

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: W.V. BOARD OF ACUPUNCTURE TITLE NUMBER: 32

CITE AUTHORITY 30-35-7(a)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 32-3

TITLE OF RULE BEING PROPOSED: HOMEOPATHY WITHIN THE  
SCOPE OF ORIENTAL MEDICINE

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

D. Darrell E. Samples, Secretary  
Authorized Signature

West Virginia Board of Acupuncture  
(Proposed Legislatived Rule)  
HOMEOPATHY WITHIN THE SCOPE OF ORIENTAL MEDICINE

This rule expands the scope of practice to include all medicines found in the Homeopathic Pharmacopea of the United States (HPUS). It defines the use of Homeopathic medicine within the Oriental Medical therapies.

West Virginia Board of Acupuncture  
(Proposed Legislatived Rule)  
HOMEOPATHY WITHIN THE SCOPE OF ORIENTAL MEDICINE

Homeopathy has been an integral part of natural medicine in the United States since its inception and is a recognized curriculum within American schools and colleges of Oriental Medicine. The West Virginia Board of Acupuncture recognizes this part of the training of Acupuncture Physicians.

Homeopathy has been recognized, through rigorous testing and experimentation, as having significant scientific evidence supporting its efficacy and safety. (Single medicines are given on the basis of an individual's manifestation of a disease state in comparison to combination remedies that are given on the basis of a particular diagnostic category).

The Board recognizes that Homeopathic medicines are subjected to federal regulations and restrictions. Homeopathy is practiced in a variety of traditional and non-traditional forms, and that electrodiagnostic testing is currently a tool appropriate to use by Acupuncture and Oriental Medical Physicians.

This rule expands the scope of practice as defined in 30-35-2 (a) 5. It clarifies the term oriental medical therapies.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: HOMEDOPATHY WITHIN THE SCOPE OF ORIENTAL MEDICINE  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: W.V. BOARD OF ACUPUNCTURE  
 Address: P.O. Box 252  
HUNTINGTON WV 25707-0252  
DR. DARRELL E. SAMPLES  
304 529-9355

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

*THERE IS NO EXPENSE INVOLVED IN THIS RULE.*

3. Objectives of these rules:

*TO CLARIFY SCOPE OF PRACTICE.*

Rule Title: HOMEOPATHY WITHIN THE SCOPE OF ORIENTAL MEDICINE

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NONE

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date:

June 25, 1997

Signature of Agency Head or Authorized Representative

Dr. Darrell E. Samples, Secretary

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: W.V. Board of Acupuncture

LEGISLATIVE RULE TITLE: Homeopathy within the Scope of Oriental Medicine

1. Authorizing statute(s) citation 30-35-7(a)

2. a. Date filed in State Register with Notice of ~~Hearing~~ Comment Period June 25, 1997

b. What other notice, including advertising, did you give of the hearing?

c. Date of Hearing(s)

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments. W.V. State Medical Association Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. Name and phone number(s) of agency person(s) to contact for additional information:

DR. DARRELL E. SAMPLES, SECRETARY
P.O. Box 252
HUNTINGTON WV 25707-0252
304 529-9355

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing: NA

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

NA

d. Attach findings and determinations and reasons:

Attached NA

WEST VIRGINIA BOARD OF ACUPUNCTURE  
(PROPOSED LEGISLATIVE RULE)  
HOMEOPATHY WITHIN THE SCOPE OF ORIENTAL MEDICINE

32-3-1 GENERAL:

1.1 Scope of Practice to include Homeopathic Medicine and Homeopathic Pharmaceuticals.

1.2 Authority- 30-35-7 (a)

1.3 Filing Date-

1.4 Effective Date-

32-3-2 Homeopathy

2.1 Homeopathy, as taught in acupuncture schools and colleges and its practice, is hereby included in the scope of practice. WV Licensed Acupuncture Physicians recognize other licensed practitioners of the healing art who are also properly trained in homeopathy may utilize homeopathic medicine.

2.2 The WV Acupuncture profession can initiate clinical trials and provings to further evaluate the effectiveness of homeopathy.

2.3 WV Licensed Acupuncture Physicians are authorized to prescribe and dispense all products included in the Homeopathic Pharmacopoeia of the United States (HPUS).

2.4 Homeopathic products will be subject to strict labeling requirements. Preparations which are not prepared in accord with the manufacturing principles in the HPUS should not use the term "homeopathic." If parents choose homeopathic preparations for their children or their wards for the prophylaxis of infectious disease as an alternative to conventional vaccines, the physician should clearly state that they are unproven and that they are not legal substitutes for the state-mandated requirements.

2.5 Homeopathic prescriptions should be made with careful evaluation of their effect on the entire organism.

2.6 Electrodiagnostic testing should be used according to accepted protocol. It is recommended that it not be relied on as the sole determinant in homeopathic prescribing.



# West Virginia STATE MEDICAL ASSOCIATION

4307 MacCORKLE AVENUE, SE, CHARLESTON, WEST VIRGINIA  
Address Reply To: P. O. Box 4106, Charleston, West Virginia 25364

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RONALD E. CORDELL, M.D. President Charleston	THOMAS H. CHANG, M.D. President Elect Clarksburg	DAVID W. AVERY, M.D. Vice President Parkersburg	SHERMAN E. HATFIELD, M.D. Treasurer Charleston	GEORGE RIDER Executive Director Charleston
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July 30, 1997

Dr. Darrell E. Samples, Secretary  
West Virginia Board of Acupuncture  
P. O. Box 252  
Huntington, WV 2707-0252

Sent via certified mail: P 490 326 708

**RE: West Virginia Board of Acupuncture Rules**

Dear Dr. Samples:

Thank you for the opportunity to comment on these rules.

We are enclosing information from the National Institutes of Health on alternative medicines that is replete with claims of effectiveness of these treatments. However, as indicated by the highlighted sections, in no case has *truly scientific analysis* supported any of these claims. Most of the areas in which success has been reported deal with anecdotal stories where no true investigation utilizing the accepted scientific process has been undertaken. To reenforce this fact, the sponsor of the paper entitled *Alternative Systems of Medical Practice*, the National Institute of Health (NIH), has placed a disclaimer on the information it provides on alternative medicine stating that individuals should not seek the therapies described on these pages without consultation of a licensed health care provider. These licensed health care providers do not include alternative therapy providers.

Based upon irrefutable facts that alternative medicine is not based on true scientific scrutiny, licensed acupuncturists cannot demonstrate their competency to use the diagnostic modalities of modern medical science in a manner that physicians and certain other medical practitioners can. For that reason, to approve these rules could put our citizens at great risk. We urge these proposed rules be withdrawn.

In the event you choose not to withdraw the rule, we offer the following specific deletions or amendments.

### Homeopathy Within the Scope of Oriental Practice

We request that you withdraw this rule because it exceeds the scope of a permissible rule-making. It adds homeopathy to the scope of practice of acupuncture. The scope of practice of acupuncture is specifically defined in 30-36-2(b) and that practice does not include homeopathy, which according to *Dorland's Medical Dictionary* is "a system of therapeutics in which diseases are treated by drugs which are capable of producing in healthy persons symptoms like those of the disease to be treated, the drug being administered in minute doses." According to information from the National Institutes of Health Office of Alternative Medicine, "Some homeopathic medicines are diluted to concentrations as low as 10-30 to 10-

Dr. Darrell E. Samples, Secretary  
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July 10, 1997

20,000. This particular aspect of homeopathic theory and practice has caused many modern scientists to reject homeopathic medicine.”

In the event you do not choose to withdraw the rule, we offer the following suggested amendments; the amendments are not offered in any way to make the rule acceptable to protect the citizens of the state of West Virginia. They are offered only to correct the most egregious errors in what we consider to be a totally flawed rule.

32-3-2.1 Homeopathy, as taught in acupuncture schools and colleges and its practice, is hereby included in the scope of practice. WV Licensed Acupuncture ~~Physicians~~ practitioners recognize other licensed practitioners of the healing art who are also properly trained in homeopathy may utilize homeopathic ~~medicine~~ approaches in their practices.

Acupuncture practitioners are not specifically designated as physicians in their Practice Act. The general title of physician, along with the practice of “medicine” is by custom and tradition reserved for doctors of medicine and doctors of osteopathy as a “term of art.” The changes we have suggested should be done in order to eliminate confusion among members of the general public and prevent confusing or misleading advertising.

2.3 WV Licensed Acupuncture ~~Physicians~~ practitioners are authorized to prescribe and dispense all products included in the Homeopathic Pharmacopoeia of the United States (HPUS). Provided, however, that unless they are otherwise duly qualified and licensed, WV Licensed Acupuncture Practitioners shall not prescribe or dispense any drug which requires a prescription written by a doctor of medicine or a doctor of osteopathy.

2.4 Homeopathic products will be subject to strict labeling requirements. Preparations which are not prepared in according with the manufacturing principles in the HPUS should not use the term “homeopathic.” If ~~parents~~ individuals choose homeopathic preparations ~~for their children or their wards~~ for the prophylaxis of infectious disease as an alternative to conventional vaccines or drug therapies, the ~~physician~~ WV Licensed Acupuncture Practitioner should clearly state that they are unproven and that they are not legal substitutes for the state-mandated requirements.

Venipuncture and Diagnostic Testing

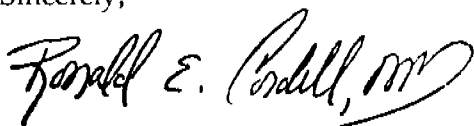
Dr. Darrell E. Samples, Secretary  
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32-4-2

2.1 Practitioners licensed by the WVBOA will have the right to order such laboratory diagnostic procedures as is deemed necessary by his/her skill and judgment, required to provide an adequate picture of his/her patients/ states of health. These diagnostic tests include but are not limited to, urinalysis, hair analysis, blood chemistry analysis, blood gas analysis, stool analysis, antigen-antibody analysis and radiographic imaging.

We would request you delete this section in its entirety as ordering diagnostic tests is totally beyond the scope of practice of the so-called "alternative practitioner."

Sincerely,



Ronald E. Cordell, MD  
President

Enclosures

cc: Debra Graham, Counsel, Legislative Rule-Making Review Committee  
Delegate Mark Hunt, House Chair, Legislative Rule-Making Review Committee  
Senator Mike Ross, Senate Chair, Legislative Rule-Making Review Committee  
100.08  
Chronological File

WEST VIRGINIA BOARD OF ACUPUNCTURE  
P O Box 252  
HUNTINGTON, WV 25707-0252

MARTHA ASHELMAN  
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CHARLESTON  
C. P. NEGRI, DAC, OMD  
MORGANTOWN

D. E. SAMPLES, ND, OMD  
HUNTINGTON  
JEFFERY T. WORTH, BS, OMD  
SHEPHARDSTOWN

July 31, 1997

Ronald E. Cordell, MD  
West Virginia State Medical Association  
P O Box 4106  
Charleston, WV 25364

**RE: West Virginia Board of Acupuncture Rules**

Dear Dr. Cordell:

Thank you for your constructive comments regarding the proposed rules of the West Virginia Board of Acupuncture.

We, however, disagree with your opinion that alternative medicine is not based on truth or scientific scrutiny. We firmly believe that licensed acupuncturists have the skill and competency to use modern diagnostic modalities to help in forming treatment plans. Use of modern diagnostics provides the level of safety that all West Virginians should consider mandatory of any health care provider. All physicians (allopathic, osteopathic, chiropractic and acupuncture) have the moral obligation to use available diagnostic tools to insure that proper treatment plans are developed.

Therefore, the WVBOA considers the proposed rules to be valid and is not in a position to withdraw them at this time.

Regarding your specific deletions or amendments.

**Homeopathy Within the Scope of Oriental Medicine 32-3**

The Acupuncture Practice Act states in the Definition Section 30-35-2 (a) 5 "Practice acupuncture" means the use of oriental medical therapies or the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance and restoration of health.

Oriental Medicine therapies include Homeopathic Medicine and the WVBOA wishes to make that more clear. The designation "physician" is used to designate the acupuncture practitioner as an equal

partner in health care with other providers of the healing arts, allopathic, osteopathic and chiropractic, who are “physicians” in West Virginia.

The rule does not provide for the dispensing of allopathic pharmaceuticals or drug therapies.

#### **Venipuncture and Diagnostic Testing 32-4**

We feel that this rule is required to allow the Acupuncture Physician to diagnose and treat any West Virginian. Oriental Medicine has a long history of adapting and integrating technology within its system of medicine. Acupuncture uses modern diagnostics in training of students and treatment of patients.

The opening of your letter questions the “scientific” analysis of alternative therapies. You propose that using the accepted scientific process is the method for determining the effectiveness of these therapies. The recognized method of analysis is data based upon modern diagnostic testing. We strongly feel that this type of diagnostic testing is necessary for properly determining the effectiveness of our therapies.

We feel that you may be unaware of the depth and level of training that most Acupuncture Physicians have attained. Enclosed you will find a typical transcript along with course descriptions.

We hope that this clarifies the WVBOA position on the proposed rules and the state of Oriental Medicine in West Virginia.

Sincerely,

Darrell E. Samples, OMD  
Secretary

Enclosures

cc: Debra Graham, Counsel, Legislative Rule-Making Review Committee  
Delegate Mark Hunt, House Chair, Legislative Rule-Making Review Committee  
Senator Mike Ross, Senate Chair, Legislative Rule-Making Review Committee