

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

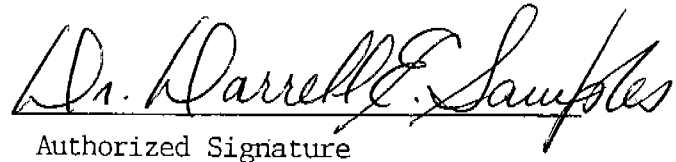
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 32 CRS 12

TITLE OF RULE BEING PROPOSED: TUTORIAL EDUCATION
REQUIREMENTS

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

\$3.40

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32 CRS 12

DEC 16 10 05 AM '98

**Title 32
Legislative Rule
Board of Acupuncture**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**Series 12
Tutorial Education Requirements**

32-12-1. General.

1.1. Scope. --This section establishes the educational requirements for licensed acupuncture applicants completing a tutorial or apprenticeship program.

1.2. Authority. -- W. Va. Code § 30-36-7.

1.3. Filing date. --

1.4. Effective date. --

32-12-2. Application.

This legislative rule applies to applicants for licensure and applicants for tutorial programs.

32-12-3. Definitions.

3.1. Acupuncture tutorial. --An acupuncture apprenticeship program which is approved by the Board pursuant to the Code which when successfully completed meets the requirements of W.Va. Code § 30-35-10 (3) for licensure as an acupuncturist.

3.2. Supervising acupuncturist. --A licensed acupuncturist who is approved by the Board to provide an acupuncture tutorial to a trainee who is registered with the Board.

3.3. Trainee. --A person who is registered with the Board in order to participate in an acupuncture tutorial under a supervising acupuncturist.

32-12-4. Prior Approval to Practice as an Acupuncture Trainee.

A person shall obtain prior approval to practice acupuncture in tutorial in this State without the prior approval of the Board.

32-7-5. Prior Approval to Supervise an Acupuncture Trainee.

An acupuncturist shall obtain prior approval to supervise any acupuncture trainee in an acupuncture tutorial from the Board.

32-12-6. Filing of Applications: Credit for Prior Training.

6.1. Applications for approval as an acupuncture trainee shall be filed on a form provided by the Board and accompanied by the required application fee, 32CRS4.

6.1. Applications for approval to supervise an acupuncture trainee shall be filed on a form provided by the Board and accompanied by any necessary documents, including the training agreement and the required application fee, 32CRS4.

6.2. Applicants who have prior training and experience which meets the standards of the Board may be considered when developing a training plan between a supervisor and trainee, and specifically the required hours of theoretical and clinical training may be reduced on account of the prior training and experience. Evidence of the prior training and experience should be submitted to the Board for its review with the applications for registration of the supervising acupuncturist and trainee.

32-12-7. Requirements for Approval of an Acupuncture Tutorial.

7.1. An acupuncture tutorial should provide a trainee with a structured learning experience in all the basic skills and knowledge necessary for the independent practice of acupuncture and should prepare the trainee for the Board's examination for acupuncture licensure.

7.2. An acupuncture tutorial which is in the nature of on-the-job training may be a full-time or part time employment relationship, however, the training plan and proposed supervision shall be contained in a written agreement between the supervisor and trainee.

7.3. An acupuncture tutorial shall provide formal clinical training with supplemental theoretical and didactic instruction. That training required in W.Va. Code § 30-36-10 from an

approved acupuncture school or another post secondary educational institution which is accredited or approved under or is accredited by a regional accrediting agency authorized by the U.S. Department of Education.

- 7.4. The clinical training shall consist of a minimum of 300 hours in the following areas:
 - 7.4.1. Practice observation;
 - 7.4.2. History and physical examination;
 - 7.4.3. Therapeutic treatment planning;
 - 7.4.4. Preparation of the patient;
 - 7.4.5. Sterilization, use and maintenance of sterilization equipment;
 - 7.4.6. Moxibustion;
 - 7.4.7. Electroacupuncture (AC and DC voltages);
 - 7.4.8. Body and auricular acupuncture;
 - 7.4.9. Treatment of emergencies, including cardiopulmonary resuscitation;
 - 7.4.10. Pre- and post-treatment instruction to the patient; and
 - 7.4.11. Contraindications and precautions.

- 7.5. The theoretical and didactic training for tutorials shall consist of a minimum of 2700 hours (approximately 270 semester units) in the following areas:
 - 7.5.1. Traditional Oriental Medicine - a survey of the theory and practice of traditional diagnostic and therapeutic procedures.
 - 7.5.2. Acupuncture anatomy and physiology - fundamentals of acupuncture, including the meridian system special and extra loci, and auriculotherapy.
 - 7.5.3. Acupuncture techniques - instruction in the use of needling techniques, moxibustion, electroacupuncture, including precautions (e.g., sterilization of needles), contraindications and complications.
 - 7.5.4. Clinical medicine - a survey of the clinical practice of medicine, osteopathy, dentistry, psychology, nursing, chiropractic, podiatry and homeopathy to familiarize acupuncture practitioners with the practices of other health care practitioners.
 - 7.5.5. History of Medicine - a survey of medical history, including transcultural healing practices.
 - 7.5.6. Medical terminology - fundamentals of English language medical terminology.
 - 7.5.7. General sciences - a survey of general biology, chemistry, and physics.
 - 7.5.8. Anatomy - a survey of microscopic and gross anatomy and neuroanatomy.
 - 7.5.9. Physiology - a survey of basic physiology, including neurophysiology, endocrinology, and neurochemistry.
 - 7.5.10. Pathology - a survey of the nature of disease and illness, including microbiology, immunology, psychopathology, and epidemiology.
 - 7.5.11. Clinical sciences - a review of internal medicine, pharmacology, neurology, surgery, obstetrics/gynecology, urology, radiology, nutrition and public health.

7.6. The acupuncture services provided by the tutorial trainee shall be done so in a manner which does not endanger the health and welfare of patients receiving the services. The tutorial trainee shall inform a patient that the services will be rendered by that trainee. The patient on each occasion of treatment shall be informed of the procedure to be performed by the tutorial trainee under the supervision of the supervising acupuncturist and have consented in writing prior to performance to permit the rendering of the acupuncture procedure by the tutorial trainee. These requirements shall also be applied to those instances wherein the trainee is to assist the supervisor in the rendering of acupuncture services.

7.7. The acupuncture tutorial training program shall be set forth in a written agreement signed by the supervisor and trainee which sets forth, but is not limited to, the training plan, length of training time, the method for providing the theoretical and didactic training and guidelines for supervision of the acupuncture services rendered by the trainee. A copy of the written agreement shall be submitted with the application for approval.

32-12-8. Supervising Acupuncturist's Responsibilities.

Supervising acupuncturist's have the following duties and responsibilities:

8.1. A supervisor shall at all times be responsible for and provide supervision of the work performed by the trainee as required in this rule;

8.2. The supervisor shall only assign those patient treatments which can be safely and effectively performed by the trainee. The supervisor shall provide continuous direction and immediate supervision of the trainee when patient services are provided and shall be in close proximity during needle insertion and extraction;

8.3. The supervisor shall insure that patient informed consent is obtained when necessary;

8.4. The supervisor shall insure that the objectives of the submitted training plan are provided and met by the trainee;

8.5. The supervisor shall insure that the trainee complies with the standards of practice;

8.6. The supervisor shall file quarterly with the Board a progress report on a form provided by the Board which sets forth the schedules for theoretic and didactic training and for clinical training of the trainee;

8.7. The supervisor shall insure that when rendering services or otherwise engaging in professional activity the tutorial trainee always identifies himself or herself as an “acupuncture trainee”; and wears an identification badge stating his or her trainee status;

8.8. There shall be no separate billing by the tutorial trainee;

8.9. The supervisor shall comply with the provisions of W. Va. Code § 30-36-1 et seq., the Board’s Rules Title 32 CRS 1 et seq. and applicable laws and regulations governing wages and compensation paid to employees or apprentices, maximum hours and working conditions. Any overtime worked by the trainee shall not interfere with or impair the training program and shall not be detrimental to the health and safety of the trainee or patients.

32-12-9. Trainee’s Responsibilities.

9.1. The tutorial trainee shall not provide acupuncture services without the required supervision or autonomously, and shall not provide any services for which he or she is not trained or competent to perform;

9.2. The tutorial trainee shall satisfactorily meet the objectives of the training plan submitted to the Board including the necessary theoretical training;

9.3. The tutorial trainee shall comply with the standards of practice, 32CRS5;

9.4. The tutorial trainee shall always identify himself or herself as an acupuncture trainee when rendering services or otherwise engaging in professional activity and shall wear an identification badge on an outer garment and in plain view which states the trainee’s name and the title “Acupuncture Trainee”;

9.5. The tutorial trainee shall report to the Board any delay, interruption or termination of the acupuncture tutorial not reported by the supervisor.

32-12-10. Termination or Modification of Tutorial.

10.1. The Board shall be notified in writing within ten (10) days of the termination of any acupuncture tutorial for any reason. At the time of the notification the registration of both the supervisor and trainee shall be canceled. If the supervisor or trainee subsequently participate in an acupuncture tutorial, a new application for registration shall be filed with the Board.

10.2. If the training plan of the acupuncture tutorial is substantially modified then a report of the modifications shall be filed with the Board. There shall be no charge for filing the

report.

10.3. If the supervisor is unable to complete the training, the Board at its discretion, may define steps where by the tutorial trainee may complete the course of training. The Board may assign a new supervising acupuncturist.

32-12-11. Application for Examination of Credentials and Oral Examination.

At the completion of the tutorial the trainee may file an application for licensure.

32-12-12. Denial, Suspension or Revocation of Registration as a Supervisor.

The Board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a registration to supervise a trainee in an acupuncture tutorial for the following causes:

- (a) Failure to comply with the provisions of the W. Va. Code § 30-36-1 et seq. or this Rule;
- (b) Violation of the standards of practice, 32CRS5;
- © The supervisor is the subject of a successful disciplinary action or has had charges in a disciplinary action filed against him or her;
- (d) The registration was obtained by fraud or misrepresentation or false or misleading information was presented to the Board with respect to an acupuncture tutorial;
- (e) Failure of the supervisor or the trainee to comply with patient informed consent; or
- (f) The trainee has rendered acupuncture services in violation of this Rule within the setting of the acupuncture tutorial regardless of whether the supervising acupuncturist has knowledge of the acts performed.

32-12-13. Denial, Suspension or Revocation of Registration as a Trainee.

The Board may deny, issue, subject to terms and conditions, suspend revoke or place on probation a registration as a trainee in an acupuncture tutorial for the following causes:

- (a) Failure to comply with this Rule for approval and registration as a trainee;
- (b) Violation of the W. Va. Code § 30-36-1 et seq. or the Boards Rules 32CRS1 et seq.;

- (c) The registration was obtained by fraud or misrepresentation or false or misleading information was presented to the Board with respect to the acupuncture tutorial;
- (d) Failure to comply with patient informed consent;
- (e) The rendering of acupuncture services outside the approved acupuncture tutorial;
- (f) Failure to identify oneself as an acupuncture trainee or failure to wear an appropriate identification badge when rendering acupuncture services; or
- (g) Rendering acupuncture services under a supervising acupuncturist who is not approved as a supervisor by the Board or whose registration as a supervisor has been suspended.

32-12-14. Proceedings.

Any proceedings to suspend or revoke the registration of a supervising acupuncturist or trainee or to deny such registration on grounds of unprofessional conduct shall be conducted pursuant to the Board's Rule 32 CRS 7 on Hearings and Due Process.



FILED

Nov 16 12 16 PM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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November 12, 1998

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Delegate Mark Hunt, Co-Chairman
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Teri Anderson, Administrative Assistant

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: **Tutorial Education Requirements, 32CSR12**

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: Tutorial Education Requirements, 32CSR12

PERTINENT DATES

Filed for public comment: July 1, 1998
Public comment period ended: July 31, 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 16 10 33 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 applicants for licensure and applicants for tutorial programs.

Section 3 defines terms.

Section 4 requires a person to receive prior approval of the Board prior to practicing acupuncture in tutorial.

Section 5 requires an acupuncturist to obtain prior approval before supervising an acupuncture trainee.

Section 6 requires a person to apply to the Board for approval as an acupuncture trainee and an acupuncturist for approval as a supervisor. It allows prior training and experience of the trainee to be taken into account when the training plan is developed.

Section 7 requires 300 hours of clinical training and 2700 hours in theoretical and didactic training for tutorials. Specific areas of study are listed.

Section 8 sets forth the duties and responsibilities of a supervising acupuncturist.

Section 9 sets forth the trainee's responsibilities.

Section 10 requires that the Board be given 10 days notice of the termination of a tutorial. It also requires that any substantial modifications to a tutorial be filed with the Board.

Section 11 provides that a trainee may apply for licensure following completion of the tutorial.

Section 12 sets forth the circumstances for which the Board may deny, suspend, revoke, etc., the registration of an acupuncturist to supervise a trainee.

Section 13 sets forth the circumstances for which the Board may deny, suspend, revoke, etc., the registration of a trainee.

Section 14 provides that any proceedings to suspend or revoke a registration are to be in compliance with due process procedures contained in Series 7.

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...

ANALYSIS

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

No.

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?

It is Counsel's opinion that the intent of the statute was to provide an apprenticeship program following completion of a course of study. The proposed rule, particularly in Section 7.5 seems to provide for more study rather than the hands on approach of an apprenticeship.

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

No.

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?

See II.

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

This rule needs some work to make it easier to understand and to put the requirements in a logical order.

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 technical modifications to suggest.