

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

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DEC 16 10 05 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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 10

TITLE OF RULE BEING PROPOSED: CODE OF ETHICS FOR
LICENSED ACUPUNCTURISTS

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

\$2.60

**Title 32
Legislative Rule
Board of Acupuncture**

Dec 16 10 05 AM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**Series 10
Code of Ethics for Licensed Acupuncturists**

32-10-1. General.

1.1. Scope. -- This rule establishes a code of ethics for acupuncture and oriental medicine in this state.

1.2. Authority. -- W. Va. Code §§ 30-36-7 (a) and 30-36-7 (b).

1.3. Filing Date. --

1.4. Effective Date. --

32-10-2. Application.

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

32-10-3. Code of Ethics

Licensed practitioners shall post the provisions of this section in each acupuncturist office, clinic, or treatment center:

3.1. The Acupuncture Practitioner's primary purpose is to restore, maintain and optimize health in human beings.

3.2. The Acupuncture Practitioner acts to restore, maintain and optimize health by providing individualized care, according to his or her ability and judgment, following the principles of Oriental Medicine.

3.3. The Acupuncture Practitioner shall endeavor to first, do no harm; to provide the most effective health care available with the least risk to his or her patients at all times.

(Primum Non Nocere)

3.4. The Acupuncture Practitioner shall recognize, respect and promote the self-healing power of nature inherent in each individual human being. (Vis Medicatrix Naturae)

3.5. The Acupuncture Practitioner shall strive to identify and remove the causes of illness, rather than to merely eliminate or suppress symptoms. (Tolle Causum)

3.6. The Acupuncture Practitioner shall educate his or her patients, inspire rational hope and encourage self-responsibility for health. (Practitioner as Teacher)

3.7. The Acupuncture Practitioner shall treat each person by considering all individual health factors and influences. (Treat the Whole Person)

3.8. The Acupuncture Practitioner shall emphasize the condition of health to promote well-being and to prevent disease for the individual, each community and our world. (Health Promotion, the Best Prevention)

3.9. The Acupuncture Practitioner shall acknowledge the worth and dignity of every person and therefore, shall not exclude anyone from treatment on the basis of ethnic, racial, gender, or sexual orientation.

3.10. The Acupuncture Practitioner shall safeguard the patient's right to privacy and only disclose confidential information when either authorized by the patient or mandated by law.

3.11. The Acupuncture Practitioner shall act judiciously to protect the patient and the public when the incompetent or unethical practices by any person adversely affect health care quality and safety.

3.12. The Acupuncture Practitioner shall maintain competence in Oriental Medicine and strive for professional excellence through assessment of personal strengths, limitations and effectiveness and by advancement of professional knowledge.

3.13. The Acupuncture Practitioner shall conduct his or her practice and professional activities with honesty, integrity and responsibility for individual judgment and actions.

3.14. The Acupuncture Practitioner shall strive to participate in professional activities to advance the standards of care, body of knowledge and public awareness of Oriental Medicine.

3.15. The Acupuncture Practitioner shall respect all ethical, qualified health care

practitioners and cooperate with other health professions to promote health for individual's, the public and the global community.

3.16. The Acupuncture Practitioner shall strive to exemplify personal well-being, ethical character and trust worthiness as a health care professional.

Section 32-10-4. Ethics regarding the sale of oriental medicines in the office.

4.1. The sale of medications within an acupuncturist's office shall be based on addressing the needs of the patient. The making of profit is always viewed as a secondary consideration. This is an extension of the code of ethics of the state and national associations governing the conduct of acupuncture physicians.

4.2. While the retail selling of medications could be construed as a conflict of interest on the part of the physician; as long as the underlying intention remains the patient's best interest and not to make profit, and no other source for the formulation and quality of the medication that the practitioner feels is adequate exists, this remains a legitimate and viable service.

4.3. Oriental medicines include, but are not limited to:

4.3.1. Herbs, alone and in combinations;

4.3.2. Glandulars;

4.3.3. Minerals;

4.3.4. Vitamins; and

4.3.5. Chinese patent medicines.

4.4. The U. S. Food and Drug Administration rules regarding the sale of over the counter medications, herbs and materia medica shall be observed by licensees.



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Nov 16 12 17 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
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NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Dr. Darrell E. Samples
Board of Acupuncture
P.O. Box 252
Huntington, WV 25707

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Code of Ethics for Licensed Acupuncturists, 32CSR10**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Board of Acupuncture

Subject: Code of Ethics for Licensed Acupuncturists, 32CSR10

PERTINENT DATES

Filed for public comment: April 17, 1998
Public comment period ended: May 20, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE SECRETARY OF STATE
SEP 18 10 31 AM '98
FILED

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 states that the proposed rule applies to all licensed, student and apprenticed acupuncturists.

Section 3 contains a Code of Ethics and requires that licensees post a copy of the Code in their workplace.

Section 4 relates to ethics regarding the sale of oriental medicines in the office and provides that their sale shall be based on addressing the needs of the patient.

AUTHORITY

Statutory authority: W.Va. Code, §30-36-7, which provides, in part, as follows:

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) The board may adopt a code of ethics for licensure...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Possibly. The statute does not contain any reference to the use or sale of oriental medicines. The definition of the term "practice acupuncture" does not include the prescribing of medications. In Counsel's opinion, the section of the proposed rule may exceed the scope of the Board's authority.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

See I.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has a minor technical modification to suggest.