

**RULES AND REGULATIONS  
ARKANSAS STATE BOARD OF ACUPUNCTURE  
& RELATED TECHNIQUES**

**TITLE I**

A. DEFINITIONS: For the purpose of these rules the following definitions apply in addition to those in the Act.

1. **"Act"** is the Arkansas Acupuncture Practices Act, as found in Ark. Code Ann. § 17-102-101 et seq.
2. **"Acupuncture"** means the insertion, manipulation, and removal of needles from the body, and the use of other modalities and procedures at specific locations on the body, for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health. Acupuncture shall not be considered surgery.
3. **"Acupuncturist"** means a person licensed under the Act as a doctor of healing arts to practice acupuncture and related techniques in the State of Arkansas, and includes the terms licensed acupuncturist, certified acupuncturist, acupuncture practitioner, oriental acupuncture practitioner, and doctor of oriental medicine.
4. **"Applicant"** is a person who has submitted to the Board an application for licensure.
  
- 5.a. **"Applicant for Grandfather Licensure"** is a person who has submitted to the Board an application for grandfather licensure pursuant to Ark. Code Ann. § 17-102-202(a).
  
- 5.b. **"Applicant for Provisional Licensure"** is a person who has submitted to the Board an application for provisional licensure pursuant to Ark. Code Ann. § 17-102-202(b).
6. **"Board"** is the Arkansas State Board of Acupuncture and Related Techniques.
7. **"Clinical Experience"** is the practice of acupuncture and oriental medicine as defined in the Act, after graduation from an educational program in acupuncture and oriental medicine. A year of clinical experience shall be consistent with the National Commission for the

Certification of Acupuncture and Oriental Medicine's (NCCAOM) requirements.

8. **"Doctor of Oriental Medicine"** is an individual licensed to practice acupuncture and related techniques, including oriental medicine, pursuant to the Act and as such has responsibility for his or her patient as an independent specialty care provider.
9. **"Institution"** is a school that teaches an educational program in acupuncture and oriental medicine, which includes acupuncture and related techniques, and that has been approved by the Board, pursuant to Ark. Code Ann. § 17-102-204(b).
10. **"Licensee"** is an individual licensed pursuant to the Act and defined under Title I (3) of these Rules.
11. **"Moxibustion"** means the use of heat on, or above, or on acupuncture needles, at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder.
12. **"Office"** is the physical facility used for the practice of acupuncture and oriental medicine.
13. **"Rules"** are the rules and regulations, promulgated pursuant to the Act, governing Doctors of Oriental Medicine, Applicants, Applicants for provisional licensure, Applicants for grandfather licensure, educational programs, educational institutions, and all matters covered by the Act.
14. **"Supervised Clinical Practice"** is the observation and application of acupuncture and oriental medical practice in actual treatment situations under appropriate supervision, as defined by NCCAOM.
15. **"Supervision"** is the coordination, direction and continued evaluation at first hand of the person in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in a board-approved institute of oriental medicine.
16. **"Provisional Licensee"** is an individual who holds a provisional license pursuant to the provisions of Ark. Code Ann. § 17-102-202(b).

**B. SCOPE OF PRACTICE:** The practice of oriental medicine in Arkansas is a distinct system of primary health care with the goal of prevention, cure, or correction of any illness, injury pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health. Oriental medicine includes all traditional and modern diagnostic, prescriptive and therapeutic methods utilized by practitioners of acupuncture and oriental medicine world wide. The scope of practice of Doctors of Oriental Medicine shall include but is not limited to:

1. Evaluation and management services.
2. Examination and diagnostic testing.
3. The ordering of radiological, laboratory or other diagnostic tests.
4. The procedures of Acupuncture, injection therapy and other related procedures. Before utilizing Oriental medicine injection therapy, Doctors of Oriental Medicine, holding an Arkansas State license, must complete and submit proof of completion of an Arkansas State Board of Acupuncture and Related Techniques approved course of study in Oriental Medical injection therapy which includes the management of anaphylaxis and associated emergency protocol.
5. The stimulation of points or areas of the body using needles, heat, cold, light, lasers, sound, vibration, magnetism, electricity, bleeding, suction, pressure, Gua Sha, or other devices or means.
6. Physical medicine modalities and techniques.
7. Therapeutic exercises, breathing techniques, meditation, and the use of biofeedback and other devices that utilize color, light, sound, electromagnetic energy and other means therapeutically.
8. Dietary and nutritional counseling and the administration of food, beverages and dietary supplements therapeutically.
9. The prescription or administration of any herbal medicine, homeopathic medicine, or substances such as vitamins, minerals, enzymes, glandulars, amino acids and nutritional or dietary supplements, unless otherwise prohibited by State or federal law or regulation.
10. Counseling regarding physical, emotional and spiritual balance in lifestyle.

## **TITLE II**

### **A.1 BOARD COMPOSITION AND DUTIES: In addition to its duties**

**described in the Act, the Board shall:**

1. Meet in special meetings at any time. Notice of special meetings shall be provided to Board members, the media which have requested notification, and all other interested parties who have requested notification of such meeting at least twenty-four (24) hours in advance of such special meetings.
2. Meet in regular meetings upon such a schedule as shall be set by the Board. Notice of regular meetings shall be provided to Board members, the media, and all interested parties who have requested notification of such meeting at least three (3) days in advance of such regular meetings.
3. Incur and pay expenses for the employ of personnel, legal counsel, independent contractors, or such assistants, as it may deem necessary for the functioning of and fulfilling the duties of the Board as prescribed in the Act.
4. Keep a file of all approved educational programs.
5. Keep a file of all licensees and provisional licensees.
6. Issue certificates of approval of educational programs and educational institutions.
7. Delegate its ministerial duties if it so chooses, as provided by the Act.
8. Notify the Governor when any board member has missed three consecutive meetings, whether special or regular meetings.
9. Elect a President, Secretary, and Treasurer at the first Board meeting held in the month of May of each year.
10. Perform such other duties and shall exercise such other powers as may be conferred upon it by statute, or as may be reasonably implied from such statutory powers and duties and as may be reasonably necessary in the performance of its responsibilities under the Act, pursuant to Ark. Code Ann. § 17-102-108.

A.2 **PUBLIC RECORDS:** All records kept by the Board shall be available for public inspection pursuant to the Arkansas Freedom of Information Act and the Arkansas Administrative Procedures Act.

**B. MEETINGS OF THE BOARD**

- (a) **Regular Meetings.** The Board shall meet at least once in every six (6) months, and may meet more often.
- (b)

**Special Meetings.** The Board may meet in special meetings called at any time at the pleasure of the President or by the Secretary upon the request of any two (2) full members of the Board.

(c)

**Quorum.** A quorum of the Board shall consist of three (3) full members of the Board in attendance at any meeting. For purposes of determining a quorum, the ex officio member shall not be considered a full member.

(d)

**Voting.** Any and every official action taken by the Board shall require an affirmative vote of a majority of the full membership of the Board, that is three (3) out of the five (5) full members. No vote on any official action shall include a vote by the ex officio member.

### **C. ADOPTION OF RULES AND REGULATIONS**

The Board may adopt such rules and regulations as are necessary to conduct its business and administer its duties as found in the Act. All rules and regulations shall be adopted pursuant to the provisions of the Arkansas Administrative Procedures Act.

In addition to rules and regulations proposed by the Board, interested parties may petition the Board for a change in or addition to the rules and regulations pursuant to the Arkansas Administrative Procedure Act. The Board shall consider such written request at its next regular meeting.

## **TITLE III**

### **A.1 APPLICATION FOR LICENSURE**

The Board shall not cause a license to be issued to any person it has deemed to be unqualified pursuant to the provisions of the Act and these rules and regulations. Notwithstanding the provisions of A.C.A § 17-102-202, all applicants are required to be at least 21 years of age, be a citizen of the United States and/or a legal resident, not have had a license to practice acupuncture and related techniques in any other state suspended or revoked nor have been placed on probation for any cause, not have been convicted of a felony and not be a habitual user of intoxicants, drugs or hallucinatory preparations.

(a)

Every Applicant, other than an applicant under A.C.A. § 17-102-202, must provide a statement signed by the Applicant and the signature verified by a Notary Public as to whether he or she:

- (1) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture, oriental medicine and related techniques, or related to any other health care professions for which the Applicant is licensed, certified, registered or legally recognized to practice;
  - (2) Has been a defendant in litigation in any jurisdiction related to his or her practice of acupuncture, oriental medicine and related techniques, or related to any other health care professions for which the Applicant is licensed, certified, registered or legally recognized to practice; and
  - (3) Has been convicted of a felony in any jurisdiction.
- (b) Any Applicant, other than an applicant under Ark. Code Ann. § 17-102-202, who is licensed, certified, registered or legally recognized to practice any other health care professions, in any jurisdiction, pursuant to any authority other than the Arkansas Acupuncture Practices Act shall provide a certificate from each such jurisdiction stating the disciplinary record of the Applicant. A copy of the certificate may be substituted if verified as a true and correct copy by the keeper of the records in that jurisdiction.
- (c) Any Applicant other than an applicant under Ark. Code Ann. § 17-102-202 who has been subject to any action or proceeding in another jurisdiction comprehended by Title III.A. 1 (a), may be denied a license by the Board.

**A.2 APPLICATION:** Every person seeking a license to practice acupuncture, oriental medicine, and related techniques shall file an application on the current form provided by the Board. All applications must be complete and in English.

(a) **EXHIBITS REQUIRED:** Every application shall be accompanied by:

1. The fee for application for licensure specified in Title III, C.4.
2. A passport-type photograph of the Applicant taken not more than six

months prior to the submission of the application.

3. Except for those applicants applying under Ark. Code Ann. § 17-102-202, two (2) affidavits certifying the Applicant's good moral character by acupuncturists not related to the Applicant, who have known the Applicant not less than one year. These affidavits shall be on a form provided by the Board.
4. A notarized form signed by the Applicant authorizing the release to the Board of additional information regarding the Applicant and his or her qualifications for licensure, including but not limited to educational background, criminal background check, transcripts, credentials, and accreditation information on educational institutions.

(b)

**VERIFICATION:** Except for those applicants applying under Ark. Code Ann. § 17-102-202, verification of the Applicant's education shall include:

1. A copy of the Applicant's certificate or diploma from an accredited educational institution evidencing completion of the required program of study in acupuncture and oriental medicine. This copy shall include on it an affidavit certifying that it is a true copy of the original.
2. An official copy of the Applicant's transcript that shall be sent directly to the Board by the approved educational institution from which the Applicant received the certificate or diploma, and that shall verify the Applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; and

(c)

**DOCUMENTS IN A FOREIGN LANGUAGE:** All documents submitted in a foreign language must be accompanied by a certified translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the Applicant certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an Applicant's application shall be at the expense of the Applicant.

(d)

**SUFFICIENCY OF DOCUMENT:** The Board shall determine the sufficiency of the documentation to support the application for licensure. The Board may, in its sole discretion, request further proof of qualifications and/or require a personal interview with any Applicant to establish his or her qualifications.

**B. AUTHORIZED FORMS** The Board shall authorize such forms as are necessary from time to time for the application for licenses, and the renewal of licenses. The authorized forms may be reproduced without permission from the Board but shall not be altered or changed in any way by any prospective Licensee. Authorized forms shall be available from the Board to any member of the public or any prospective Licensee. Requests for forms may be made in writing or by telephone call to the Board at its offices, or to the Board Secretary.

### **C.1 REQUIREMENTS FOR LICENSING**

(a)

**EDUCATIONAL REQUIREMENTS:** Every Applicant, except for those applicants applying under Ark. Code Ann. §17-102-202, shall provide satisfactory proof that he or she has completed an approved four year academic educational program in acupuncture and oriental medicine and has received a certificate or diploma for completion of the approved educational program from an institute approved by the Board.

(1)

**EDUCATIONAL PROGRAM:** The Applicant shall submit proof of graduation from an approved program of study taught at an institution approved by the Board. Upon submission of such proof, the Board shall consider the application for approval.

(2)

**APPROVED EDUCATIONAL INSTITUTION.** For the Board to determine that an institution meets the standards of professional education, the institution must require a program of study of at least four (4) academic years which must meet Accreditation Commission for Acupuncture and Oriental Medicine's (ACAOM) level of education or other criteria as found reasonable by the Board, require participation by students in a supervised clinical or internship program which includes a minimum of eight hundred

(800) hours of supervised clinical practice, and confer a certificate, diploma, or degree only after personal attendance in classes and clinics.

- (3) **PREREQUISITES:** Has successfully completed not fewer than sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in the field of science.
- (b) The educational requirements found in Title III. C. I (a) shall not apply to any person who is qualified for and receives a license under the provisions of Ark. Code Ann. § 17-102-202.

**C.2 FEES: The Board shall charge the following fees:**

- (a) Initial application for licensing: \$250.00
- (b) Written and practical examination, not including the cost of the nationally recognized examination, a fee not to exceed three hundred fifty dollars (\$350.00).
- (c) Biennial licensing renewal: \$400.00
- (d) Late renewal (in addition to the application fee): \$100.00
- (e) Reciprocal licensing fee: \$750.00
- (f) Continuing education provider registration fee (annual): \$200.00
- (g) Administrative support fee (maximum annual): \$300.00

**D. RECIPROCAL LICENSING:** The Board may enter into reciprocal licensing agreements with other states or jurisdictions, provided the requirements and qualifications for licensure in that state or jurisdiction meet or exceed the requirements and qualifications for licensure in Arkansas.

**E. EXAMINATIONS:** The Board shall be authorized to give examinations to all Applicants for licensure, or to accept the scores of an Applicant on Board-approved nationally recognized examinations on acupuncture and Chinese herbal medicine.

- (a) Examination topics to be covered shall be anatomy and physiology,

pathology, diagnosis, hygiene, sanitation, sterilization techniques, acupuncture and related principles, practices and techniques, and Chinese herbal medicine.

- (b) If the Board conducts its own examination of applicants for licensure, the Board shall hold an examination at least once each calendar year. Applicants for a license shall be notified in writing by the Board at least thirty (30) days in advance of the date set for the examination.
- (c) Every applicant for a license pursuant to the Act shall achieve a score of not less than seventy percent (70%) on each topic on the examination administered by the Board, or a passing score on a Board-approved nationally recognized examination on acupuncture and Chinese herbal medicine.
- (d) The Board shall maintain a list of every Board-approved nationally recognized examination at its offices.
- (e) The above requirements of Title III (E) do not apply to applicants seeking licensure under Ark. Code Ann. § 17-102-202.

**F. ACUPUNCTURE DETOX SPECIALISTS.** Detox specialists shall register with the Board. They shall be permitted to practice only under the supervision of a Doctor of Oriental Medicine who is licensed by the Arkansas State Board of Acupuncture and Related Techniques. They shall be permitted to use only the five

(5) point ear protocol of NADA for substance abuse and shall not treat or offer treatment in any other capacity.

#### **TITLE IV**

**A.1 LICENSE RENEWAL:** Every Applicant for license renewal must provide a statement as to whether he or she, since applying for licensure or since last applying for license renewal, which ever occurred most recently:

- (a) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine and related techniques, or related to any other health care professions for which the Applicant for license renewal is licensed, certified, registered or

- legally recognized to practice;
- (b) Has been a defendant in any litigation in any jurisdiction related to his or her practice of acupuncture and oriental medicine and related techniques, or related to any other health care professions for which the Applicant for license renewal is licensed, certified, registered or legally recognized to practice; and
- (c) Has been convicted of a felony in any jurisdiction.

Any Applicant for license renewal who has been subject to any action or proceeding comprehended by Title III.A.1 may be subject to disciplinary action, including denial, suspension or revocation of licensure.

**A.2 LICENSING PERIOD:** The licensing period shall run from January 1<sup>st</sup> to the second consecutive December 31<sup>st</sup>. A newly licensed Doctor of Oriental Medicine shall be issued a license that shall be required to be renewed on the second December 31<sup>st</sup> following the initial date of licensure. The Board shall send renewal notifications to licensees no later than December 1<sup>st</sup>.

**A.3 LICENSE RENEWAL:** Except as provided otherwise in the Act, or in these Rules, or pursuant to other State law, each licensed Doctor of Oriental Medicine shall be granted renewal of his or her license for two years upon receipt by the Board of his or her renewal application that shall include any continuing education documentation required by Ark. Code Ann. 17-102-308 and Title IV.B. of these Rules and the fee for the biennial license renewal specified in Title III.C.2.

**A.4 LATE LICENSE RENEWAL:** Each licensee shall be required to pay biennial license renewal fees and meet continuing education requirements as specified in the Act and in these Rules. A licensee who fails to renew his or her license within one (1) year after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the following requirements:

- (1) Meets all current standards of the Arkansas State Board of Acupuncture and Related Techniques; and
- (2) Takes and passes the examination and pays all fees associated

therewith as if seeking a license for the first time.

**A.5 EXPIRED LICENSE:** If a Licensee has not renewed his or her license by the end of the one (1) year period following the expiration of the license, that Licensee shall not practice oriental medicine until the expired license is renewed.

**B.1 CONTINUING EDUCATION:** The Board shall not renew the license of any licensee unless the licensee presents to the Board evidence of attendance at a board- approved educational session or sessions of not less than twenty-four (24) hours of continuing education within the previous biennial period, except that in the first biennial period subsequent to initial licensure by the Board, the licensee shall not be required to present evidence of continuing education.

**B.2** The Board may accept hours from Board approved courses or NCCAOM approved courses as valid continuing education hours.

(a)

If the course has not been approved by NCCAOM or the State of Arkansas for continuing education, the licensee shall submit information to the Board about the course, including the person or organization sponsoring or presenting the course, an outline of the subject matter covered by the course and the length of the course in hours.

(b)

It is the Board's intention to respond to all submissions of continuing education courses in a timely manner. However, in the event of extenuating circumstances, if the submission is not specifically denied in writing by the Board within 60 days after the postmark of the applicant's submission, the submission shall be approved.

(c)

Applications for approval of providers of continuing education shall be on an individual course basis, provider applicants shall be responsible for obtaining and submitting the proper information and fees to the Board.

(d)

If the Board denies approval for any course or courses upon application for license renewal, the applicant shall have an additional 90 days to obtain the required hours during which time the applicant can

continue to practice. Failure to acquire the proper hours within said 90 days shall result in non-renewal of the license.

## **TITLE V**

### **A. HEARING PROCEDURES ON DENIED APPLICATIONS**

- (a) Any Applicant who is denied the issuance of a license by the Board may appeal such decision and request a hearing before the full Board on the application. The Applicant shall file the appeal in writing with the Board within thirty (30) days of receipt of the notice of denial.
- (b) Within thirty (30) days of the filing of the appeal on the denial of a license, the Board shall hold a hearing on the application. The Applicant shall be notified in writing of the date, time, and location of the hearing at least twenty (20) days in advance of the hearing on the appeal.
- (c) The Board and the Applicant shall disclose no later than ten (10) days before the hearing on the merits the names, addresses and telephone numbers of all persons who they intend to call as witnesses at the hearing, and shall provide a list of exhibits which will be offered for introduction into evidence.
- (d) The Applicant shall not engage in ex-parte communications with any member of the Board on any matter related to the application or the appeal prior to the date set for the hearing, nor shall the Board members engage in ex-parte communications in violation of the Arkansas Administrative Procedures Act.
- (e) At the hearing, the Applicant shall be provided the opportunity to present evidence, by testimony or by documents, cross examine all witnesses, and call such witnesses as they may deem have relevant information for the Board to consider with respect to the granting or denial of the license sought by the Applicant.
- (f) The Board shall not be bound by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure in its proceedings. However, the Rules may serve as a guide to the presiding officer for the conduct of

the hearing. The President of the Board shall rule on all motions as well as all evidentiary and procedural matters that arise during the hearing. The Board may appoint an impartial hearing officer to preside at or assist the Board in any hearing on any application, any disciplinary action, or any matter requiring adjudication.

(g)

The Board shall not cause a license to be issued to a person it has deemed to be unqualified until and unless the Board has been satisfied that the Applicant has complied with all the terms, conditions, and requirements set forth in the Act and these rules and regulations, and that the Applicant is capable of safely and ethically engaging in the practice of acupuncture and related techniques.

(h)

When an Applicant has been denied a license, he or she may not reapply for a license until one of the following has taken place: (1) one full year has passed since the date the license was denied; or

(2) there has been a significant change in circumstances or facts with respect to the applicant's credentials and/or qualifications.

## **B.1 COMPLAINT AND DISCIPLINARY PROCEDURES**

(a)

A complaint may be initiated by any person by a telephone call, a written complaint, or a walk-in complaint presented to any Board Member or the Board's representative. The Board shall prepare a complaint form. This form shall be available at the office of the Board or from the Secretary of the Board.

(b)

The provisions of Title V (B. 1)(a) above notwithstanding, no formal disciplinary proceeding against any person may be instituted without a written complaint signed by the complaining party (the Complainant), under penalty of perjury.

(c)

The Secretary of the Board shall maintain a written log of all complaints received which records the date of the complaint, the name, address and telephone number of the Complainant, the name of the subject of the complaint (Respondent), the method by which the complaint was made (e.g., telephone, letter, sworn written complaint, etc.), and other pertinent data as the Board may direct.

## **B.2 PROCEDURES FOR RECEIPT OF A COMPLAINT**

(a)

Upon receipt of a written, signed complaint, or upon the Board's own action as initiated by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, and as then reduced to a written complaint, if the Board has reasonable cause to believe that the Act or the Rules promulgated pursuant thereto have been or are being violated, the Board Secretary shall:

1. Log in the date of receipt of any complaint initiated by the Board or any other party.
2. Determine whether the Respondent is licensed by the Board to practice acupuncture and oriental medicine in the State of Arkansas, or is an Applicant for licensure.
3. Assign a complaint number and create an individual file. Complaint numbering shall begin with the last two digits of the year in which the complaint is filed and shall then continue sequentially (e.g. 98-001).
4. Within seven (7) working days of the date of receipt of the complaint, send written acknowledgment of receipt of the complaint to the Complainant.

(b)

Furnish the Respondent with a copy of the complaint and all documents filed in relation to the complaint by certified mail within seven (7) working days of the receipt of the complaint by the Board. The Respondent shall also be informed in writing at this time that the Board has initiated an investigation into the complaint, and that the Respondent may furnish the Board documents relevant to the complaint.

## **B.3 REVIEW OF THE COMPLAINT**

(a)

The Board will review all written, signed complaints filed against a Licensee or Applicant. The Board shall provide the Respondent with a copy of the complaint within seven (7) days of receipt of the complaint.

(b)

The Respondent shall be provided at least twenty (20) calendar days

in which to file a written response to the complaint, and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position.

- (c) If the Board determines that further information is needed, it may issue subpoenas, or employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint.
- (d) Upon completion of the investigation, the Board will provide a written summary of its findings. The summary shall not identify any of the parties by name. The Board shall provide a copy of its findings to the Complainant and Respondent.
- (e) If the Board determines that it does not have jurisdiction, both the Complainant and Respondent will be notified in writing. The letter will explain why the case cannot be accepted for investigation and/or action (e.g. due to the statute of limitations, or the nature of the complaint being a fee dispute, or there being no violation of the Act or the Rules), or it may note that the complaint can be referred to another agency. A letter from the Board will be sent within thirty (30) days of the date of the Board's decision to both the Complainant and Respondent. The letter will state the Board's action and the reasons for its decision. The letter will be signed by the President.

#### **B.4 HEARING BY THE BOARD**

- (a) Unless the Board dismisses the complaint pursuant to Title V (B.3)(e), above, the complaint shall be set for a hearing before the full Board. The matter shall be referred to only by the assigned case number, and shall be brought pursuant to the provisions of the Arkansas Administrative Procedure Act.
- (b) The Respondent shall be notified of the hearing at least thirty (30) days in advance of the date set for the hearing. The Complainant shall also receive a copy of the notice of hearing. The notice of hearing shall set forth the charges and allegations against Respondent in sufficient detail so as to provide full disclosure and notice of all violations of the Act and regulations, as well as the issues that will be considered by the Board at the hearing.

- (c) The Respondent may file a response to the notice of hearing, but is not required to do so. Any written response to the charges must be filed with the Board ten (10) days in advance of the date set for the hearing on the complaint.
- (d) The Respondent may waive a hearing on the notice and complaint. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Board.
- (e) At any time the Board may enter into a settlement agreement with the Licensee as a means of resolving a complaint. Any proposed settlement agreement must be approved by the Board upon a majority vote of those qualified to vote, and must be approved further by the Licensee or Applicant, upon a knowing and intentional waiver by the Licensee or Applicant of his or her right to a hearing.
- (f) The Board is empowered to issue subpoenas pursuant to the Ark. Code Ann. § 17-102-108(c) and Ark. Code Ann. § 17-80-102.
- (g) The Board may appoint an impartial hearing officer to preside at or assist the Board in any hearing on any application, any disciplinary action, or any matter requiring adjudication.

## **B.5 DISCIPLINARY PROCEEDINGS**

- (a) The parties shall disclose to each other no later than ten (10) days before the hearing on the merits the names, addresses and telephone numbers of all persons who they intend to call as witnesses at the hearing, and shall provide a list of exhibits which each intends to offer for introduction into evidence. If the opposing party is not in possession of a copy of any of the listed exhibits, the party which intends to offer the exhibits shall provide copies of all such exhibits at the time the written exhibit list is provided.
- (b) The Respondent shall not engage in ex-parte communications with any member of the Board on any matter after a notice of hearing has been issued by the Board, nor shall the Board members engage in ex-parte communications in violation of the Arkansas Administrative Procedures Act.

- (c) At the hearing, each party shall be provided the opportunity to present evidence, by testimony or by documents, cross examine witnesses and call such witnesses as they may deem have relevant information for the Board to consider.
- (d) The Board shall not be bound by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure in its proceedings. However, the Rules may serve as a guide to the presiding officer for the conduct of the hearing. The President of the Board or its duly appointed hearing officer shall rule on all motions as well as all evidentiary and procedural matters that arise during the hearing.
- (e) When a Licensee is found guilty of any of the acts set forth in the Act or a violation of any Order of the Board, or of a violation of these rules and regulations, the Board may impose the following sanctions:
1. Refuse to issue a license to the Applicant;
  2. Revoke or suspend the license of the Licensee;
  3. Restrict the practice of the Licensee;
  4. Impose an administrative fine not to exceed five thousand dollars (\$5,000.00) for each count or separate offense of which the Licensee is found guilty;
  5. Reprimand the Licensee; or
  6. Place the Licensee on probation for such period of time as the Board deems is appropriate and impose such conditions as the Board may specify for the conduct of the Licensee's practice.

In the event that the Board revokes or suspends the license of an acupuncturist, the license shall not be reinstated until such time as the Board is satisfied that the Licensee has complied with all the terms and conditions set forth in the final disciplinary order of the Board, and that the Licensee is capable of safely and ethically engaging in the practice of acupuncture and related techniques.

## **TITLE VI**

### **A. PROHIBITED ACTS AND CONDUCT OF LICENSED PROFESSIONALS:**

Any Applicant for license renewal who provides the Board with false information or makes a false statement to the Board with regard to any action or proceeding comprehended by the Act or these rules and

regulations may be subject to disciplinary action, including denial, suspension or revocation of licensure.

The following acts or omissions shall be considered as grounds for disciplinary action by the Board, following notice and hearing:

(1)

**PROFESSIONAL INCOMPETENCE:** Pursuant to the Act, a Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she, in diagnosing and treating a patient fails to possess or apply the knowledge, or to use the skill and care ordinarily used by reasonably well-qualified Doctors of Oriental Medicine practicing under similar circumstances, giving due consideration to the locality involved.

(2)

**FAILURE TO FOLLOW PROPER INSTRUMENT STERILIZATION PROCEDURE:** Pursuant to the Act, a Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she fails to use sterile instruments or fails to follow proper instrument sterilization procedures including the use of biological monitors and the keeping of accurate records of sterilization cycles and equipment service maintenance as described in the manufacturer's instruction manual, the current edition of "Clean Needle Technique For Acupuncturists--A Manual" published by the National Commission For The Certification Of Acupuncturists. This provision shall not apply to needles or syringes, which may not be re-used or sterilized for a subsequent use under any circumstances.

(3)

**FAILURE TO FOLLOW CLEAN NEEDLE TECHNIQUE:** Pursuant to the Act, a Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she fails to follow clean needle technique as defined in the current edition of "Clean Needle Technique For Acupuncturist--A Manual" published by the National Commission For The Certification Of Acupuncturists.

(4)

**FALSE REPORTING:** Pursuant to the Act, a Doctor of Oriental Medicine or an Applicant shall be guilty of unprofessional conduct if he or she willfully makes or files false reports or records in his or her practice as a Doctor of Oriental Medicine, or who files false statements for collection of fees for services that were not rendered.

(5)

**OUT OF STATE DISCIPLINARY ACTION:** A Doctor of Oriental Medicine or an Applicant shall be guilty of unprofessional conduct if he

or she has committed any act or omission which has resulted in disciplinary action against the Doctor of Oriental Medicine or Applicant by the licensing or disciplinary authority or court in another state, territory, or country.

(6)

**PROCURING LICENSE BY BRIBERY, FRAUD, OR DECEIT:** A Doctor of Oriental Medicine or an Applicant shall be guilty of unprofessional conduct by fraud or deceit in procuring or attempting to procure or renew a license or a provisional license to practice in the profession of acupuncture and oriental medicine if he or she makes false statements, or provides false information on his or her application for licensure. A Doctor of Oriental Medicine or an Applicant shall be guilty of bribery if he or she attempts to pay money or provide any thing of value to a member of the licensing Board in return for having a license issued.

(7)

**MISREPRESENTATION:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct by misrepresentation if he or she advertises, practices, or attempts to practice under a name other than one's own.

(8)

**FALSE ADVERTISING:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct by advertising by means of knowingly false statements if he or she makes or publishes or causes to be made or published any advertisement, offer, statement or other form of representation, oral or written, that directly or by implication is false, misleading or deceptive.

(9)

**FALSE ADVERTISING BY APPLICANTS:** An Applicant or an Applicant for Provisional Licensure shall be guilty of unprofessional conduct by advertising by means of knowingly false statements if he or she advertises his or her practice of acupuncture and oriental medicine if he or she does such advertising prior to being licensed by the Board.

(10)

**EDUCATIONAL FRAUD:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she practices fraud, deceit, gross negligence, or misconduct in the operation of an educational program in acupuncture, oriental medicine, and related techniques.

(11)

**FAILURE TO KEEP RECORDS:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she fails to keep written records reflecting the course of treatment of the patient. Records shall

be kept for a period of no less than five (5) years, and shall be subject to review by the Board.

(12)

**FAILURE TO PROVIDE RECORDS TO PATIENT:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she fails to make available to a patient or client, upon request, copies of documents, in the possession or under the control of the Doctor of Oriental Medicine, that have been prepared for and paid for by the patient or client.

(13)

**BREACH OF CONFIDENTIALITY:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she reveals personally identifiable facts, data or information obtained in a professional capacity, without the prior consent of the patient or client, except as authorized or required by law.

(14)

**DELEGATION OF RESPONSIBILITIES TO UNQUALIFIED PERSONS:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she:

a.

Delegates professional responsibilities to a person when the Doctor of Oriental Medicine delegating such responsibilities knows or has reason to know that the person is not qualified by education, by experience or by licensure or certification to perform the responsibilities; or

b.

Fails to exercise appropriate supervision over Provisional Licensees or students who are authorized to practice only under the supervision of the Doctor of Oriental Medicine.

(15)

**EXERCISING INFLUENCE WITHIN A PATIENT-DOCTOR RELATIONSHIP FOR PURPOSES OF ENGAGING A PATIENT IN SEXUAL ACTIVITY:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct when he or she exercises influence within a patient-doctor relationship for the purpose of engaging a patient in sexual activity.

(16)

**LACK OF FITNESS TO PRACTICE:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she continues to practice and provide treatment for patients when he or she

a.

Has become mentally incompetent or unfit, or has become

incompetent by reason of negligence, habits, or other related causes;  
or

b.

Has become habitually intemperate or addicted to the use of habit-forming drugs, illegal drugs, and/or alcohol.

(17)

**INSURANCE FRAUD:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she knowingly commits fraud or deceit in the filing of insurance forms, documents, or information pertaining to the health or welfare of a patient, or knowingly allows an employee to file insurance forms, documents, or information pertaining to health or welfare benefits which are false.

(18)

**WILLFUL VIOLATIONS:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she continues to willfully or repeatedly violate any of the provisions of the Act or any of the provisions of these rules and regulations, or any lawful order of the Board.

(19)

**POSTING OF LICENSE:** A Doctor of Oriental Medicine who has been licensed by this Board shall post his or her license in a conspicuous location at his or her office or place of practice. A Doctor of Oriental Medicine who fails to post the license shall be guilty of unprofessional conduct.

(20)

**PUBLIC HEALTH AND SANITATION:** A Doctor of Oriental Medicine shall be guilty of unprofessional conduct if he or she

a.

Fails to use only presterilized, disposable needles in their administration of acupuncture;

b.

Uses staples in the practice of acupuncture;

c.

Fails to wash their hands with soap and water or other disinfectants before handling needles and between treatment of different patients;

d.

Fails to thoroughly swab the skin in the area of penetration with alcohol or other germicidal solution before inserting needles; or

e.

Re-uses needles in the administration of acupuncture.

(21)

**INCOMPETENCE AND UNPROFESSIONAL CONDUCT:** The foregoing specifications of unprofessional conduct shall not be exclusive of the types of acts and omissions that may be found by the Board to constitute incompetence or unprofessional conduct.