



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Acupuncture

RULE TYPE: Legislative

TITLE-SERIES: 32-14

RULE NAME: Auricular Detoxification Therapy
Certificate

CITE AUTHORITY: §30-36-7(d) and §30-36-10

The above proposed Legislative rules, 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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Linda Lyter -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 32
LEGISLATIVE RULE
BOARD OF ACUPUNCTURE

SERIES 14
AURICULAR DETOXIFICATION THERAPY CERTIFICATE

§32-14-1. General.

1.1. Scope. -- This rule establishes the application, certificate, qualification and terms for auricular acupuncture certificate holders pursuant to W. Va. Code §30-36-10.

1.2. Authority. -- W. Va. Code §30-36-7(d) and §30-36-10.

1.3. Filing Date. --

1.4. Effective Date. --

1.5 Sunset Provision -- This rule shall terminate and have no further force or effect upon the expiration of 10 years from its effective date.

§32-14-2. Application.

This legislative rule applies to application, issuance of a certificate, renewal, qualifications and terms for auricular acudetox certificate holders.

§32-14-3. Definitions.

3.1. Auricular acudetox therapy -- means therapy as approved by the board or as stipulated by the National Acupuncture Detoxification Association (NADA), for the treatment of substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery. Those persons certified as having successfully completed a course of study necessary to perform auricular detoxification therapy.

3.2. Certificate holder -- means those persons issued an authorization by the board to persons trained in auricular acudetox who meet the qualifications to be certified as an auricular detoxification therapist or specialist (ADS).

3.3. National Acupuncture Detoxification Association (NADA protocol) -- means the National Acupuncture Detoxification Association protocol for auricular detoxification therapy.

§32-14-4. Application, Terms and Renewal for Certificate Holders.

4.1. A person seeking a certificate as an Auricular acudetox therapist or Auricular acudetox specialist shall apply to the board on a form prescribed by the board and pay the applicable board fee as established by the board by rule pursuant to Title 32, Series 4, Code of State Rules, Fees of the Board of Acupuncture.

4.2. The certificate of authorization to perform auricular acudetox therapy shall be valid for two years from month ending of the date of issuance by the board and such initial approval shall be communicated in writing to the applicable professional board listed in subsection 5.1.2. of this rule.

4.3. A certificate to perform auricular acudetox therapy shall be renewed by applying to the board for renewal on a form prescribed by the board, as required and accompanied with the payment of the applicable fee.

§32-14-5. Requirements for a Certificate.

5.1. To qualify for a certificate as an auricular detoxification specialist, an applicant shall:

5.1.1. Be at least 18 years old;

5.1.2. Be authorized in this state to engage in any of the following:

5.1.2.a. Physician assistant, pursuant to §30-3E-1 et seq. of this code;

5.1.2.b. Dentist, pursuant to §30-4-1 et seq. of this code;

5.1.2.c. Registered professional nurse, pursuant to §30-7-1 et seq. of this code;

5.1.2.d. Practical nurse, pursuant to §30-7A-1 et seq. of this code;

5.1.2.e. Psychologist, pursuant to §30-21-1 et seq. of this code;

5.1.2.f. Occupational therapist, pursuant to §30-28-1 et seq. of this code;

5.1.2.g. Social worker, pursuant to §30-30-1 et seq. of this code;

5.1.2.h. Professional counselor, pursuant to §30-31-1 et seq. of this code;

5.1.2.i. Emergency medical services provider, pursuant to §16-4C-1 et seq. of this code; or

5.1.2.j. Corrections medical provider, pursuant to §15A-1-1 et seq. of this code.

5.1.3. Provide evidence of successful completion of a board-approved auricular acudetox program;

5.1.4. Submit a completed application as prescribed by the board; and

5.1.5. Submit the appropriate fees as provided for by legislative rule.

5.2. A certificate may be renewed pursuant to the provision of this rule.

5.3. A certificate holder shall maintain and remain current in the professional competencies and authorizations as required pursuant to West Virginia Code §30-36-10 and subsection 5.1.2. of this rule.

§32-14-6. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Certificates for Auricular Acudetox.

6.1. The board may deny an application for a certificate, place a certificate holder on probation, suspend a certificate, limit or restrict a certificate or revoke any certificate issued by the Board, upon satisfactory proof that the certificate holder has:

6.1.1. Knowingly made, or presented or caused to be made or presented, any false, fraudulent or forged statement, writing, certificate, diploma or other material in connection with an application for a certificate;

6.1.2. Been or is involved in fraud, forgery, deception, collusion or conspiracy in connection with an application for certification;

6.1.3. Become addicted to a controlled substance;

6.1.4. Become a chronic or persistent alcoholic;

6.1.5. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or member of the public;

6.1.6. Willfully violated a confidential communication;

6.1.7. Had his or her license or other authorizations to practice in the professional capacity pursuant to West Virginia Code §30-36-10 and subsection 5.1.2 of this rule, in this or any other state, territory, jurisdiction or foreign nation revoked, suspended, restricted or limited, or otherwise acted against, or has been subjected to any other disciplinary action by the licensing or governing authority thereof, or has been denied licensure or authorizations in this or any other state, territory, jurisdiction, or foreign nation;

6.1.8. Demonstrated a lack of professional competence in performing auricular acudetox with a reasonable degree of skill and safety for patients. In this connection, the Board may consider repeated acts of a certificate holder indicating his or her failure to properly treat a patient and may require the certificate holders to submit to inquiries or examinations, written or oral, by members of the Board, by its agent, or designee, as the Board considers necessary to determine the professional qualifications of the certificate holder;

6.1.9. Engaged in unprofessional conduct, including, but not limited to, any departure from, or failure to conform to, the standards of acceptable practice, pursuant to the guidelines established by the National Acupuncture Detoxification Association protocol for auricular detoxification therapy irrespective of whether a patient is injured by the conduct, or has committed any act contrary to honesty, justice or good morals, whether the act is committed in the course of his or her practice or otherwise and whether committed within or without this State;

6.1.10. With respect to existing certificate holders, been convicted of or found guilty of a crime in any jurisdiction which directly relates to the practice of auricular detoxification therapy or related to the professional or other authorizations as described pursuant to W.Va. Code §30-36-10 and subsection 5.1.2. of this rule. A plea of nolo contendere will be considered conviction for purpose of this rule;

6.1.11. With respect to initial certification, been convicted of a crime in any jurisdiction that remains unreversed and bears a rational nexus to the practice of auricular detoxification therapy or to the professional or other authorizations as described pursuant to W.Va. Code §30-36-10 and subsection 5.1.2. of this rule. A plea of nolo contendere will be considered conviction for purposes of this rule. In determining whether a conviction bears a rational nexus to the practice of auricular detoxification therapy or to the professional or other authorizations as described pursuant to W.Va. Code §30-36-10 and subsection 5.1.2. of this rule, the board shall consider at a minimum;

6.1.11.a. The nature and seriousness of the crime for which the individual was convicted;

6.1.11.b. The passage of time since the commission of the crime;

6.1.11.c. The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

6.1.11.d. Any evidence of rehabilitation or treatment undertaken by the individual; and notwithstanding any other statutory provisions to the contrary, in the event that the applicant is disqualified from certification because of a prior criminal conviction the board shall permit a subsequent application in conformity with the W. Va. Code §30-1-24.

6.1.12. Advertised, practiced or attempted to practice under a name other than his or her own;

6.1.13. Failed to report to the board any person whom the certificate holder knows is in violation of this rule, the of provisions of the West Virginia Acupuncture Practice Act, or in violation of any standard of professional conduct as described in §30-1-1 et seq., of West Virginia Code;

6.1.14. Failed to perform any statutory or legal obligation placed upon a certificate holder;

6.1.15. Made or filed a report which the certificate holder knows to be false, intentionally or negligently failed to file a report or record required by state or federal law, willfully impeded or obstructed the filing or induced another person to do so. The reports or records will include only those which are signed in the capacity as a certificate holder;

6.1.16. Exercised influence within a patient-practitioner relationship for purposes of engaging a patient in sexual activity;

6.1.17. Made deceptive, untrue or fraudulent representations in the practice of auricular detoxification therapy or employed a trick or scheme in the practice of auricular detoxification therapy when the trick or scheme fails to conform to the generally prevailing standards of treatment in the oriental medical community;

6.1.18. Solicited patients, either personally or through an agent, through use of fraud, intimidation, undue influence, or by overreaching or vexatious conduct. A solicitation is any communication which directly or implicitly requests an immediate response from the recipient;

6.1.19. Performed any procedure or prescribed any therapy which, by the prevailing standards of auricular detoxification therapy in the community, that would constitute the experimentation on a human subject, without first obtaining full, informed and written consent from the patient;

6.1.20. Practiced or offered to practice auricular detoxification therapy beyond the scope permitted by the West Virginia Acupuncture Practice Act or accepted and performed professional responsibilities which the certificate holder knows or has reason to know he or she is not competent to perform;

6.1.21. Violated or failed to comply with a lawful order of the Board, or has violated an order of any court entered pursuant to any proceedings commenced by the Board; or

6.1.22. Failing to meet the standard of practice in connection with any supervisory and/or collaborative agreement with any category of health practitioner licensed under Chapter 30 of the W. Va. Code;

6.2. When the board finds that any applicant is unqualified to be granted a certificate or finds that

any certificate holder should be disciplined pursuant to the West Virginia Acupuncture Practice Act or rules of the board, the board may take anyone or more of the following actions:

6.2.1. Refuse to grant a certificate to an applicant;

6.2.2. Administer a public reprimand;

6.2.3. Suspend, limit or restrict any certificate for a definite period, not to exceed five (5) years;

6.2.4. Require any certificate holder to participate in a program of education prescribed by the Board;

6.2.5. Revoke any certificate;

6.2.6. Require the certificate holder to submit to care, counseling or treatment by physicians or other professional persons;

6.2.7. Require the certificate holder to practice under the direction or supervision of another practitioner; or

6.2.8. In addition to and in conjunction with these actions, the board may make a finding adverse to the certificate holder or applicant, but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend enforcement of the penalty and place the auricular detoxification therapist on probation, which may be vacated upon the noncompliance with any terms imposed by the board. In its discretion, the board may restore and reissue a certificate under the West Virginia Acupuncture Practice Act, W. Va. Code §30-36-1 *et. seq.*, and as a condition it may impose any disciplinary or corrective measure provided for in this Rule or in the West Virginia Acupuncture Practice Act.

§ 32-14-7. Disciplinary and Compliant Procedures.

7.1 This rule establishes the same complaint process and procedures for an auricular acudetox certificate holder as referenced in Title 32 Legislative Rule Series 7 Disciplinary and Complaint Procedures for Acupuncturists. Once a final agency order or decision has been entered, the Board shall communicate this decision or order to the professional board listed in subsection 5.1.2. of this rule.

§ 32-14-8. Contested Case Hearing Procedure

8.1 This rule establishes the same contested case hearing procedures for an auricular acudetox certificate holder as referenced in Title 32 Procedural Rule Series 8 Contested Hearing Case Procedure.