

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

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

FINAL

1790 Acupuncture Advisory Council

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on September 17, 2009 before the Acupuncture Advisory Council ("Council") which functions under the auspices of the Delaware Board of Medical Practice ("Board") to consider adoption of rules and regulations governing the practice of acupuncture in the State of Delaware. Pursuant to 24 **Del.C.** §1796(c), the Council proposed rules and regulations to clarify provisions of the recently enacted law regulating the practice of acupuncture and to implement provisions of Subchapter X of the Medical Practice Act governing acupuncture practitioners. See HB 377, as amended by HA 1 and SA 1, enacted in the 144th General Assembly.

As required by the Administrative Procedures Act, 29 **Del.C.** §10115, notice of the proposed rules and regulations was published on August 1, 2009 in the Delaware Register of Regulations, Volume 13, Issue 2 at 13 **DE Reg.** 237.

Summary of the Evidence and Information Submitted

The Council received written and verbal comments at the public hearing. The following notices, written comments and documents were admitted as exhibits and made a part of the record:

Council Exhibit 1: News Journal Affidavit of Publication.

Council Exhibit 2: Delaware State News Affidavit of Publication.

Council Exhibit 3: A copy of an e-mail to Council Chair Lorna Lee from Brian C. Allen commenting generally on the continuing education regulations and suggesting that the Council consider accepting evidence of current NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) certification to satisfy the Council's proposed continuing education requirements since NCCAOM certification requires 60 credits every 4 years whereas the Board requires 30 every 2 years.

Council Exhibit 4: Letter dated September 17, 2009 from Cheyenne Luzader, MS, ADS, and Steven Berlin, MD, ADS, stating that the acupuncture law as written proposes problems for Acupuncture Detoxification Specialists in Delaware. Ms. Luzader and Dr. Berlin stated that there are currently 16 Acupuncture Detoxification Specialists (ADS) in Delaware credentialed by the National Acupuncture Detoxification Association (NADA), one of whom is a medical doctor. There are 3 additional trainees, 2 of whom are medical doctors. Ms. Luzader and Dr. Berlin stated that Acupuncture Detoxification (Acudetox) has been practiced in Delaware since 1993 under the auspices of the Medical Board. Ms. Luzader and Dr. Berlin request that the Council: 1) allow NADA certified Acupuncture Detoxification Specialists to use the 5 acupuncture points for detoxification protocol, 2) exempt Acudetox practitioners from licensing, as general acupuncturists, since they practice a specific 5 point protocol for a specific population and do not diagnose, and 3) allow NADA requirements to be the standard for the practice of detoxification in the State of Delaware.

Ms. Luzader and Dr. Berlin added that the Beebe Medical Center's Integrative Health Department was developing a program for addictive behavior that included Acupuncture Detoxification when they learned that the law had passed.

Council Exhibit 5: Letter dated September 15, 2009 from Felicitas "Tita" Gontang, LCSW, ICADC, ADS. Ms. Gontang worked at the Kent/Sussex Detoxification Center from 1995 until it closed in July 2009. She noted that auricular acupuncture was used at the facility since 1993 under a waiver from the Board of Medical Practice in a pilot study to determine if the treatment would be an effective and efficient treatment option, reduce client anxiety and stress relative to withdrawal, increase retention and completion, and reduce recidivism. Ms. Gontang stated that the pilot study goals were met. Ms. Gontang added that Treatment Protocol # 45, a publication of the Center for Substance Abuse Treatment, supports auricular acupuncture detoxification as an evidenced based practice.

She noted that the practice of acupuncture detoxification specialists does not involve diagnosis. The 5 point NADA protocol is an adjunctive therapy that helps people modulate their stress response, it is not used for healing or curing any conditions. Ms. Gontang noted the effectiveness of the protocol after the tragedies of 9/11 and hurricane Katrina.

Ms. Gontang urged the Council to 1) allow individuals holding NADA certification as an ADS to practice the 5 point protocol, 2) exempt individuals with ADS certification from licensing as acupuncturists, and 3) recommend the procedure for use as a substance abuse support as the protocol developed by NADA. Ms. Gontang submitted that other states, including Virginia, Maryland, New York, Texas, Michigan, Louisiana, Connecticut and Vermont, have done so.

Attached to Ms. Gontang's letter is a 9 page review titled "Acu detox: Beneficial Effects beyond Detox" written by Laura Cooley, L.Ac., discussing studies and articles about the effectiveness and benefits of acupuncture, Acu detox, and the NADA 5 point protocol as an adjunct treatment for substance use disorder and other disorders.

Council Exhibit 6: Letter from Michael O. Smith, M.D, Director, Lincoln Recovery Center, Founder, National Acupuncture Detoxification Association dated September 14, 2009 supporting an exemption for acudetox in the acupuncture licensing law. Dr. Smith consulted with the Delaware Board of Medical Practice with regard to the acudetox program that led to an impressive reduction in recidivism at Kent/Sussex. He noted that Delaware led the way in acupuncture supported treatment that was later followed by Virginia and Maryland. He submitted that having a specific acudetox exemption is critical for the use of acupuncture in this field. He noted some of the states that do and do not have programs. Dr. Smith stated that Yale University addiction fellows and residents are required to take acudetox certification training from a nurse who is an acudetox specialist. Statistics show that there are over 900 licensed programs that use acupuncture, it is recommended in the TIPS 45 manual for detox treatment and a leading malpractice insurance agency reported no claims related to auricular acupuncture. He described the treatment as safe and popular and urged the Council to continue providing the service to the citizens of Delaware by approving the acudetox exemption.

Council Exhibit 7: Letter dated September 7, 2009 from Irene Rust, MCC, NCACII, CADC, ADS, F.T. (Tita) Gontang, LCSW, ICADC, ADS, Michael Betts, MS, LPMCH, ICCDP, ADS, Cheyenne Luzader, MS, DCEP, CT, CCH-PS, ADS, writing on behalf of the 19 Acupuncture Detoxification Specialists and Trainees in Delaware requesting recognition of the NADA ADA credential to use the 5 needle protocol. The writers note that they are in a separate diverse, challenging, and sometimes dangerous profession that shares a technique with the field of acupuncture but state that they have a different mission. The technique they use was developed for addictions. Auricular detoxification is a tool that helps clients withdraw from substances and ease into a healthy lifestyle. The writers ask for the Council's and Board's support as they work with NADA to continue to practice. They stated their regret that they were not informed about the law and asked to be informed of any future circumstances that might affect them.

Council Exhibit 8: Copies of the Michigan Department of Community Health Office of Drug Control Policy, Treatment Policy-02, establishing standards for the use of acupuncture as an adjunctive therapy in substance abuse treatment, and copies of the Michigan and Virginia laws exempting NADA certified acupuncture detoxification specialists from licensure in those states.

Council Exhibit 9: Letter dated September 16, 2009 from Jeffrey M. Fried, FACHE, President and CEO, Beebe Medical Center, discussing the low cost program for patients with addictive behavior being proposed by the Integrative Health Department at Beebe Medical Center that includes the use of auricular acupuncture detoxification. Dr. Fried stated that an adjustment is needed to the law to allow them to proceed with the program and asked the Board and Council to support an amendment to the law or other action to allow NADA credentialed acupuncture detoxification specialists to practice in Delaware.

Council Exhibit 10: Letter from Michael Betts, Psychologist III, LPCMH, CCDP, NCC, ADS, ICCDP, asking for an exemption for Acupuncture Detoxification Specialists to be written into the rules and regulations. Mr. Betts stated that he believed section 1797(b) of the Code allows for the exemption. Mr. Betts noted his long-term observation of and recent participation in the use of the ADS technique. He described his 24 year tenure as a psychologist at KSMHC where he saw the training of the nurses in the use of the technique. Their detox center was involved in the early research in the value of the procedure in treating the restlessness that comes with addiction. Tens of thousands of people have received the treatment as a powerful adjunctive therapy in their detox center and with the population he serves. He noted his experience on the Board of Mental Health Counselors and stated that he appreciated the difficulty of finding agreement and creating appropriate language in rules and regulations to implement legislation without exceeding the legislative authority. He commented that clarification

now would likely avoid future problems.

Council Exhibit 11: A copy of the "Proposal for the Implementation of Acupuncture Detoxification at Kent-Sussex Detox and an Outpatient Facility" dated August 6, 1992 submitted to the Delaware Board of Medical Practice for the Kent-Sussex pilot program.

The following individuals provided verbal comment at the public hearing:

1. Felicitas "Tita" Gontang, LCSW, ICADC, ADS, provided verbal comments consistent with her written comments and introduced additional exhibits in support of her request for an exemption for Acupuncture Detoxification Specialists. In addition, she responded to a Council question clarifying that Acupuncture Detoxification Specialists are required by NADA to take a clean needle technique course every year.

2. Irene Rust, MCC, NCACII, CADC, ADS, provided verbal comments consistent with her written comments and introduced additional exhibits in support of her request for an exemption for Acupuncture Detoxification Specialists.

3. Cheyenne Luzader, MS, DCEP, CT, CCH-PS, ADS, provided verbal comments consistent with her written comments and introduced the letter from Jeffrey M. Fried, FACHE, President and CEO, Beebe Medical Center in support of their request for an exemption for Acupuncture Detoxification Specialists.

4. Michael Betts, Psychologist III, LPCMH, CCDP, NCC, ADS, ICCDP, provided verbal comments consistent with his written comment. Mr. Betts also noted, as further support of his request for an exemption for Acupuncture Detoxification Specialists by regulation, that the regulations for Professional Counselors of Mental Health provide for the use of acupuncture as an adjunctive therapy.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed amendments to the Council's Rules and Regulations.

2. The Council received written and public comment as reflected in the summary of evidence.

3. There was only one public comment on the specifics of the regulations as proposed. Brian C. Allen commented on the regulations governing continuing education and suggested that the Council consider accepting evidence of current NCCAOM certification to satisfy the Council's proposed continuing education requirements since NCCAOM certification requires 60 credits every 4 years whereas the Board requires 30 every 2 years.

The Council discussed accepting evidence of NCCAOM certification during the drafting of the regulations but voted not to accept the certification because of the different reporting periods. The law governing acupuncture practitioners requires continuing education to be completed in every renewal period; accepting NCCAOM certification would not satisfy that objective because a licensee could wait until the end of the NCCAOM certification 4 year period to complete their continuing education, effectively not having done any continuing education during the required 2 year renewal period to maintain Delaware licensure. Having already given this suggestion full consideration, the Council does not believe that a change to the regulations should be made and rejects the suggestion at this time. This is an issue that the Council may revisit in the future after it goes through a renewal cycle, but the Council is satisfied that the rule as drafted is necessary to meet the statutory objectives and does not place an undue burden on the licensee.

4. All of the additional public comment focused on providing an exemption in the law or regulations for Acupuncture Detoxification Specialists certified by the National Acupuncture Detoxification Association (NADA) to practice acudetox. The Council is sympathetic to the issue and recognizes the value of the 5 point protocol for dealing with substance abuse and other issues. However, the law as drafted does not provide an exemption for Acupuncture Detoxification Specialists and the Council cannot recommend to the Board regulations that exceed the enabling statute.

Although Mr. Betts cited 24 Del.C. §1797(b) for the proposition that NADA certified Acupuncture Detoxification Specialists could be exempted by regulation, the Council does not agree. The exemption in 24 Del.C. §1797(b) allows individuals who are already authorized by their practice acts to perform acupuncture to continue to do so without obtaining licensure as an acupuncture practitioner. These exempted professionals include chiropractic, medical and osteopathic physicians. The exemption does not allow the Council or the Board to create an exemption for individuals not covered by another practice act. Mr. Betts also raised the issue of the mental health regulations. The Council is not persuaded that those regulations provide any precedent for action by the Council and cannot say whether those regulations are in conflict with the new acupuncture licensure law. The Council, therefore, finds that it cannot recommend to the Board that an exemption be created by regulation and

rejects the request to do so.

As requested the Council will offer its support with regard to legislative initiatives to allow NADA certified Acupuncture Detoxification Specialists to continue to perform acudetox in Delaware under the regulation of the Council and the Board of Medical Practice.

5. Pursuant to 24 Del.C. §1796(c), the Council has statutory authority to promulgate regulations governing the practice of acupuncture, after a public hearing and subject to the approval of the Board of Medical Practice.

6. The Council finds that the proposed amendments to the rules and regulations are necessary to meet the Council's statutory mandate to promulgate rules and regulations governing the practice of acupuncture in the State of Delaware. There were no modifications to the rules and regulations as a result of the public hearing and they are recommended for approval as originally published in the *Register of Regulations* on August 1, 2009.

7. The Council finds, and recommends to the Board of Medical Practice, that it approve the Regulations attached hereto as Exhibit "A" to govern the practice of acupuncture by licensed acupuncture practitioners in the State of Delaware.

Recommendation to the Board of Medical Practice

NOW, THEREFORE, the Acupuncture Advisory Council, by the unanimous affirmative vote of the undersigned members, hereby adopts the Rules and Regulations attached hereto as Exhibit "A" and recommends approval of such Rules and Regulations to the Board of Medical Practice.

These Rules and Regulations will be published in the *Delaware Register of Regulations* after approval by the Board of Medical Practice to be effective ten (10) days after such publication.

APPROVED AND RECOMMENDED BY THE UNANIMOUS VOTE OF THE ACUPUNCTURE ADVISORY COUNCIL ON THIS 15th DAY OF October, 2009.¹

Lorna Lee, L.Ac., Chairperson
Jennifer Baust, R.N., L.Ac.
James Frisa, L.Ac.

Vincent Lobo, D.O., Physician Member
Alan Keith Tillotson, L.Ac.

ORDER

AND NOW, this 3rd day of November, 2009, the Board of Medical Practice having considered the attached Recommendation of the Acupuncture Advisory Council for approval of Rules and Regulations;

AND, the Board of Medical Practice after consideration having determined to approve the aforesaid Rules and Regulations as proposed by the Acupuncture Advisory Council;

NOW, THEREFORE, IT IS ORDERED:

1. That the Rules and Regulations recommended by the Acupuncture Advisory Council to govern the practice of acupuncture by licensed acupuncture practitioners in the State of Delaware are hereby approved by the Board of Medical Practice.

2. That such Rules and Regulations attached hereto as Exhibit "A" to the Recommendation of the Council shall be published in the Delaware Register of Regulations and shall be deemed to be effective ten (10) days after such publication.

BOARD OF MEDICAL PRACTICE

Anthony M. Policastro, M.D., President
Raymond L. Moore, Sr., Public Member, Vice President
Gregory Adams, M.D.
John Banks, Public Member
George Brown, Public Member

Thomas Desperito, M.D.
Galicano Inguito, M.D.
Sophia Kotliar, M.D.
Karl McIntosh, M.D.
Oluseyi Senu-Oke, M.D., Secretary

1. Jeffrey S. Meyers, M.D., is an Ex-Officio non-voting member of the Council.

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. §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 and 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.

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