

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1790 Acupuncture Advisory Council

Statutory Authority: 16 Delaware Code, Section 1796 (16 **Del.C.** §1796)

PROPOSED

PUBLIC NOTICE

Consistent with a recent statutory amendments creating an Acupuncture Advisory Council of the Board of Medical Practice ("the Council"), and providing for the licensing and regulation of acupuncture practitioners, the Council in accordance with 24 Del.C. §1796(c) and 29 Del.C. Chapter 101, has developed and is proposing to recommend to the Board of Medical Practice ("the Board") the approval of regulations regarding the practice of acupuncture in the State of Delaware.

A public hearing will be held on Thursday, September 17, 2009 at 3:15 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public may offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Medical Practice, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward the written comments to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Council may vote on whether to promulgate the proposed regulations subject to the approval of the Board immediately following the public hearing.

1790 Acupuncture Advisory Council

1.0 Source of Authority: 24 Del.C. Ch. 17, Subchapter X

- 1.1 The Rules and Regulations herein contained constitute, comprise, and shall be known as the Rules and Regulations of the Acupuncture Advisory Council of the Board of Medical Practice, and are hereby promulgated, pursuant to 24 Del.C. §1796 (c).

2.0 Definitions

Whenever used in these Rules and Regulations unless expressly otherwise stated, or unless the context or subject matter requires a different meaning, the following terms shall have the respective meanings hereinafter set forth or indicated.

"ACAOM" means Accreditation Commission for Acupuncture and Oriental Medicine.

"Board" means Delaware Board of Medical Practice.

"CCAOM" means the Council of Colleges of Acupuncture and Oriental Medicine.

"Council" means the Acupuncture Advisory Council of the Board of Medical Practice.

"Crime Substantially Related to the Practice of Acupuncture" means those crimes identified in Rule 29 of the rules and regulations of the Board of Medical Practice.

"License" means a license issued by the Board to practice acupuncture.

"Licensed Acupuncturist" ("L.Ac.") means an individual authorized to practices acupuncture under the provisions of the Medical Practice Act, 24 Delaware Code, Chapter 17, Subchapter X.

"NCCAOM" means the National Certification Commission for Acupuncture and Oriental Medicine.

"Practice of Acupuncture" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

3.0 Purpose

The purpose of the rules and regulations standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Council and Board to evaluate the safe and effective practice of acupuncture.

4.0 Minimum Standards of Practice for the Acupuncture Practitioner

4.1 Clean Needle Technique

4.1.1 All applicants for licensure shall complete a course in clean needle technique as administered by the CCAOM or provide evidence of passing an examination in clean needle technique before a license will be issued unless a waiver is granted pursuant to 24 Del.C. §1798(b).

4.2 English as a Second Language

4.2.1 An applicant for whom English is a second language must demonstrate his or her ability to speak English by providing evidence of one of the following:

4.2.1.1 Passage of the NCCAOM examination taken in English;

4.2.1.2 Completion at least 60 credits from an English-speaking undergraduate school or English-speaking professional school;

4.2.1.3 Passage of the TOEFL (Test of English as a Foreign Language with a score of 550 or higher on the paper based test or with a score of 213 or higher on the computer based test;

4.2.1.4 Passage of the TSE (Test of Spoken English) with a score of 45 or higher;

4.2.1.5 Passage of the TOEIC (Test of English for International Communication) with a score of 500 or higher; or

4.2.1.6 At the discretion of the Council, passage of any similar, validated exam testing English competency given by a testing service with results reported directly to the Council or with results otherwise subject to verification by direct contact between the testing service and the Council.

5.0 Filing of Application for Licensure as an Acupuncture Practitioner

5.1 Application - Initial Licensure

5.1.1 An applicant who is applying for licensure as acupuncture practitioner must submit a completed application on a form prescribed by the Council and approved by the Board to the Board office at the Division of Professional Regulation ("Division"), Dover, Delaware. The application must be accompanied by payment of the fees established by the Division.

5.1.2 Each application must be accompanied by (1) proof of achievement of a Diplomate in Oriental Medicine from NCCAOM or other equivalent recognized by the Council and approved by the Board (2) evidence of completion of a course in clean needle technique as provided in regulations 4.1 and (3) for applicants for whom English is a second language, proof of ability to speak English as provided in Regulation 4.2.

5.2 Application - Current Practitioners

5.2.1 An applicant who is applying for licensure under the 24 Del.C. 21 §1799A must have been practicing in Delaware for the 12 month period prior to June 27, 2008. The applicant must submit proof of achievement of a Diplomate in Acupuncture from NCCAOM or other equivalent recognized by the Council and approved by the Board of evidence of graduation from a course of training or at least 1,800 hours in acupuncture, including 300 clinical hours, that is accredited by ACAOM or its equivalent as determined by Council and (2) evidence of completion of a course in clean needle technique as provided in regulations 4.1.

5.2.2 Proof of practice may be demonstrated by providing a W-2, business license, schedule C, or other similar documentation of practice during the period 6/27/2007 through 6/26/2008 acceptable to Council.

5.3 Application - Reciprocity

- 5.3.1 An applicant for licensure by reciprocity must submit a copy of the law and regulations from the State in which they are currently licensed in order for the Council and Board to determine that the standards for licensure are substantially similar along with letters of good standing from all jurisdictions in which they are licensed.
- 5.4 If any documents submitted by an applicant require translation to English, the translation shall be obtained by the applicant, at the applicant's expense, from an organization approved by the Council and Board.
- 5.5 The Council and Board shall not consider an application for licensure as an acupuncture practitioner complete until all items specified in the applicable regulations are submitted to the Board's office.
 - 5.5.1 The Council may recommend and the Board may, in its discretion, approve applications contingent on receipt of necessary documentation. If the required documentation is not received within 120 days from the date when the application is first reviewed by the Council, the Council shall propose to deny the application.
 - 5.5.2 If an application is complete in terms of required documents, but the candidate has not responded to a Council or Board request for further information, explanation or clarification within 120 days of the Council or Board's request, the Council shall make its recommendation to and the Board shall vote on the application as is.

6.0 Unprofessional Conduct and Inability to Practice Acupuncture

- 6.1 "Unprofessional conduct" includes but is not limited to any of the following acts or omissions:
 - 6.1.1 Has employed or knowingly cooperated in fraud or material deception in order to acquire or renew a license to practice acupuncture, has impersonated another person holding a license, has allowed another person to use the acupuncturist's license, or has aided and abetted a person not licensed to practice acupuncture to represent himself or herself as an acupuncturist;
 - 6.1.2 The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement for acupuncturists, or in connection with the practice of acupuncture;
 - 6.1.3 Having a license to practice acupuncture revoked, suspended, or otherwise disciplined, including the denial of licensure by the licensing authority of another state or territory for reasons which would preclude licensure in this state. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states or territories and may not permit a collateral attack on those decisions;
 - 6.1.4 Conviction of or admission under oath to having committed a crime substantially related to the practice of medicine other profession regulated by the Board of Medical Practice as defined by the Board of Medical Practice in its rules and regulations;
 - 6.1.5 Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public;
 - 6.1.6 Advertising, practicing or attempting to practice acupuncture under a false or assumed name;
 - 6.1.7 Advertising, practicing or attempting to practice acupuncture in an unethical or unprofessional manner;
 - 6.1.8 The practice of acupuncture without a license;
 - 6.1.9 Failing to perform any statutory or legal obligation placed upon an acupuncturist;
 - 6.1.10 Making or filing a false report in connection with the practice of acupuncture which the licensee knows to be false, intentionally or negligently failing to file a report required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so.
 - 6.1.11 Solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition, as determined with reasonable medical certainty, can be permanently cured;
 - 6.1.12 Misconduct, incompetence, or gross negligence in the practice of acupuncture;
 - 6.1.13 Willful violation of the confidential relationship with or confidential communications of a patient;

- 6.1.14 Engaging in sexual relations with a patient until at least six (6) months have lapsed since the patient-practitioner relationship has ended.
- 6.1.15 Making deceptive, untrue, or fraudulent misrepresentations in the practice of acupuncture;
- 6.1.16 Soliciting patients, either personally or through an agent, through the use of fraud, intimidation, or undue influence, or a form of overreaching conduct;
- 6.1.17 Failing to keep written medical records documenting the course of treatment of the patient;
- 6.1.18 Exercising undue influence on the patient to exploit the patient for financial gain of the licensee or of a third party;
- 6.1.19 Being unable to practice acupuncture with reasonable skill and safety to patients by reason of illness or intemperate use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;
- 6.1.20 Malpractice or the failure to practice acupuncture at the level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner of acupuncture as being acceptable under similar conditions and circumstances;
- 6.1.21 Practicing or offering to practice beyond the scope permitted by law or accepting or performing professional responsibilities which the licensee knows or has reason to know that such a person is not qualified by training, experience or certification to perform;
- 6.1.22 Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or has reason to know, that such person is not qualified by training, experience, or licensure to perform them;
- 6.1.23 Violating any provision of the Medical Practice Act, a rule of the Council and Board or a lawful order of the Board entered in a disciplinary hearing conducted by Council or the Board or failing to comply with a lawfully issued subpoena of the Board to provide documents and or to appear before the Council or Board;
- 6.1.24 Conspiring with another to commit an act, or committing an act, which coerces, intimidates, or precludes another licensee from lawfully advertising or providing his or her services;
- 6.1.25 Fraud or deceit, or gross negligence, incompetence, or misconduct in the operation of a course of study;
- 6.1.26 Failing to comply with state, county, or municipal regulations or reporting requirements relating to public health and the control of contagious and infectious disease;
- 6.1.27 Failing to comply with clean needle techniques and proper procedures for the disposal of potentially infectious materials;
- 6.1.28 Unjustified failure upon request to divulge information relevant to the authorization or competence of a person to practice acupuncture to the Board, to any committee thereof, to the Executive Director, or to anyone designated by the Executive Director to request such information; and
- 6.1.29 Charging a grossly exorbitant fee for professional or occupational services rendered.

7.0 Disciplinary Investigations and Hearings

- 7.1 Upon receipt of a written complaint against an acupuncturist or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against an acupuncturist and the process established by 29 Del.C. §8735(h) shall be followed with respect to any such matter.
- 7.2 As soon as practicable after receipt of a complaint from the Attorney General's Office following an investigation conducted pursuant to 29 Del.C. §8735(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render acupuncture services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

8.0 Renewal of License

- 8.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 Del.C. Ch. 17.
- 8.2 Renewal may be effected by:
 - 8.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. License renewal may be accomplished online at www.dpr.delaware.gov;
 - 8.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;
 - 8.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 9.0;
 - 8.2.4 payment of fees as determined by the Division of Professional Regulation.
- 8.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A licensee whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 7.2.1 - 7.2.4 above, certifying that he/she has not practiced acupuncture in Delaware while his/her license has expired, and paying the renewal fee and a late fee as determined by the Division of Professional Regulation.
- 8.4 No licensee will be permitted to renew his/her license once the one-year period has expired.
- 8.5 The former licensee may re-apply under the same conditions that govern applicants for new licensure under 24 Del.C. Ch. 17.
- 8.6 No acupuncturist shall practice acupuncture in the State of Delaware during the period of time that his/her Delaware license has expired.

9.0 Continuing Education

- 9.1 Professional Development Activity Points Required for Renewal
 - 9.1.1 Licensees are required to complete (30) Professional Development Activity (PDA) points biennially. Licensees shall retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes.
 - 9.1.2 PDA's shall be prorated for new licensees in accordance with the following schedule:
 - Two years remaining in the licensing cycle requires - 30 hours
 - One year remaining in the licensing cycle requires -15 hours
 - Less than one year remaining in the licensing cycle -exempt
- 9.2 Exemptions
 - 9.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.
 - 9.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.
- 9.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide licensees in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to professional competence in the practice of acupuncture.

 - 9.3.1 Definition and PDA Point Requirements

- 9.3.1.1 Each hour of continuing education is equal to (1) PDA point.
- 9.3.1.2 Fifteen of the required 30 PDA points shall enhance core knowledge, skills and abilities and shall be in biomedicine and/or one of the five branches of Oriental medicine (e.g., acupuncture, Chinese herbs, Chinese dietary therapy, Qigong, Asian bodywork therapy). Four the 15 core PDA points shall be taken in safety and/or ethics (e.g., CPR, herbal safety, universal precautions, clean needle techniques, ethics and liability, public health reporting requirements).
- 9.3.1.3 The remaining 15 PDA points may be taken in electives that directly contribute to a licensee's knowledge or practice of acupuncture (including Western science and medical practices, medical ethics, medical research, practice management, adjunctive therapies, patient education, and disaster relief training, etc.).

9.4 Acceptable Activities/Programs

9.4.1 Acceptable activities and programs include:

- 9.4.1.1 Additional NCCAOM Certification: A maximum of 10 PDA points may be submitted for successfully achieving an additional certification from NCCAOM in acupuncture, Chinese herbology, or Asian bodywork therapy (Required Documentation: Copy of the NCCAOM certificate including certification date which must be within the two year renewal period);
- 9.4.1.2 Passage of the NCCAOM or other approved Biomedicine Examination: A maximum of 10 PDA points may be submitted for successfully passing the NCCAOM Biomedicine examination. (Required Documentation: A copy of the official letter notifying the licensee of their test score including the exam date which must be within the two year renewal period).
- 9.4.1.3 Service on a Professional Board: Serving on a regional, state, or national board or committee related to acupuncture may be submitted for a maximum of 5 PDA points submitted per renewal period. (Required Documentation: A letter, printed on letterhead from the organization's chair verifying participation dates of service, and in what capacity.)
- 9.4.1.4 Clinical Experience: Completing a supervised clinical experience in acupuncture, Chinese herbology, Oriental medicine or Asian bodywork therapy which includes observation, case discussions, and/or supervised practice. The experience must be conducted in a formal clinical setting and be part of an educational or preceptor program. One PDA point is equal to one hour of supervision with a maximum of 5 PDA points per renewal period. (Required Documentation: A letter from the school or preceptor who must be an NCCAOM Diplomate in active status for 5 years. Date(s), hours, and type of experience are required on letterhead stationery)
- 9.4.1.5 Directing Clinical Supervision: Supervising a clinical experience in acupuncture, Chinese herbology, Oriental medicine or Asian bodywork therapy which includes directing students in observation, case discussions, and/or supervised practice. The experience must be conducted in a formal clinical setting and be part of an educational or preceptor program. One PDA point is equal to one hour of supervision with a maximum of 5 PDA points per renewal period. (Required Documentation: A letter from the school or preceptor, on letterhead, indicating the date(s), hours, and type of supervision.)
- 9.4.1.6 Research in Oriental Medicine: A maximum of 10 PDA points may be submitted for documented research in acupuncture or Oriental medicine. The licensee must be a primary researcher, and the research must be funded (not self-funded). (Required Documentation: One PDA point is equal to one hour of research. A letter from the school, hospital or official agency funding the research is required. The letter, on letterhead, must be accompanied by a copy of the published abstract showing the licensee's name as contributor.)
- 9.4.1.7 Teaching or Lecturing: A maximum of 10 PDA points may be submitted for teaching and/or lecturing in acupuncture or Oriental medicine subjects. (Required Documentation: One PDA point is equal to one hour of teaching. Date(s), number of classroom hours, course

- title, and instructor's name is required on letterhead stationery from the providing organization, or listed on a school transcript)
- 9.4.1.8 Tai Chi/Qigong: A maximum of 5 PDA points may be submitted for Tai Chi and exercise Qigong courses. One PDA point is equal to one hour of instruction. (Required Documentation: Date(s), number of hours, course title, and instructor's name is required on either an end-of-course certificate or letterhead stationery from the providing organization.)
- 9.4.1.9 Language: A maximum of 5 PDA points may be submitted for the study of a second language relevant to a practitioner's practice. One PDA point is equal to one hour of instruction. (Required Documentation: Date(s), number of hours, course title, and instructor's name is required on either an end-of-course certificate or on letterhead from the providing organization.)
- 9.4.1.10 Publications: Includes writing and editing books, professional journals, and articles in Oriental medicine. PDA points may be permitted as follows:
- 9.4.1.10.1 Author a Book: A maximum of 15 PDA points may be submitted for authoring a book in the field of Oriental medicine that is at least 150 pages in length. (Required Documentation: Copy of the book cover and title pages showing the date, ISBN number, abstracts, and executive summaries.)
- 9.4.1.10.2 Author a Chapter in a Book: A maximum of 10 PDA points may be submitted for authoring chapters in a book in the field of Oriental Medicine. Five PDA points may be gained for each chapter with a maximum of submitting two chapters per renewal period. (Required Documentation: Copy of the book cover and title pages showing the date, ISBN number, abstracts, and executive summaries).
- 9.4.1.10.3 Edit a Book or Professional Journal: A maximum of 10 PDA points may be submitted for editing a professional book or journal. Five PDA points may be gained for each book or professional journal with a maximum of submitting two books/journals per renewal period. (Required Documentation: A letter, on letterhead, from the author of the book or the editor in chief of the journal is required. The letter should describe the licensee's participation in the editing process including the title of the book/journal, publishing date, ISBN number, abstracts, and executive summaries.)
- 9.4.1.10.4 Publication of a Peer-Reviewed Journal Article: A maximum of 10 points may be submitted for authoring an article in a professional, peer-reviewed journal in the field of Oriental medicine. Five PDA points may be gained for each article with a maximum of submitting two articles per recertification cycle. (Required Documentation: Copy of the article, the cover of the journal, and the table of contents that show the date, article title, and author.)
- 9.4.1.10.5 Author an Article: A maximum of 5 PDA points may be submitted for writing an article that is published. (Required Documentation: Copy of the article and the cover of the newspaper or magazine that shows the date and table of contents or article listing.)
- 9.4.1.10.6 Formal Continuing Education Programs: All PDA points may be obtained by taking formally organized courses which satisfy the content requirements of Regulation 9.3.1.2 and are approved by the Board or sponsored and/or approved by and sponsored by the following organizations and their member organizations:
- 9.4.1.10.6.1 The American Association of Acupuncture and Oriental Medicine (AAAOM),
- 9.4.1.10.6.2 The Council of Colleges of Acupuncture and Oriental Medicine (CCAOM),
- 9.4.1.10.6.3 The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM),
- 9.4.1.10.6.4 The National Commission for the Certification of Acupuncture and Oriental Medicine (NCCAOM),
- 9.4.1.10.6.5 The National Academy of Acupuncture and Oriental Medicine (NAAOM),
- 9.4.1.10.6.6 The Society for Acupuncture Research,

- 9.4.1.10.6.7 Center for Oriental Medical Research and Education (COMRE).
- 9.4.1.10.6.8 The National Acupuncture Detoxification Association.
- 9.4.1.10.6.9 The National Acupuncture Teachers Association, or
- 9.4.1.10.6.10 The American Academy of Medical Acupuncturists;
- 9.4.1.10.6.11 World Health Organization (WHO).
- 9.4.1.10.6.12 National Institutes of Health (NIH).
- 9.4.1.10.6.13 The National Institutes of Health Office of Alternative Medicine (NIHOAM).
- 9.4.1.10.6.14 American Medical Association (AMA).
- 9.4.1.10.6.15 American Osteopathic Association (AOA).
- 9.4.1.10.6.16 American Nurses Association (ANA).
- 9.4.1.10.6.17 American Psychiatric Association (APA).
- 9.4.1.10.6.18 American Hospital Association (AHA).
- 9.4.1.10.6.19 American Lung Association (ALA).
- 9.4.1.10.6.20 Red Cross;
- 9.4.1.10.6.21 Local colleges;
- 9.4.1.10.6.22 Local hospitals; or
- 9.4.1.10.6.23 Other professional or educational organizations as approved periodically by the Board upon the recommendation of Council. (Required Documentation: Certificate of attendance documenting hours attended and/or credits awarded.)

9.4.2 No continuing education PDA points will be given for advocating legislation or for peer Reviewed Posters and/ or exhibits.

9.4.3 PDA points for foreign study are subject to the approval of the Council and Board.

9.4.4 Approval of continuing education is at the discretion of the Council and with the approval of the Board. PDAs earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.