the Maryland  
4 Acupuncture Act be instituted within a certain time period; altering the term of  
5 the members of the State Acupuncture Board; providing that certain licensees  
6 have a certain grace period for license renewal under certain circumstances;  
7 prohibiting the Board from placing licensees on inactive status for more than a  
8 certain time period; requiring the Board to reactivate a license under certain  
9 circumstances; authorizing, instead of requiring, the Board to reinstate certain  
10 licenses under certain circumstances; providing for the reinstatement of certain  
11 licenses under certain circumstances; prohibiting the Board from assessing a  
12 certain fee on certain licensees under certain circumstances; requiring certain  
13 individuals to obtain a certain license in a certain manner; establishing certain  
14 grounds for disciplinary action against certain licensees; authorizing the Board  
15 chairman to delegate certain authority to conduct certain hearings to a certain  
16 committee; requiring a certain committee to hold certain hearings, prepare  
17 certain recommendations, and give certain notice to certain parties; increasing  
18 certain penalties for a violation of the Maryland Acupuncture Act; requiring the  
19 Board to send each licensee a certain notice in a certain manner and on or before  
20 a certain date; and generally relating to the State Acupuncture Board and the  
21 Maryland Acupuncture Act.

22 BY repealing and reenacting, with amendments,  
23 Article - Courts and Judicial Proceedings  
24 Section 5-106(y)  
25 Annotated Code of Maryland  
26 (2002 Replacement Volume and 2003 Supplement)

27 BY repealing and reenacting, with amendments,  
28 Article - Health Occupations  
29 Section 1A-202(g), 1A-306, 1A-307, 1A-309, 1A-310, and 1A-403  
30 Annotated Code of Maryland  
31 (2000 Replacement Volume and 2003 Supplement)

1 BY repealing and reenacting, without amendments,  
2 Article - Health Occupations  
3 Section 1A-202(a)  
4 Annotated Code of Maryland  
5 (2000 Replacement Volume and 2003 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Courts and Judicial Proceedings**

9 5-106.

10 (y) A prosecution for a misdemeanor offense under TITLE 1A OR Title 9 of the  
11 Health Occupations Article shall be instituted within 3 years after the offense was  
12 committed.

13 **Article - Health Occupations**

14 1A-202.

15 (a) (1) The Board consists of seven members appointed by the Governor.

16 (2) Of the seven members:

17 (i) Five shall be licensed acupuncturists appointed from a list  
18 submitted as provided in subsection (c) of this section; and

19 (ii) Two shall be consumer members.

20 (g) (1) The term of a member is [3] 4 years.

21 (2) The terms of members are staggered as required by the terms  
22 provided for members of the Board on July 1, 1994.

23 (3) At the end of a term, a member continues to serve until a successor is  
24 appointed and qualifies.

25 (4) A member may not serve more than two consecutive full terms.

26 (5) A member who is appointed after a term has begun serves only for  
27 the rest of the term and until a successor is appointed and qualifies.

28 1A-306.

29 (a) (1) The Board shall provide for the term and renewal of licenses under  
30 this section.

31 (2) The term of a license may not be more than 3 years.

1 (3) A license expires at the end of its term, unless the license is renewed  
2 for a term as provided by the Board.

3 (b) At least 1 month before the license expires, the Board shall send to the  
4 licensee, by first-class mail to the last known address of the licensee, a renewal notice  
5 that states:

6 (1) The date on which the current license expires;

7 (2) The date by which the renewal application must be received by the  
8 Board for the renewal to be issued and mailed before the license expires; and

9 (3) The amount of the renewal fee.

10 (c) Before the license expires, the licensee periodically may renew it for an  
11 additional term, if the licensee:

12 (1) Otherwise is entitled to be licensed;

13 (2) Pays to the Board a renewal fee set by the Board; and

14 (3) Submits to the Board:

15 (i) A renewal application on the form that the Board requires; and

16 (ii) Satisfactory evidence of compliance with any continuing  
17 education requirements set under this section for license renewal.

18 (d) In addition to any other qualifications and requirements established by  
19 the Board, the Board may establish continuing education requirements as a condition  
20 to the renewal of licenses under this section.

21 (e) The Board shall renew the license of and issue a renewal certificate to each  
22 licensee who meets the requirements of this section.

23 (F) AN ACUPUNCTURIST HAS A GRACE PERIOD OF 30 DAYS AFTER THE  
24 ACUPUNCTURIST'S LICENSE EXPIRES IN WHICH TO RENEW IT RETROACTIVELY, IF  
25 THE ACUPUNCTURIST:

26 (1) OTHERWISE IS ENTITLED TO HAVE THE LICENSE RENEWED; AND

27 (2) PAYS TO THE BOARD THE RENEWAL FEE AND ANY LATE FEE SET BY  
28 THE BOARD.

29 [(f)] (G) A licensee may advertise only as permitted by regulations adopted by  
30 the Board.

31 1A-307.

32 (a) (1) The Board shall place a licensee on inactive status if the licensee  
33 submits to the Board:

1 [(1)] (I) An application for inactive status on the form required by  
2 the Board; and

3 [(2)] (II) The inactive status fee set by the Board.

4 (2) THE BOARD MAY NOT PLACE A LICENSEE ON INACTIVE STATUS FOR  
5 MORE THAN 6 YEARS.

6 (b) The Board shall [issue] REACTIVATE a license to an individual who is on  
7 inactive status if the individual complies with the renewal requirements that exist at  
8 the time the individual changes from inactive to active status.

9 (c) The Board [shall] MAY reinstate the license of a former licensee who has  
10 failed to renew the license for any reason if the former licensee:

11 (1) Meets the [renewal] CONTINUING EDUCATION requirements of §  
12 1A-306 of this subtitle FOR EACH YEAR THAT THE LICENSE HAS LAPSED; [and]

13 (2) APPLIES FOR REINSTATEMENT MORE THAN 30 DAYS AFTER THE  
14 LICENSE RENEWAL DEADLINE;

15 (3) SUBMITS TO THE BOARD AN APPLICATION FOR REINSTATEMENT ON  
16 THE FORM REQUIRED BY THE BOARD; AND

17 [(2)] (4) Pays to the Board a reinstatement fee AND A RENEWAL FEE set  
18 by the Board.

19 (D) THE BOARD MAY NOT ASSESS THE REINSTATEMENT FEE REQUIRED  
20 UNDER SUBSECTION (C) OF THIS SECTION ON AN INDIVIDUAL WHO HAS BEEN ON  
21 INACTIVE STATUS FOR MORE THAN 6 YEARS IF THE INDIVIDUAL CAN PROVIDE  
22 DOCUMENTATION OF MAINTAINING AN ACTIVE LICENSE IN ANOTHER STATE.

23 (E) AN INDIVIDUAL WHO HAS BEEN PREVIOUSLY LICENSED BY THE BOARD  
24 SHALL OBTAIN A LICENSE ONLY BY MEANS OF LICENSE RENEWAL OR  
25 REINSTATEMENT AS PROVIDED IN THIS ARTICLE AND IN REGULATIONS ADOPTED BY  
26 THE BOARD.

27 1A-309.

28 Subject to the hearing provisions of § 1A-310 of this subtitle, the Board, on the  
29 affirmative vote of a majority of its full authorized membership, may deny a license to  
30 practice acupuncture to any applicant, reprimand any licensee, place any licensee on  
31 probation, or suspend or revoke a license if the licensee:

32 (1) Fraudulently or deceptively obtains or attempts to obtain a license  
33 for the applicant or licensee or for another;

34 (2) Fraudulently or deceptively:

35 (i) Uses a license; or

- 1 (ii) Solicits or advertises;
- 2 (3) Is guilty of immoral or unprofessional conduct in the practice of  
3 acupuncture;
- 4 (4) Is professionally, physically, or mentally incompetent;
- 5 (5) Provides professional services while:
- 6 (i) Under the influence of alcohol; or
- 7 (ii) Using any narcotic or controlled dangerous substance, as  
8 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of  
9 therapeutic amounts or without a valid medical indication;
- 10 (6) Knowingly violates any provision of this title or any rule or  
11 regulation of the Board adopted under this title;
- 12 (7) Is convicted of or pleads guilty or nolo contendere to a felony or to a  
13 crime involving moral turpitude, whether or not any appeal or other proceeding is  
14 pending to have the conviction or plea set aside;
- 15 (8) Practices acupuncture with an unauthorized person or assists an  
16 unauthorized person in the practice of acupuncture;
- 17 (9) Is disciplined by the licensing or disciplinary authority of any [other]  
18 state or country or convicted or disciplined by a court of any state or country for an act  
19 that would be grounds for disciplinary action under this section;
- 20 (10) Willfully makes or files a false report or record in the practice of  
21 acupuncture;
- 22 (11) Willfully fails to file or record any report as required by law, willfully  
23 impedes or obstructs the filing or recording of the report, or induces another to fail to  
24 file or record the report;
- 25 (12) Submits a false statement to collect a fee;
- 26 (13) Refuses, withholds from, denies, or discriminates against an  
27 individual with regard to the provision of professional services for which the person is  
28 licensed and qualified to render because the individual is HIV positive;
- 29 (14) Fails to display the notice required under § 1A-313 of this subtitle;  
30 [or]
- 31 (15) Fails to cooperate with a lawful investigation conducted by the Board;
- 32 (16) COMMITS ANY ACT OF GROSS NEGLIGENCE, INCOMPETENCE, OR  
33 MISCONDUCT IN THE PRACTICE OF ACUPUNCTURE;

1 (17) ENGAGES IN A COURSE OF CONDUCT THAT IS INCONSISTENT WITH  
2 GENERALLY ACCEPTED PROFESSIONAL STANDARDS IN THE PRACTICE OF  
3 ACUPUNCTURE; OR

4 (18) FAILS TO COMPLY WITH ANY BOARD ORDER.

5 1A-310.

6 (a) Except as provided in the Administrative Procedure Act, before the Board  
7 takes any action under § 1A-309 of this subtitle, it shall give the individual against  
8 whom the action is contemplated an opportunity for a hearing before the Board.

9 (b) The Board shall give notice and hold the hearing in accordance with the  
10 Administrative Procedure Act.

11 (c) The individual may be represented at the hearing by counsel.

12 (D) (1) THE BOARD CHAIRMAN MAY DELEGATE THE AUTHORITY TO  
13 CONDUCT A HEARING TO A COMMITTEE CONSISTING OF THREE OR MORE BOARD  
14 MEMBERS.

15 (2) THE COMMITTEE SHALL:

16 (I) HOLD AN EVIDENTIARY HEARING; AND

17 (II) PREPARE A RECOMMENDED DECISION FOR CONSIDERATION BY  
18 A QUORUM OF THE BOARD, WHICH MAY INCLUDE MEMBERS OF THE COMMITTEE.

19 (3) THE COMMITTEE SHALL GIVE TO EACH PARTY THAT IS THE SUBJECT  
20 OF THE HEARING NOTICE OF THE OPPORTUNITY TO FILE EXCEPTIONS AND PRESENT  
21 ARGUMENTS TO THE BOARD REGARDING THE DECISION OF THE COMMITTEE.

22 [(d)] (E) Over the signature of an officer or the administrator of the Board, the  
23 Board may issue subpoenas and administer oaths in connection with any  
24 investigation under this title and any hearings or proceedings before it.

25 [(e)] (F) If, after due notice, the individual against whom the action is  
26 contemplated fails or refuses to appear, the Board may hear and determine the  
27 matter.

28 [(f)] (G) If, after a hearing, an individual is found in violation of § 1A-309 of  
29 this subtitle, the individual shall pay the costs of the hearing as specified in a  
30 regulation adopted by the Board.

31 1A-403.

32 A person who violates any provision of this subtitle is guilty of a misdemeanor  
33 and on conviction is subject to a fine not exceeding [\$1,000] \$5,000 or imprisonment  
34 not exceeding [1 year] 3 YEARS or both.

1       SECTION 2. AND BE IT FURTHER ENACTED, That, on or before the effective  
2 date of this Act, the State Acupuncture Board shall send to each licensee, by  
3 first-class mail to the last known address of the licensee, a summary of the changes  
4 made to the Maryland Acupuncture Act by this Act.

5       SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2004.