

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

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

Form #5

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Board of Acupuncture TITLE NUMBER: 32

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 RULE BEING PROPOSED: 06

TITLE OF RULE BEING PROPOSED: Standards of Practice
of Acupuncture by Licensed Acupuncturists

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 269

SECTION 64-9-4 (d), PASSED ON MARCH 12, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: MAY 21, 1999

Dr. Darrell E. Samples
Authorized Signature

\$3.20

32 CRS 6

**Title 32
Legislative Rule
Board of Acupuncture**

**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.
- 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 W. Va. Department of Labor 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 non-needle 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 non-needle 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. -- The practitioner shall clean area of the patient's body where needles are to be inserted 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. -- An acupuncturist shall immediately refer any complications, including but not limited to, hematoma, peritonitis or pneumothorax arising out of an acupuncture treatment to a western 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 when providing the 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 diagnosis;
- 9.1.3. Diagnostic testing and imaging procedures and laboratory results;
- 9.1.4. Points used and any treatment procedures administered at each visit;
- 9.1.5. The practitioner's prescriptions and recommendations; and
- 9.1.6. Patient treatment plan with progress notes.

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

32-6-10. Financial Responsibility.

10.1. 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 that financial responsibility. Each licensee shall have one of the following:

- 10.1.1. 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.
- 10.1.2. 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 the 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 .

10.1.3. 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.

10.2. Exemptions. -- Upon application to the Board, the following licensees are exempt from the requirements of this section:

10.2.1. 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;

10.2.2. Any licensee whose license has become inactive and who is not practicing in this state. Any licensee applying for reactivation of a license shall show either that the 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;

part of 10.2.3. Any licensee who practices only in conjunction with his or her teaching duties at an accredited school. That licensee may engage in the practice of acupuncture to the extent that the practice is incidental to and a necessary duties in connection with the teaching position in the school;

10.2.4. Any licensee 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

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

bbh

H. B. 2499

1 Bill-Acupu

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(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

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[Introduced February 1, 1999; referred to the
Committee on Health and Human Resources then
the Judiciary.]

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10 A BILL to amend article nine, chapter sixty-four of the
11 code of West Virginia, one thousand nine hundred
12 thirty-one, as amended, by adding thereto a new
13 section, designated section twenty-nine, relating to
14 authorizing the board of acupuncture to promulgate a
15 legislative rule relating to the standards of practice
16 of acupuncture by licensed acupuncturists.

17 **Be it enacted by the Legislature of West Virginia:**

18 That article nine, chapter sixty-four of the code of
19 West Virginia, one thousand nine hundred thirty-one, as
20 amended, be amended by adding thereto a new section,
21 designated section twenty-nine, to read as follows:

22 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**
23 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

1 §64-9-29. Board of acupuncture.

2 The legislative rule filed in the state register on
3 the third day of August, one thousand nine hundred
4 ninety-eight, under the authority of section seven, article
5 thirty-six, chapter thirty, of this code, modified by the
6 board of acupuncture to meet the objections of the
7 legislative rule-making review committee and refiled in the
8 state register on the eighth day of January, one thousand
9 nine hundred ninety-nine, relating to the board of
10 acupuncture (standards of practice of acupuncture by
11 licensed acupuncturists, 32 CSR 6), is authorized.

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13 NOTE: The purpose of this bill is to authorize the
14 Board of Acupuncture to promulgate a legislative rule
15 relating to the Standards of Practice of Acupuncture by
16 Licensed Acupuncturists.

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18 This section is new; therefore, strike-throughs and
19 underscoring have been omitted.