

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

AUG 3 1 20 PM '98

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: BOARD OF ACUPUNCTURE TITLE NUMBER: 32

CITE AUTHORITY W Va Code § 30-36-7

AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 32 CRS 6

TITLE OF RULE BEING PROPOSED: STANDARDS OF PRACTICE  
OF ACUPUNCTURE BY LICENSED ACUPUNCTURISTS

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.

Darrell E. Samples, ND, OMD  
Authorized Signature

\$5.00

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WVa Board of Acupuncture  
P.O. Box 252  
Huntington WV 25707-0252

LEGISLATIVE RULE TITLE: Continuing Education  
Requirements

1. Authorizing statute(s) citation WVa Code §§  
30-36-7(a) and 30-36-14(c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

April 15, 1998

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

copies sent to state acupuncture  
association and other state boards  
and to the Governor

c. Date of Public Hearing(s) or Public Comment Period ended:

May 20, 1998

- d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received X

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

July 30, 1998

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

DR DARRELL E SAMPLES, ND, OMD  
SECRETARY, BOARD OF ACUPUNCTURE  
P.O. Box 252  
HUNTINGTON WV 25707-0252

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this box

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: BOARD of ACUPUNCTURE TITLE NUMBER: 32

RULE TYPE: Legislative; CITE AUTHORITY CODE § 30-36-7

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: SERIES 6

TITLE OF RULE BEING PROPOSED: STANDARDS of PRACTICE  
of ACUPUNCTURE by LICENSED ACUPUNCTURISTS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON MAY 20, 1998 AT 12:00 NOON. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV BOARD of ACUPUNCTURE  
P.O. Box 252  
HUNTINGTON WV  
25907-0252

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Darrell E. Samples MD OMD  
Authorized Signature

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: STANDARDS OF PRACTICE OF ACUPUNCTURE  
 Type of Rule:  Legislative  Interpretive  Procedural  
 Agency: W. Va. Board of Acupuncture  
 Address: P.O. Box 252  
Huntington WV 25707-0252

1. Effect of Proposed Rule NA.

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

2. Explanation of above estimates:

N.A.

3. Objectives of these rules: to establish standards of practice for acupuncture.

Rule Title: Standards of Practice of Acupuncture by  
Licensed Acupuncturists

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

*N.A.*

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

*N.A.*

C. Economic Impact on Citizens/Public at Large.

*N.A.*

Date: April 15, 1998

Signature of Agency Head or Authorized Representative

Darrell E. Sampson, ND OMD  
*Secretary*

This rule is establishes the standards of practice, conditions of the office, treatment procedures, informed consent, medical records and professional liability insurance requirements for licensed acupuncturists.

This rule is being promulgated pursuant to the Legislative intent that the Board protect the general public's interests.

FILED

32 CRS 6

AUG 3 1 20 PM '98

**Title 32  
Legislative Rule  
Board of Acupuncture**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**Series 6  
Standards of Practice  
Of Acupuncture By Licensed Acupuncturists**

**32-6-1. General.**

- 1.1. Scope. --This rule establishes the minimum standards of practice for acupuncture in this state.
- 1.2. Authority. -- W. Va. Code § 30-36-7.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**32-6-2. Application.**

This legislative rule applies to all licensed acupuncturists, all student acupuncturists and all apprenticed acupuncturists.

**32-6-3. Definitions.**

- 3.1. Clean Needle Technique. -- The standard protocol test as administered by the CCAOM.
- 3.2. CCAOM. -- The Council of Colleges of Acupuncture and Oriental Medicine or its successor organization.
- 3.3. FDA. -- The federal Food and Drug Administration.
- 3.4. OSHA. -- The federal Occupational Safety and Health Administration.

**32-6-4. Condition of Office.**

4.1. Each acupuncture office, clinic, treatment center or institution shall be maintained in a clean and sanitary condition at all times, and shall have a readily accessible bathroom facilities for both male and female patients.

4.2. The Board or its representative may make announced or unannounced office inspections during regular business hours to insure that sanitary conditions are being maintained. The Board or its representative may inspect treatment as well as non treatment areas. Patient files and records shall be made available to any authorized inspection by the Board or its official representative.

**32-6-5. Disposable needles; sterilization equipment.**

5.1. Disposable needles.-- All acupuncture offices, clinics, treatment centers and institutions shall use only pre-sterilized disposable needles. A practitioner shall use pre-sterilized disposable needles according to "clean needle technique" and standards of practice established by the CCAOM.

5.2. Sterilization Equipment. --All acupuncture offices, clinics, treatment centers and institutions shall have functioning sterilization equipment for sanitizing non-needle equipment which is used in the normal and regular treatment of patients, or they shall contract with a local hospital or medical service for the transportation and sterilization of the non-needle equipment. Sterilization equipment shall be inspected at least once every two years by qualified inspectors.

**32-6-6. Treatment Procedures.**

A licensed acupuncturist shall practice the standard protocols of the FDA and the CCAOM during treatments by adhering to the following procedures:

6.1. Hand washing. -- The acupuncturist shall vigorously scrub his or her hands with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients.

6.2. Sterilization of Instruments. --All acupuncture instruments shall be sterilized before use in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.

6.3. Acupuncture needles. -- A practitioner shall use only pre-packaged, pre-sterilized disposable needles for acupuncture treatments. Needles may not be reused on the same patient, even during the same treatment.

6.4. Acupuncture points. -- Where needles are to be inserted the practitioner shall clean the patient with an appropriate antiseptic before insertion of the needle.

6.5. Subcutaneous needle breakage. --In the event an acupuncture needle inserted in a patient breaks subcutaneously, the treating acupuncturist shall immediately consult a medical physician. An acupuncturist shall not sever or penetrate the tissues in order to excise the needle.

6.6. Medical treatment for complications. -- Any complications, including but not limited to, hematoma, peritonitis or pneumothorax arising out of an acupuncture treatment shall refer immediately to a medical doctor, osteopath or podiatrist, if appropriate, when immediate medical treatment is required.

6.7. Pointpuncture (aquapuncture). --A practitioner shall perform point-puncture injections using sterile disposable needles and sterile solutions.

6.8. Needle Disposal. --A practitioner shall dispose of all acupuncture needles, pointpuncture needles and instruments to be discarded into rigid biohazard containers. A practitioner shall discard needles in one of the two following ways:

6.8.1. They shall be sterilized and discarded in a sealed container; or

6.8.2 They shall be placed in a sealed unbreakable container marked "Hazardous Waste" and disposed of in a manner consistent with OSHA biohazardous waste regulations.

**32-6-7. Informed Consent.**

The practitioner shall notify patients in writing and verbally, as any treatment requires, regarding any potential complications arising from the treatment plan.

**32-6-8. Treatments Outside the Office.**

8.1. A practitioner who provides acupuncture treatment outside the office shall carry the required sterile needles and other instruments in a sterile airtight container.

8.2. A practitioner shall adhere to all standards of practice applicable to treatment outside the office when providing such treatment out of his or her office.

**32-6-9. Content and Retention Acupuncture Medical Records.**

9.1. Acupuncturists shall maintain written medical records justifying the course of treatment of each patient. These records shall include for each patient at least the following:

- 9.1.1. The patient's medical history;
- 9.1.2. Acupuncture and Oriental Medical diagnostic impressions;
- 9.1.3. Points used and any treatment procedures administered at each visit;
- 9.1.4. The practitioner's recommendations; and
- 9.1.5. Patient progress notes.

9.2. The practitioner shall maintain all medical records must be maintained for a period of five (5) years from the date of the last entry to the record.

**32-9-10. Medical Records of an acupuncturist who dies, terminates his practice, or relocates; Retention; Time limitations.**

10.1. The executor, administrator, personal representative or survivor of a deceased acupuncturist licensed pursuant to W. Va. Code § 30-36-1 et seq., shall retain medical records in existence upon the death of the acupuncturist concerning any patient of the acupuncturist for at least two (2) years from the date of the death of the acupuncturist.

10.2. Within one (1) month from the date of death of the acupuncturist, the executor, administrator, personal representative or survivor of the deceased acupuncturist shall cause to be published in the newspaper of greatest general circulation in the county where the acupuncturist maintained his or her office, a notice indicating to the patients of the deceased acupuncturist that the medical records are available to the patients or their duly constituted representative from a specific person at a certain location and the times at which the records are available.

10.3. At the conclusion of a 24 month period of time from the date of the acupuncturist's death, or thereafter, the executor, administrator, personal representative, or survivor, shall cause to be published once weekly for four (4) consecutive weeks, in the newspaper

of greatest general circulation in the county where the acupuncturist maintained his or her office, a notice indicating to the patients of the acupuncturist that the acupuncturist's medical records will be disposed of or destroyed one month later from the last day of the fourth week of publication.

10.4. An acupuncturist licensed pursuant to W. Va. Code § 30-36-1 et seq., who terminates his or her practice or relocates and is no longer available to his or her patients shall ensure that the medical records which pertain to his or her patients are retained for at least two (2) years following the termination of practice or relocation.

10.5. An acupuncturist licensed pursuant to W. Va. Code § 30-36-1 et seq., who terminates his or her practice or relocates and is no longer available to his patients and who does not transfer his or her practice to another acupuncturist shall provide written notice of such termination or relocation by US Mail to all patients who have received treatment within the sixty (60) days prior to the termination or relocation and who require active ongoing treatment. The notice shall inform the patients that the acupuncturist's medical records are available to the patients or their duly constituted representative from a specific person at a certain location and when the records are available.

10.6. In all other cases, at least sixty (60) days prior to the date of an acupuncturist's termination of practice or relocation, the acupuncturist shall cause to be published once during each week for four (4) consecutive weeks, in the newspaper of greatest circulation in the county where the acupuncturist maintains his or her office, a notice indicating to the patients of such acupuncturist that the acupuncturist's medical records are available to the patients or their duly constituted representative from a specific person at a certain location and the times of availability.

10.7. At the conclusion of a two (2) year period of time from the date of the acupuncturist's termination of practice or relocation, or thereafter, the acupuncturist shall cause to be published once during each week for four (4) consecutive weeks, in the newspaper of greatest general circulation in the county where the acupuncturist maintained his office, a notice indicating to the patients of the acupuncturist that the acupuncturist's medical records will be disposed of or destroyed one (1) month or later from the last day of the fourth week of publication.

**32-6-11. Financial Responsibility.**

11.1. Financial Responsibility. --As a prerequisite for licensure or license renewal every acupuncturist shall maintain medical malpractice insurance or professional liability insurance and shall provide the Board with proof of such financial responsibility. Each licensee shall have one of the following:

11.1.1. A licensed acupuncturist shall obtain and maintain professional liability coverage in an amount not less than \$10,000 per claim, with a minimum annual aggregate of not less than \$30,000 from an authorized insurer.

11.1.2. Obtaining and maintaining an unexpired, irrevocable letter of credit in the amount not less than \$10,000 per claim, with a minimum aggregate availability of credit of not less than \$30,000. The letter of credit shall be payable to the acupuncturist as beneficiary upon presentment of a final judgement indicating liability and awarding damages to be paid by the acupuncturist or upon presentment of a settlement agreement signed by all parties to such agreement when the final judgement or settlement is a result of a claim arising out of the rendering of, or the failure to render, acupuncture services. The letter of credit shall be nonassignable and nontransferable. The letter of credit shall be issued by any bank or savings association organized under the W. Va. Code .

11.1.3. Obtaining and maintaining a surety bond in an amount not less than \$10,000 per claim, with a minimum annual aggregate of not less than \$30,000 written by a company licensed to do business in West Virginia.

11.2. Exemptions. -- Upon application to the Board, the following licensees are exempt from the requirements of this financial responsibility rule:

11.2.1. Any acupuncturist who practices exclusively as an officer, employee or agent of the federal government or of the state of West Virginia or its agencies or subdivisions. For the purposes of this rule, an agent of the State of West Virginia, its agencies or its subdivisions is a person who is eligible for coverage under any plan offered by the State of West Virginia;

11.2.2. Any person whose license has become inactive under W. Va. Code § 30-36-16 and who is not practicing in this state. Any person applying for reactivation of a license shall show either that such licensee maintained tail insurance coverage which provided liability coverage for incidents that occurred on or after January 1, 1998, or the initial date of licensure in West Virginia, whichever is later, and incidents that occurred before the date on which the license became inactive; or such licensee shall submit an affidavit stating that the licensee has no unsatisfied medical malpractice judgements or settlements at the time of application for reactivation;

11.2.3. Any person licensed under W. Va. Code § 30-36-1 et seq., who is practices only in conjunction with his or her teaching duties at an accredited school. That person may engage in the practice of acupuncture to the extent that the practice is incidental to and a necessary part of duties in connection with the teaching position

in the school;

11.2.4. Any person holding an active license under W. Va. Code § 30-36-1 et seq. who is not practicing in West Virginia. If that person initiates or resumes practice in this state, he or she shall notify the Board of the activity and fulfill his or her obligation to obtain coverage; and

11.2.5. Any person who can demonstrate to the Board that he or she has no malpractice exposure in the State of West Virginia.