



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

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 and §64-9-2 (b)

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB361

Section N/A Passed On 3/11/2023 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

April 20, 2023

This rule shall terminate and have no further force or effect from the following date:

August 01, 2033

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 and §64-9-2 (b).
- 1.3. Filing Date. -- April 18, 2023.
- 1.4. Effective Date. -- April 20, 2023.
- 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 Council of Colleges of Acupuncture and Herbal Medicine (CCAHM).
- 3.2. CCAHM. -- The Council of Colleges of Acupuncture and 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 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; 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 and standards of practice established by the CCAHM.

§32-6-6. Treatment Procedures.

A licensed acupuncturist shall practice according to the standard protocols of the Clean Needle Technique and the CCAHM during treatments by adhering to the following procedures:

6.1. Injection Therapy. — A practitioner shall be limited to perform 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 injection into acupuncture points by means of sterile needles used primarily for this purpose. Permissible substances includes, saline, glucose, lidocaine, procaine, oriental herbs, vitamin B-12, traumeel, sarapin, and homeopathic substances. Practitioners trained in injection therapy must comply with the ability to perform resuscitative procedures, including access to epinephrine injections and nasal oxygen if their patient exhibits symptoms of anaphylaxis.

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:

6.2.1. They shall be placed in a sealed unbreakable container marked “Medical Waste” and disposed of in a manner consistent with OSHA biohazardous waste regulations.

6.3. 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.

§32-6-7. Informed Consent.

The practitioner shall notify patients in writing and verbally, prior to ~~as~~ any recommended treatment 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 seven (7) years for adults. Records for minors shall be maintained for six (6) years after the last date of service or until age 21, whichever is longer.

§32-6-10. Professional Liability Insurance.

10.1. 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 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;

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.