



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

6/30/2022 10:41:56 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Acupuncture TITLE-SERIES: 32-06

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: STANDARDS OF PRACTICE OF ACUPUNCTURE BY LICENSED ACUPUNCTURISTS

CITE STATUTORY AUTHORITY: §30-36-7

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/30/2022 12:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Linda Lyter

ADDRESS: 179 Summers St Ste 711

179 Summers St Ste 711

EMAIL:

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

TO UPDATE FOR CURRENT LANGUAGE.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

TO UPDATE FOR CURRENT LANGUAGE

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

THIS RULE WILL HAVE NO EFFECT ON THE EXPENDITURS AND REVENUE OF THE BOARD.

**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 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. -- ~~May 21, 1999.~~
- 1.4. Effective Date. -- ~~May 21, 1999.~~

1.5. Sunset Provision. - This rule shall terminate and have no further notice force or effect upon August 1, 2033.

**§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~~ Council of Colleges of Acupuncture and Herbal Medicine (CCAHM).
- 3.2. ~~CCAOM~~ CCAHM. -- The Council of Colleges of Acupuncture and ~~Oriental~~ Herbal 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~~ Clean Needle Technique**

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”~~ Clean Needle Technique and standards of practice established by the ~~CCAOM~~ CCAHM.

~~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 according to the standard protocols of the ~~FDA~~ Clean Needle Technique and the ~~CCAOM~~ CCAHM 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:~~ 6.1. Pointpuncture (aquapuncture). Injection therapy – A practitioner shall be limited to perform subcutaneous point-puncture-injections using sterile disposable needles and sterile solutions. Injection Therapy shall be the injection of sterile herbs, vitamins, minerals, homeopathic substance or other similar substances specifically manufactured for subcutaneous injection into acupuncture points by means of sterile subcutaneous needles used primarily for this purpose. Permissible substances includes, saline, glucose, lidocaine, procaine, orietnal herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. Practitioners trained in injection therapy must comply with the ability to perform resuscitativte procedures, including access to EpiPen and nasal oxygen if their patient exhibits symptoms of anaphylaxis.

~~6.8:~~ 6.2. 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.~~ 6.2.1. They shall be placed in a sealed unbreakable container marked “~~Hazardous~~ Medical 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, prior to ~~as~~ any recommended 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 maintain Clean Needle Technique. ~~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 of 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)~~ seven (7) years for adults. Records for minors shall be maintained for six (6) years after from the last date of service or until age 21, whichever is longer. ~~the last entry to the record.~~

**§32-6-10. ~~Financial Responsibility~~ Professional Liability Insurance.**

10.1. ~~Financial Responsibility~~ Professional Liability Insurance. -- 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 that \$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;

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 part of 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.