



Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <http://rules.wyo.gov>

Revised November 2016

1. General Information

a. Agency/Board Name*		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number
g. Agency Liaison Email Address		
h. Date of Public Notice		i. Comment Period End Date
j. Public Comment URL or Email Address:		
k. Program		

* By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

No. Yes. Please provide the Enrolled Act Numbers and Years Enacted:

3. Rule Type and Information

a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter.
Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.

Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed

4. Public Comments and Hearing Information

a. A public hearing on the proposed rules has been scheduled. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

5. Federal Law Requirements

a. These rules are created/amended/repealed to comply with federal law or regulatory requirements. No. Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

6. State Statutory Requirements

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):

The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: _____

Not Applicable.

7. Additional APA Provisions

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

_____ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

_____ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

8. Authorization

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

STATEMENT OF REASONS

The passage of the Acupuncture Practice Act, Wyoming Statutes §§ 33-49-101 *et. seq.*, during the 2017 Legislative Session created the Wyoming Board of Acupuncture (Board) and gave it the authority to adopt rules and regulations under Wyoming Statutes § 33-49-106. Pursuant to this statute, the Board has set forth rules and regulations governing the practice of acupuncture in the state of Wyoming. These rules ensure that those who wish to practice acupuncture within Wyoming are aware of the requirements for practice, the licensure requirements and fees, ethical violations and grounds for discipline, and any adverse action that may be taken against them. Thus, the rules create the framework within which a person may practice acupuncture and do so in a manner that protects the safety of the citizens of Wyoming. The rules encompass the following:

CHAPTER 1: This chapter provides general provisions, definitions and incorporations by reference of the Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records and the Uniform Rules for Contested Case Practice and Procedure.

CHAPTER 2: This chapter provides requirements for licensure for acupuncture and auricular acupuncture.

CHAPTER 3: This chapter establishes continuing education requirements for acupuncturists who seek renewal of licensure.

CHAPTER 4: This chapter establishes requirements for “Acupuncture Tutorial Program” supervisors. The “Acupuncture Tutorial Program” allows licensed acupuncturists to provide interns with practical learning experience in the practice of acupuncture.

CHAPTER 5: This chapter regulates the scope of practice of acupuncture.

CHAPTER 6: This chapter regulates ethical conduct of acupuncturists, providing for acceptable practices of licensees and allowing for better public protection.

CHAPTER 7: This chapter establishes fees for services provided by the Board.

CHAPTER 8: This chapter regulates grounds for discipline of licensees and adverse actions that may be taken against them if the need for discipline arises. These adverse actions include disciplinary steps that may be taken during the application process, the complaint review and investigation process, and several sections relating to formal disciplinary action.

In accordance with Wyoming Statutes § 33-49-107, the Board wishes to have these rules in effect by January 1, 2018.

CHAPTER 1

GENERAL PROVISIONS

Section 1. Statement of purpose. The Wyoming State Board of Acupuncture Rules and Regulations are set forth and promulgated for the purpose of interpreting and implementing W.S. 33-49-101 through 33-49-112 *et seq.*

Section 2. Severability. If any provisions of these rules or the application thereof to any license holder or circumstance is determined to be invalid, such invalidity shall not affect other provisions or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

Section 3. Terms defined by Statute. Terms defined in W. S. 33-49-101 through 33-25-112 shall have the same meaning when used in these rules unless the context or subject matter clearly requires a different interpretation.

Section 4. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information's rules concerning public records.

Section 5. Incorporation by Reference. The Board hereby incorporates by reference the following:

(a) Each rule and code incorporated by reference is further identified as follows:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, available on the Board's website at <http://acupuncture.wyo.gov/board/rules>.

(ii) Chapter 2 – Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on July 20, 2017, available on the Board's website at <http://acupuncture.wyo.gov/board/rules>.

(b) For these rules incorporated by reference:

(i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rules are maintained at the Board office and available for public inspection and copying at cost at the same location.

CHAPTER 2

LICENSE REQUIREMENTS AND APPLICATION PROCEDURES

Section 1. General license requirements. The following requirements apply to all applicants for licensure as an acupuncturist:

- (a) Applicants for a general acupuncture license shall submit:
 - (i) A complete and legible application form with a recent, unmounted, full-face photograph;
 - (ii) Proof of Lawful Presence in the United States;
 - (iii) Payment of the fees set by the Board.
 - (iv) An official transcript giving evidence of graduation from an accredited ACAOM program and:
 - (A) Official passing score of the NCCAOM examination;
 - (B) Evidence of continuous practice of acupuncture in Wyoming for the last ten (10) years prior to January 1, 2018; or
 - (C) Official passing score of the California Acupuncture Licensing Examination.
 - (v) Verification of license in good standing from all jurisdictions in which the applicant is currently, or has ever been licensed or certified in any health care profession;
- (b) No applicant for license shall have been convicted of an offense involving moral turpitude or controlled substances which may impair the applicant's ability to provide competent health care or which could pose a threat to the safety of the consumer public. A plea of nolo contendere shall establish guilt to the underlying criminal charge(s);
- (c) The Board may issue a license by endorsement to an applicant who holds a current license to practice acupuncture in another jurisdiction that has substantially equivalent acupuncture licensure requirements.

Section 2. Auricular acupuncture license.

(a) An acupuncture detoxification specialist (ADS) is an individual who practices auricular acupuncture as defined in W.S. 33-49-102(a)(iv). ADSes are trained through NADA to apply up to five fine-gauge, sterilized, one-time use stainless steel needles just under the skin at designated points in each ear. The five points include sympathetic, Shen Meen, kidney, liver, and lung.

- (b) Applicants for an auricular acupuncturist license shall submit:
 - (i) A complete and legible application form with a recent, unmounted, full-face photograph;
 - (ii) Proof of Lawful Presence in the United States;
 - (iii) Payment of the fees set by the Board; and
 - (iv) Evidence of completion of NADA certification training or an equivalent training certificate approved by the Board.

Section 3. Renewal of license.

- (a) A license will expire one (1) year after issuance.
- (b) A license not renewed annually by the expiration date is expired.
- (c) It is the license holder's responsibility to renew before the expiration date.
- (d) Renewal of a license shall include submission of the following:
 - (i) A complete application and renewal fee, postmarked or electronically completed no later than the expiration date in order to meet the renewal deadline without penalty; and
 - (ii) A copy of a current NCCAOM membership card; or
 - (iii) The successful completion of thirty (30) continuing education credits every two (2) years;
- (e) Each license holder is responsible for reporting a name change and changes in business and home addresses to the Board within thirty (30) days of the change.

Section 4. Expired license or certificate.

- (a) A license holder who fails to renew the license or certificate on or before the expiration date shall not practice acupuncture in this state.
- (b) License holders who allow their license to expire must complete the licensing requirements specified in Rules and Regulations, Chapter 2, Section 1 if they choose to reapply for a license in this state.

CHAPTER 3

CONTINUING EDUCATION

Section 1. Definitions.

- (a) “PDA” means Professional Development Activity.
- (b) “AOM” means Acupuncture and Oriental Medicine.
- (c) “BIO” means
- (d) “PE-CW” means Professional Enhancement Coursework.
- (e) “PE-AT” means Professional Enhancement Activities.

Section 2. Hours and requirements. All acupuncturists shall obtain thirty (30) PDA points every two (2) years to be eligible for renewal. There may be no carryover of PDA points to the next reporting period. Licensees are required to complete a CPR course to count toward a maximum of four (4) PDA points, plus a minimum of fifteen (15) PDA points in coursework related to acupuncture and East Asian medicine, and a minimum of four (4) PDA points in ethics and safety.

(a) One (1) PDA point is equal to one (1) hour of active, instructor-led learning or participation in a professional activity.

(b) PDA points must be attained in a live classroom or e-learning environment where a certificate or transcript is provided to the licensee by an:

- (i) NCCAOM-approved PDA provider;
- (ii) Accredited acupuncture school; or
- (iii) Accredited college or university.

Section 3. PE-AT approved professional activities.

- (a) AOM Volunteer Service Opportunities:
 - (i) Serve on a Professional Board 10 PDA points maximum
 - (ii) Advocate Legislation 10 PDA points maximum
 - (iii) Donate Acupuncture Services 10 PDA points maximum
 - (iv) NCCAOM Exam Item Writing 10 PDA points maximum

- (b) AOM Teaching and Scholarship Opportunities:
- (i) Clinical Supervision 10 PDA points maximum
 - (ii) Teach or Lecture 20 PDA points maximum
 - (iii) Research in Acupuncture 20 PDA points maximum
 - (iv) Publications related to acupuncture or East Asian Medicine
20 PDA points maximum
- (c) AOM Knowledge and Skills Opportunities:
- (i) Peer Reviewed Poster or Exhibits 10 PDA points maximum
 - (ii) Passage of NCCAOM Certification Exam
20 PDA points maximum
 - (iii) Clinical Experience 10 PDA points maximum
 - (iv) Tai Chi/Qigong Exercise 4 PDA points maximum
 - (v) Learn a New Language 4 PDA points maximum
 - (vi) Self-Directed Learning 4 PDA points maximum

CHAPTER 4

TRAINING PROGRAMS

Section 1. Acupuncture Tutorial Program. The Acupuncture Tutorial Program is a training program designed to provide an intern with a structured learning experience in all the basic skills and knowledge necessary for the independent practice of acupuncture.

Section 2. Supervisor Requirements. The following requirements are applicable to supervisors who are licensed by the Board. Being a supervisor means being truly outstanding in the field of acupuncture; over and above what is expected. Being a supervisor means setting an example for new practitioners coming into the profession.

(a) Supervisors must first have prior approval from the Board before commencing a tutorial program within their practice;

(b) An application for the supervisor must be submitted to the Board on a form provided by the Board and accompanied by the application fee;

(i) Applications must be accompanied by a training plan outline signed and dated by the supervisor and intern which shall be followed throughout the program.

(A) If the training plan is substantially modified at a later time, a report of such modification shall be filed with the Board. There shall be no charge for filing program modifications;

(c) The supervisor shall:

(i) Be found by the Board to have the knowledge necessary to educate and train interns in the practice of acupuncture and:

(A) Have at least ten (10) years of experience practicing as an acupuncturist; or

(B) Hold a license in good standing issued by the Board for at least five (5) years.

(ii) Ensure that the intern be at least eighteen (18) years of age and has graduated high school or has passed a standard equivalency test. Exceptions to this rule may be granted by the Board.

(iii) Ensure that the intern is enrolled, or plans to enroll within six (6) months of the Acupuncture Tutorial Program application, to an ACAOM accredited acupuncture program that mandates at least 1,850 hours of training, including at least eight hundred (800) hours of clinical training. Exceptions to this rule may be granted by the Board;

(iv) Keep detailed files of each intern for the duration of the training program and an additional three (3) years after training completion. The supervisor's intern files shall be subject to audit by the Board and shall include:

(A) All agreements between the supervisor and the intern;

(B) Guidelines;

(C) Verification of acupuncture school program; and

(D) A recent photograph of the intern, taken within the past six (6) months, approximately 2" x 3" in size.

(v) Be responsible for, and provide supervision of, the work performed by the intern;

(vi) Provide continuous direction and supervision of the intern when patient services are provided;

(vii) Ensure that the intern not provide acupuncture services autonomously or without the required supervision, and shall not provide any service for which he or she is not trained or competent to perform.

(viii) Be in the same clinic or facility as, and in proximity to, the location where the intern is rendering patient services and shall be readily available at all times to provide advice, instruction and assistance to the intern;

(ix) Ensure that services provided by the intern be done so in a manner which does not endanger the health and welfare of patients receiving such services. Furthermore, the supervisor shall ensure that any patient receiving care from an intern must first be notified and give written permission to allow the intern to work with them;

(x) Ensure that when rendering services or otherwise engaging in professional activity, the intern always identifies himself or herself as an acupuncture intern and wears an identification badge;

(xi) Ensure no separate billing by the intern;

(xii) Comply with provisions of the acupuncture law, the acupuncture regulations and applicable laws and regulations governing wages and compensation paid to employees or apprentices, maximum hours and working conditions. Any overtime worked by the intern shall not interfere with or impair the program and shall not be detrimental to the health and safety of the intern or patients;

(xiii) File a tutorial progress report on a form provided by the Board, within thirty (30) days after the completion of the first six (6) weeks of the program and a report for every six (6) weeks thereafter, for the duration of the program;

(xiv) Administer a self-assessment questionnaire to the intern to be sent to the Board. The purpose of this assessment is to evaluate the work of the intern in the clinic and to give feedback on the intern's clinical development;

(xv) Train no more than two (2) acupuncture interns at any one time.

Section 3. Program Requirements.

(a) The program shall be made available regardless of sex, race, religion, creed, or physical handicap;

(b) As a condition of approval or continued approval, all programs are subject to an on-site visit by representatives of the Board to review and evaluate the clinic and training provided to the intern. In lieu of a clinic site visit, current photographs of the clinic site, including written descriptions of the outside building, front office area, herbal pharmacy, treatment rooms to include close-up photographs of instrument/needle tray, hazardous waste containers, and any additional rooms relevant to the site visit. A floor plan of the clinic should also be included;

(c) An acupuncture tutorial, which is in the nature of on-the-job training, may be a full-time or part-time employment relationship. There shall be no tuition fees charged to the intern by the supervising acupuncturist.

CHAPTER 5

SCOPE OF PRACTICE

Section 1. Standards of Practice.

- (a) The practice of acupuncture shall include, but not be limited to:
- (i) Acupuncture and oriental medical concepts that employ Oriental methods of diagnosis, treatment and adjunctive therapies for the promotion, maintenance and restoration of health and the prevention of disease or the treatment of any ailment, disease, pain, injury, deformity or physical condition;
 - (ii) Stimulation of points of the body through the use of needles, lancets, moxibustion, QiGong, thermal methods, internal and external herbal preparations, light, sound, laser, vibration, pressure, magnetism, electricity, and cupping;
 - (A) The needles used in acupuncture shall be solid filiform instruments which shall include, but not be limited to:
 - (I) Dermal needles;
 - (II) Plum blossom needles;
 - (III) Press tacks;
 - (IV) Prismatic needles; and
 - (V) Disposable lancets.
 - (B) All needles shall be sterile and limited to one insertion before being disposed of in the proper sharps container.
 - (iii) Manual therapy including acupuncture theory-based massage, bodywork, acupuncture, trigger point dry needling, reflexology, shiatsu, tuina, guasha;
 - (iv) Diagnostic techniques including observation, listening, smelling, and inquiring.

CHAPTER 6

CODE OF ETHICAL CONDUCT

Section 1. Code of ethical conduct for acupuncturists. An individual licensed by the Board has a responsibility to report any organization or entity that provides or holds itself out to deliver acupuncture services that place the license holders in a position of compromise with this code of ethical conduct.

Section 2. Ethical integrity. License holders shall use the provisions contained in paragraphs (a) to (h) of this rule as guidelines for promoting ethical integrity and professionalism. Failure to comply with paragraphs (a) to (h) of this rule may be grounds for disciplinary action pursuant to W.S. 33-49-111.

(a) Respect the rights, privacy and dignity of patients and maintain confidentiality and professional boundaries at all times.

(b) Treat within the lawful scope of practice and training and only if able to safely, competently, and effectively do so.

(c) Allow patients to fully participate in decisions related to their health care by documenting and keeping them informed of treatments and outcomes.

(d) Accept and treat those seeking services in a fair and nondiscriminatory manner.

(e) Render the highest quality of care and make timely referrals to other health care professionals as may be appropriate.

(f) Continue to advance knowledge through education, training and collaboration with colleagues to maintain excellence and high ethical standards in the profession.

(g) Support acupuncture medicine's access to all people and its growth in the broad spectrum of Wyoming health care.

(h) Participate in activities that contribute to the betterment of the community.

Section 3. Unethical Conduct and Sexual Misconduct. Ethical conduct includes conforming to the minimal standards of acceptable and prevailing acupuncture practice. Conduct may be considered unethical regardless of whether or not actual injury to a patient occurred. Failure to comply with paragraphs (a) through (m) of this rule may be grounds for disciplinary action pursuant to W.S. 33-49-111.

(a) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(b) Obtaining any fee by fraud or misrepresentation;

(c) Willfully or negligently divulging a professional secret without the written consent of the patient;

(d) Conviction of any offense punishable by incarceration in a department of corrections institution or in a federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction;

(e) Making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading regarding skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of any disease or other condition of the human body or mind;

(f) Impersonating another licensee licensed under this chapter or permitting or allowing any person to use the license;

(g) Gross negligence or repeated negligence in the practice of acupuncture;

(h) Incapacity to practice acupuncture regardless of whether the incapacity is caused by illness or use of a controlled or non-controlled substance.

(A) The licensee shall have access to the result of the examination and to the criteria used for grading and evaluating the examination.

(B) If the examination is given orally, the licensee shall have the right to have the examination recorded;

(i) Failing to report the change of the location of practice of the licensee;

(j) Making a fraudulent claim;

(k) Failure by the licensee to report to the Board any adverse action taken against the licensee by another licensing jurisdiction or any peer review body, health care institution, professional society or association, governmental agency, law enforcement agency or court, for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section;

(l) Failure by the licensee to notify the Board of the licensee's voluntary resignation from the staff of a healthcare institution or voluntary limitation of a licensee's staff privileges at the institution if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to medical incompetence, unprofessional conduct, physical incapacity or impairment;

(m) Committing sexual misconduct. Sexual misconduct is defined on three levels: sexual impropriety, transgression, or violation.

(i) Sexual Impropriety: Lowest level of misconduct, non-physical contact of a patient that is disrespectful in manner and sexually demeaning. Examples: inappropriate jokes, crude gestures, demeaning comments;

(ii) Sexual Transgression: Inappropriate touching of a patient stopping just short of an overt sexual act;

(iii) Sexual Violation: A sexual act between patient and practitioner with no distinction between which party initiated the contact or whether the act was consensual.

CHAPTER 7

FEES

Section 1. General information.

(a) Fees shall be payable in the exact amount, by money order or cashier's check for all services and shall be paid in advance of the services rendered. Fees for renewal of license may be paid by personal check. License holders renewing online shall use a credit card.

(b) All fees collected by the Board are non-refundable.

(c) In accordance with W.S. 1-1-115 the Board may charge a collection fee for any returned checks.

Section 2. Fees.

- | | | |
|-----|--|----------|
| (a) | Acupuncture Application Fee (Required for Application Review): | \$900.00 |
| (b) | Initial Acupuncture License Fee (Required for License Issuance): | \$200.00 |
| (c) | Initial Auricular Acupuncture License Fee: | \$25.00 |
| (d) | Tutorial Program Supervisor Application Fee: | \$200.00 |
| (e) | Acupuncture License Annual Renewal Fee: | \$450.00 |
| (f) | Auricular Acupuncture License Annual Renewal Fee: | \$15.00 |
| (g) | Program Supervisor Annual Renewal Fee: | \$50.00 |
| (h) | Duplicate Wall Certificate or Pocket Card: | \$10.00 |
| (i) | License verification to another jurisdiction: | \$10.00 |

CHAPTER 8

DISCIPLINE AND ADVERSE ACTIONS

Section 1. Authority. These rules are adopted under the Board’s authority granted by W.S. 33-49-111 and 16-3-113(c).

Section 2. Definitions.

- (a) “ARC” means application review committee.
- (b) “DC” means disciplinary committee.
- (c) For purposes of this chapter, “licensee” means any person holding a board-issued license regulated by the Board through its powers under the Act.

Section 3. Statement of Purpose. The Board adopts these rules to implement its authority to:

- (a) Conduct investigations, hearings, and proceedings concerning:
 - (i) Actions relating to an application for a license, including granting or denying the application; and
 - (ii) Alleged violations of the Act or the Board’s rules.
- (b) Determine and administer appropriate disciplinary action against an applicant or licensee.

Section 4. Grounds for Discipline.

- (a) Disciplinary Action. The Board may take disciplinary action or refuse to issue or renew a license for one (1) or more of the following acts or conduct:
 - (i) Fraud, deception, or misrepresentation in applying for a license or certificate, in taking an examination, or in rendering services;
 - (ii) Immoral, unprofessional, or dishonorable conduct, that would violate the provisions of this chapter or the Act, including W.S. 33-49-111;
 - (iii) Practicing acupuncture in a manner that endangers the welfare of clients or patients;
 - (iv) Harassment, intimidation, or abuse – sexual or otherwise – of a client or patient;

- (v) Malpractice or negligence in the practice of acupuncture;
- (vi) Aiding or abetting the practice of acupuncture by individuals not licensed by the Board;
- (vii) Conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third-party vendor;
- (viii) Exercising undue influence to exploit a client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;
- (ix) The suspension or revocation of the licensee's license to practice acupuncture in another state. A certified copy of the order of suspension or revocation shall be conclusive evidence of the other state's action;
- (x) Refusal to appear before the Board after receiving an order to appear from the Board, its executive officer, or chairperson;
- (xi) Making any fraudulent or untrue statement to the Board;
- (xii) Inability to practice acupuncture with reasonable skill and safety to patients or clients because of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition;
- (xiii) Failure to meet the requirements for licensing as set forth in the Board's rules; or
- (xiv) Conviction of any crime or offense that reflects the inability of the practitioner to practice acupuncture with due regard for the health and safety of clients or patients.

Section 5. Application Review and Investigation Process.

- (a) Application Review and Investigation. In application and licensure matters:
 - (i) Every application for a license is subject to investigation to determine if the application satisfies the requirements set by the Act and Board rules; and
 - (ii) Every application that reveals information that merits further investigation shall be assigned to the ARC.
- (b) Application Review Committee Action. Following investigation, the ARC may:
 - (i) Recommend a license be issued, renewed, or reinstated;
 - (ii) Recommend a license be issued, renewed, or reinstated subject to

conditions, restrictions, or other disciplinary action;

(iii) Recommend approval of a settlement agreement, which may include the issuance, or renewal of a license with the imposition of a reprimand, conditions, restrictions, suspension, other discipline or a combination thereof; or

(iv) Recommend denial of the application.

(c) Notice of Intent to Recommend Approval Subject to Conditions, Restrictions, Other Disciplinary Action or Denial of License.

(i) The ARC shall notify the applicant of its intent to recommend:

(A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or

(B) Denial of the application;

(ii) The Notice of Intent shall contain:

(A) A brief description of the facts or conduct that warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action;

(B) A statement of the nature of the actions that warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action and a citation to the applicable statutory provisions in the Act or the Board rules; and

(C) Notice of the right to a hearing if a written request is received by the Board office within thirty (30) days of the date of mailing the Notice of Intent.

(d) Applicant's Request for Hearing.

(i) The applicant may request a hearing if the ARC recommends approval of the license subject to conditions, restrictions, or other disciplinary action or denial of the application.

(ii) An applicant who desires a hearing shall submit a written request for hearing to the Board office within thirty (30) days of the date of the Notice of Intent or the Board shall not grant a hearing;

(iii) Failure of the applicant to pursue proceedings related to the application after requesting a hearing may result in dismissal.

Section 6. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

(i) Complaints shall be submitted to the Board upon a form provided by the Board. Board staff may initiate complaints.

(ii) Complaints shall be investigated by the DC, Board staff, or an assigned investigative Board member.

(iii) The DC may meet informally with the licensee.

(b) Voluntary Surrender. A licensee may petition the Board in writing to surrender his or her license voluntarily. The Board shall hold an expedited proceeding at its earliest convenience to consider a petition under this section. The Board may accept or reject the petition for voluntary surrender and may consider whether the licensee is under investigation.

(c) Disciplinary Committee Action. Following investigation, the investigating party may:

(i) Recommend dismissal of the complaint;

(ii) Recommend issuance of a notice of warning;

(iii) Recommend approval of a settlement agreement, which may include a reprimand, conditions, restrictions, suspension, voluntary surrender, other discipline, or a combination thereof;

(iv) Recommend disciplinary action, which may include a reprimand, conditions, restrictions, suspension, revocation, other discipline, or a combination thereof.

Section 7. Formal Proceedings for Disciplinary Action.

(a) Notice of Intent to Recommend Disciplinary Action.

(i) The investigating party shall notify the licensee of its intent to recommend disciplinary action.

(ii) The Notice of Intent shall:

(A) Include a brief description of facts or conduct which warrant the intended action; and

(B) Provide the licensee an opportunity to show compliance or respond to allegation for disciplinary action within fifteen (15) days of the date of the mailing.

(b) Informal Conference. The licensee may request an informal conference with the investigating party to provide any additional information or to resolve an administrative complaint without a hearing.

Section 8. Petition. The investigating party shall initiate formal proceedings for disciplinary action by serving a Petition and Notice of Hearing to the licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service at least thirty (30) days prior to the date set for hearing.

Section 9. Notice of Hearing.

(a) Hearing. Upon receipt of a written request for hearing from an applicant or commencement of formal proceedings for disciplinary action against a licensee, the Board shall conduct a hearing. The Board shall service a Notice of Hearing on the applicant or licensee.

(b) Notice of Hearing. The notice of Hearing shall contain:

(i) The name and last known address of the applicant or licensee;

(ii) A brief statement of the matters asserted relating to:

(A) The recommendation to deny the application, the facts upon which the recommendation to deny is based, the statutory provisions and/or the rules the applicant is alleged to have violated; or

(B) The nature of the Petition, the facts upon which the Petition is based, the statutory provisions or rules the licensee is alleged to have violated;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction; and

(v) A statement indicating that:

(A) The applicant's failure to appear at the hearing or pursue proceedings may result in a dismissal; or

(B) The licensee's failure to answer the allegations contained in the Petition within twenty (20) days of the date of mailing and failure to appear at a noticed hearing may result in a default judgment.

Section 10. Lawful Service. There shall be a presumption of a lawful service of a Notice of Intent, Petition, Notice of Hearing, or any other communication required by these rules if sent to the last known address of the applicant or licensee by certified mail, regular mail, electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service.

Section 11. Dismissal or Default.

(a) Dismissal. The Board may enter an order of dismissal based on the allegations contained in the recommendation to deny an application in any case where the applicant or the applicant's representative has not appeared at a noticed hearing.

(b) Default. The Board may hold a default hearing under W.S. 33-27-122(e) in any case where the licensee or the licensee's representative has not answered the allegations contained in the Petition and does not appear at a noticed hearing. The hearing may be held at the time and place of the noticed hearing when it is reasonably apparent the licensee or the licensee's agent will not appear.

Section 12. Contested Case Hearing. The hearing officer shall preside over the contested case hearing which shall be conducted pursuant to the Wyoming Administrative Procedure Act and the Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

Section 13. Burden and Standard of Proof.

(a) Application/Licensure Matters. The applicant shall bear the burden to prove by a preponderance of evidence that they meet the qualifications for licensure. The burden shall shift to the ARC, DC, or other investigating party to prove by clear and convincing evidence that the Board should deny the applicant a license. The applicant bears the burden to persuade the Board that the ARC or DC's grounds for denial are insufficient.

(b) Discipline Matters. The investigating party shall bear the burden to prove by clear and convincing evidence that a licensee violated the Act or the Board's rules.

Section 14. Board Decision and Order.

(a) Board Action. The Board may resolve an application matter, complaint, or Petition by:

(i) Approving the recommendations of the ARC or DC; or

(ii) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:

(A) Issue, renew, reactivate, or reinstate a license;

(B) Issue, renew, reactivate, or reinstate a license with conditions, restrictions, or other disciplinary action;

(C) Deny a license;

(D) Dismiss the complaint or Petition due to lack of clear and convincing evidence;

(E) Issue a Notice of Warning; and

(F) Impose a reprimand, conditions, restrictions, suspension, revocation, other discipline or a combination thereof.

(b) Board Order. The Board shall issue a written decision that:

(i) Shall be sent to the applicant, licensee, or its representative by certified mail or regular mail;

(ii) Shall be deemed a public record and be available for inspection and dissemination in accordance with all federal and state laws; and

(iii) May be published in a regular publication of the Board and on the Board's website.

Section 15. Judicial Review.

(a) Appeals from decisions of the Board are governed by the Wyoming Administrative Procedure Act and Wyoming Rules of Appellate Procedure.

(b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.

CHAPTER 1

GENERAL PROVISIONS

Section 1. Statement of purpose. The Wyoming State Board of Acupuncture Rules and Regulations are set forth and promulgated for the purpose of interpreting and implementing W.S. 33-49-101 through 33-49-112 et seq.

Section 2. Severability. If any provisions of these rules or the application thereof to any license holder or circumstance is determined to be invalid, such invalidity shall not affect other provisions or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

Section 3. Terms defined by Statute. Terms defined in W. S. 33-49-101 through 33-25-112 shall have the same meaning when used in these rules unless the context or subject matter clearly requires a different interpretation.

Section 4. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information's rules concerning public records.

Section 5. Incorporation by Reference. The Board hereby incorporates by reference the following:

(a) Each rule and code incorporated by reference is further identified as follows:

(i) Chapter 2 – Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, available on the Board's website at <http://acupuncture.wyo.gov/board/rules>.

(ii) Chapter 2 – Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on July 20, 2017, available on the Board's website at <http://acupuncture.wyo.gov/board/rules>.

(b) For these rules incorporated by reference:

(i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rules are maintained at the Board office and available for public inspection and copying at cost at the same location.

CHAPTER 2

LICENSE REQUIREMENTS AND APPLICATION PROCEDURES

Section 1. General license requirements. The following requirements apply to all applicants for licensure as an acupuncturist:

- (a) Applicants for a general acupuncture license shall submit:
 - (i) A complete and legible application form with a recent, unmounted, full-face photograph;
 - (ii) Proof of Lawful Presence in the United States;
 - (iii) Payment of the fees set by the Board.
 - (iv) An official transcript giving evidence of graduation from an accredited ACAOM program and:
 - (A) Official passing score of the NCCAOM examination;
 - (B) Evidence of continuous practice of acupuncture in Wyoming for the last ten (10) years prior to January 1, 2018; or
 - (C) Official passing score of the California Acupuncture Licensing Examination.
 - (v) Verification of license in good standing from all jurisdictions in which the applicant is currently, or has ever been licensed or certified in any health care profession;
- (b) No applicant for license shall have been convicted of an offense involving moral turpitude or controlled substances which may impair the applicant's ability to provide competent health care or which could pose a threat to the safety of the consumer public. A plea of nolo contendere shall establish guilt to the underlying criminal charge(s);
- (c) The Board may issue a license by endorsement to an applicant who holds a current license to practice acupuncture in another jurisdiction that has substantially equivalent acupuncture licensure requirements.

Section 2. Auricular acupuncture license.

(a) An acupuncture detoxification specialist (ADS) is an individual who practices auricular acupuncture as defined in W.S. 33-49-102(a)(iv). ADSes are trained through NADA to apply up to five fine-gauge, sterilized, one-time use stainless steel needles just under the skin at designated points in each ear. The five points include sympathetic, Shen Meen, kidney, liver, and lung.

(b) Applicants for an auricular acupuncturist license shall submit:

(i) A complete and legible application form with a recent, unmounted, full-face photograph;

(ii) Proof of Lawful Presence in the United States;

(iii) Payment of the fees set by the Board; and

(iv) Evidence of completion of NADA certification training or an equivalent training certificate approved by the Board.

Section 3. Renewal of license.

(a) A license will expire one (1) year after issuance.

(b) A license not renewed annually by the expiration date is expired.

(c) It is the license holder's responsibility to renew before the expiration date.

(d) Renewal of a license shall include submission of the following:

(i) A complete application and renewal fee, postmarked or electronically completed no later than the expiration date in order to meet the renewal deadline without penalty; and

(ii) A copy of a current NCCAOM membership card; or

(iii) The successful completion of thirty (30) continuing education credits every two (2) years;

(e) Each license holder is responsible for reporting a name change and changes in business and home addresses to the Board within thirty (30) days of the change.

Section 4. Expired license or certificate.

(a) A license holder who fails to renew the license or certificate on or before the expiration date shall not practice acupuncture in this state.

(b) License holders who allow their license to expire must complete the licensing requirements specified in Rules and Regulations, Chapter 2, Section 1 if they choose to reapply for a license in this state.

CHAPTER 3

CONTINUING EDUCATION

Section 1. Definitions.

- (a) “PDA” means Professional Development Activity.
- (b) “AOM” means Acupuncture and Oriental Medicine.
- (c) “BIO” means
- (d) “PE-CW” means Professional Enhancement Coursework.
- (e) “PE-AT” means Professional Enhancement Activities.

Section 2. Hours and requirements. All acupuncturists shall obtain thirty (30) PDA points every two (2) years to be eligible for renewal. There may be no carryover of PDA points to the next reporting period. Licensees are required to complete a CPR course to count toward a maximum of four (4) PDA points, plus a minimum of fifteen (15) PDA points in coursework related to acupuncture and East Asian medicine, and a minimum of four (4) PDA points in ethics and safety.

(a) One (1) PDA point is equal to one (1) hour of active, instructor-led learning or participation in a professional activity.

(b) PDA points must be attained in a live classroom or e-learning environment where a certificate or transcript is provided to the licensee by an:

- (i) NCCAOM-approved PDA provider;
- (ii) Accredited acupuncture school; or
- (iii) Accredited college or university.

Section 3. PE-AT approved professional activities.

- (a) AOM Volunteer Service Opportunities:
 - (i) Serve on a Professional Board 10 PDA points maximum
 - (ii) Advocate Legislation 10 PDA points maximum
 - (iii) Donate Acupuncture Services 10 PDA points maximum
 - (iv) NCCAOM Exam Item Writing 10 PDA points maximum

(b) AOM Teaching and Scholarship Opportunities:

(i) Clinical Supervision 10 PDA points maximum

(ii) Teach or Lecture 20 PDA points maximum

(iii) Research in Acupuncture 20 PDA points maximum

(iv) Publications related to acupuncture or East Asian Medicine
20 PDA points maximum

(c) AOM Knowledge and Skills Opportunities:

(i) Peer Reviewed Poster or Exhibits 10 PDA points maximum

(ii) Passage of NCCAOM Certification Exam
20 PDA points maximum

(iii) Clinical Experience 10 PDA points maximum

(iv) Tai Chi/Qigong Exercise 4 PDA points maximum

(v) Learn a New Language 4 PDA points maximum

(vi) Self-Directed Learning 4 PDA points maximum

CHAPTER 4

TRAINING PROGRAMS

Section 1. Acupuncture Tutorial Program. The Acupuncture Tutorial Program is a training program designed to provide an intern with a structured learning experience in all the basic skills and knowledge necessary for the independent practice of acupuncture.

Section 2. Supervisor Requirements. The following requirements are applicable to supervisors who are licensed by the Board. Being a supervisor means being truly outstanding in the field of acupuncture; over and above what is expected. Being a supervisor means setting an example for new practitioners coming into the profession.

(a) Supervisors must first have prior approval from the Board before commencing a tutorial program within their practice;

(b) An application for the supervisor must be submitted to the Board on a form provided by the Board and accompanied by the application fee;

(i) Applications must be accompanied by a training plan outline signed and dated by the supervisor and intern which shall be followed throughout the program.

(A) If the training plan is substantially modified at a later time, a report of such modification shall be filed with the Board. There shall be no charge for filing program modifications;

(c) The supervisor shall:

(i) Be found by the Board to have the knowledge necessary to educate and train interns in the practice of acupuncture and:

(A) Have at least ten (10) years of experience practicing as an acupuncturist; or

(B) Hold a license in good standing issued by the Board for at least five (5) years.

(ii) Ensure that the intern be at least eighteen (18) years of age and has graduated high school or has passed a standard equivalency test. Exceptions to this rule may be granted by the Board.

(iii) Ensure that the intern is enrolled, or plans to enroll within six (6) months of the Acupuncture Tutorial Program application, to an ACAOM accredited acupuncture program that mandates at least 1,850 hours of training, including at least eight hundred (800) hours of clinical training. Exceptions to this rule may be granted by the Board;

(iv) Keep detailed files of each intern for the duration of the training program and an additional three (3) years after training completion. The supervisor's intern files shall be subject to audit by the Board and shall include:

(A) All agreements between the supervisor and the intern;

(B) Guidelines;

(C) Verification of acupuncture school program; and

(D) A recent photograph of the intern, taken within the past six (6) months, approximately 2" x 3" in size.

(v) Be responsible for, and provide supervision of, the work performed by the intern;

(vi) Provide continuous direction and supervision of the intern when patient services are provided;

(vii) Ensure that the intern not provide acupuncture services autonomously or without the required supervision, and shall not provide any service for which he or she is not trained or competent to perform.

(viii) Be in the same clinic or facility as, and in proximity to, the location where the intern is rendering patient services and shall be readily available at all times to provide advice, instruction and assistance to the intern;

(ix) Ensure that services provided by the intern be done so in a manner which does not endanger the health and welfare of patients receiving such services. Furthermore, the supervisor shall ensure that any patient receiving care from an intern must first be notified and give written permission to allow the intern to work with them;

(x) Ensure that when rendering services or otherwise engaging in professional activity, the intern always identifies himself or herself as an acupuncture intern and wears an identification badge;

(xi) Ensure no separate billing by the intern;

(xii) Comply with provisions of the acupuncture law, the acupuncture regulations and applicable laws and regulations governing wages and compensation paid to employees or apprentices, maximum hours and working conditions. Any overtime worked by the intern shall not interfere with or impair the program and shall not be detrimental to the health and safety of the intern or patients;

(xiii) File a tutorial progress report on a form provided by the Board, within thirty (30) days after the completion of the first six (6) weeks of the program and a report for every six (6) weeks thereafter, for the duration of the program;

(xiv) Administer a self-assessment questionnaire to the intern to be sent to the Board. The purpose of this assessment is to evaluate the work of the intern in the clinic and to give feedback on the intern's clinical development;

(xv) Train no more than two (2) acupuncture interns at any one time.

Section 3. Program Requirements.

(a) The program shall be made available regardless of sex, race, religion, creed, or physical handicap;

(b) As a condition of approval or continued approval, all programs are subject to an on-site visit by representatives of the Board to review and evaluate the clinic and training provided to the intern. In lieu of a clinic site visit, current photographs of the clinic site, including written descriptions of the outside building, front office area, herbal pharmacy, treatment rooms to include close-up photographs of instrument/needle tray, hazardous waste containers, and any additional rooms relevant to the site visit. A floor plan of the clinic should also be included;

(c) An acupuncture tutorial, which is in the nature of on-the-job training, may be a full-time or part-time employment relationship. There shall be no tuition fees charged to the intern by the supervising acupuncturist.

CHAPTER 5

SCOPE OF PRACTICE

Section 1. Standards of Practice.

(a) The practice of acupuncture shall include, but not be limited to:

(i) Acupuncture and oriental medical concepts that employ Oriental methods of diagnosis, treatment and adjunctive therapies for the promotion, maintenance and restoration of health and the prevention of disease or the treatment of any ailment, disease, pain, injury, deformity or physical condition;

(ii) Stimulation of points of the body through the use of needles, lancets, moxibustion, QiGong, thermal methods, internal and external herbal preparations, light, sound, laser, vibration, pressure, magnetism, electricity, and cupping;

(A) The needles used in acupuncture shall be solid filiform instruments which shall include, but not be limited to:

(I) Dermal needles;

(II) Plum blossom needles;

(III) Press tacks;

(IV) Prismatic needles; and

(V) Disposable lancets.

(B) All needles shall be sterile and limited to one insertion before being disposed of in the proper sharps container.

(iii) Manual therapy including acupuncture theory-based massage, bodywork, acupuncture, trigger point dry needling, reflexology, shiatsu, tuina, guasha;

(iv) Diagnostic techniques including observation, listening, smelling, and inquiring.

CHAPTER 6

CODE OF ETHICAL CONDUCT

Section 1. Code of ethical conduct for acupuncturists. An individual licensed by the Board has a responsibility to report any organization or entity that provides or holds itself out to deliver acupuncture services that place the license holders in a position of compromise with this code of ethical conduct.

Section 2. Ethical integrity. License holders shall use the provisions contained in paragraphs (a) to (h) of this rule as guidelines for promoting ethical integrity and professionalism. Failure to comply with paragraphs (a) to (h) of this rule may be grounds for disciplinary action pursuant to W.S. 33-49-111.

(a) _____ Respect the rights, privacy and dignity of patients and maintain confidentiality and professional boundaries at all times.

(b) _____ Treat within the lawful scope of practice and training and only if able to safely, competently, and effectively do so.

(c) _____ Allow patients to fully participate in decisions related to their health care by documenting and keeping them informed of treatments and outcomes.

(d) _____ Accept and treat those seeking services in a fair and nondiscriminatory manner.

(e) _____ Render the highest quality of care and make timely referrals to other health care professionals as may be appropriate.

(f) _____ Continue to advance knowledge through education, training and collaboration with colleagues to maintain excellence and high ethical standards in the profession.

(g) _____ Support acupuncture medicine's access to all people and its growth in the broad spectrum of Wyoming health care.

(h) _____ Participate in activities that contribute to the betterment of the community.

Section 3. Unethical Conduct and Sexual Misconduct. Ethical conduct includes conforming to the minimal standards of acceptable and prevailing acupuncture practice. Conduct may be considered unethical regardless of whether or not actual injury to a patient occurred. Failure to comply with paragraphs (a) through (m) of this rule may be grounds for disciplinary action pursuant to W.S. 33-49-111.

(a) _____ Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(b) _____ Obtaining any fee by fraud or misrepresentation;

(c) Willfully or negligently divulging a professional secret without the written consent of the patient;

(d) Conviction of any offense punishable by incarceration in a department of corrections institution or in a federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction;

(e) Making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading regarding skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of any disease or other condition of the human body or mind;

(f) Impersonating another licensee licensed under this chapter or permitting or allowing any person to use the license;

(g) Gross negligence or repeated negligence in the practice of acupuncture;

(h) Incapacity to practice acupuncture regardless of whether the incapacity is caused by illness or use of a controlled or non-controlled substance.

(A) The licensee shall have access to the result of the examination and to the criteria used for grading and evaluating the examination.

(B) If the examination is given orally, the licensee shall have the right to have the examination recorded;

(i) Failing to report the change of the location of practice of the licensee;

(j) Making a fraudulent claim;

(k) Failure by the licensee to report to the Board any adverse action taken against the licensee by another licensing jurisdiction or any peer review body, health care institution, professional society or association, governmental agency, law enforcement agency or court, for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section;

(l) Failure by the licensee to notify the Board of the licensee's voluntary resignation from the staff of a healthcare institution or voluntary limitation of a licensee's staff privileges at the institution if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to medical incompetence, unprofessional conduct, physical incapacity or impairment;

(m) Committing sexual misconduct. Sexual misconduct is defined on three levels: sexual impropriety, transgression, or violation.

(i) Sexual Impropriety: Lowest level of misconduct, non-physical contact of a patient that is disrespectful in manner and sexually demeaning. Examples: inappropriate jokes, crude gestures, demeaning comments;

(ii) Sexual Transgression: Inappropriate touching of a patient stopping just short of an overt sexual act;

(iii) Sexual Violation: A sexual act between patient and practitioner with no distinction between which party initiated the contact or whether the act was consensual.

CHAPTER 7

FEES

Section 1. General information.

(a) Fees shall be payable in the exact amount, by money order or cashier's check for all services and shall be paid in advance of the services rendered. Fees for renewal of license may be paid by personal check. License holders renewing online shall use a credit card.

(b) All fees collected by the Board are non-refundable.

(c) In accordance with W.S. 1-1-115 the Board may charge a collection fee for any returned checks.

Section 2. Fees.

(a) Acupuncture Application Fee (Required for Application Review): \$900.00

(b) Initial Acupuncture License Fee (Required for License Issuance): \$200.00

(c) Initial Auricular Acupuncture License Fee: \$25.00

(d) Tutorial Program Supervisor Application Fee: \$200.00

(e) Acupuncture License Annual Renewal Fee: \$450.00

(f) Auricular Acupuncture License Annual Renewal Fee: \$15.00

(g) Program Supervisor Annual Renewal Fee: \$50.00

(h) Duplicate Wall Certificate or Pocket Card: \$10.00

(i) License verification to another jurisdiction: \$10.00

CHAPTER 8

DISCIPLINE AND ADVERSE ACTIONS

Section 1. Authority. These rules are adopted under the Board’s authority granted by W.S. 33-49-111 and 16-3-113(c).

Section 2. Definitions.

(a) “ARC” means application review committee.

(b) “DC” means disciplinary committee.

(c) For purposes of this chapter, “licensee” means any person holding a board-issued license regulated by the Board through its powers under the Act.

Section 3. Statement of Purpose. The Board adopts these rules to implement its authority to:

(a) Conduct investigations, hearings, and proceedings concerning:

(i) Actions relating to an application for a license, including granting or denying the application; and

(ii) Alleged violations of the Act or the Board’s rules.

(b) Determine and administer appropriate disciplinary action against an applicant or licensee.

Section 4. Grounds for Discipline.

(a) Disciplinary Action. The Board may take disciplinary action or refuse to issue or renew a license for one (1) or more of the following acts or conduct:

(i) Fraud, deception, or misrepresentation in applying for a license or certificate, in taking an examination, or in rendering services;

(ii) Immoral, unprofessional, or dishonorable conduct, that would violate the provisions of this chapter or the Act, including W.S. 33-49-111;

(iii) Practicing acupuncture in a manner that endangers the welfare of clients or patients;

(iv) Harassment, intimidation, or abuse – sexual or otherwise – of a client or patient;

- (v) Malpractice or negligence in the practice of acupuncture;
- (vi) Aiding or abetting the practice of acupuncture by individuals not licensed by the Board;
- (vii) Conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third-party vendor;
- (viii) Exercising undue influence to exploit a client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;
- (ix) The suspension or revocation of the licensee's license to practice acupuncture in another state. A certified copy of the order of suspension or revocation shall be conclusive evidence of the other state's action;
- (x) Refusal to appear before the Board after receiving an order to appear from the Board, its executive officer, or chairperson;
- (xi) Making any fraudulent or untrue statement to the Board;
- (xii) Inability to practice acupuncture with reasonable skill and safety to patients or clients because of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition;
- (xiii) Failure to meet the requirements for licensing as set forth in the Board's rules; or
- (xiv) Conviction of any crime or offense that reflects the inability of the practitioner to practice acupuncture with due regard for the health and safety of clients or patients.

Section 5. Application Review and Investigation Process.

- (a) Application Review and Investigation. In application and licensure matters:
 - (i) Every application for a license is subject to investigation to determine if the application satisfies the requirements set by the Act and Board rules; and
 - (ii) Every application that reveals information that merits further investigation shall be assigned to the ARC.
- (b) Application Review Committee Action. Following investigation, the ARC may:
 - (i) Recommend a license be issued, renewed, or reinstated;
 - (ii) Recommend a license be issued, renewed, or reinstated subject to

conditions, restrictions, or other disciplinary action;

(iii) Recommend approval of a settlement agreement, which may include the issuance, or renewal of a license with the imposition of a reprimand, conditions, restrictions, suspension, other discipline or a combination thereof; or

(iv) Recommend denial of the application.

(c) Notice of Intent to Recommend Approval Subject to Conditions, Restrictions, Other Disciplinary Action or Denial of License.

(i) The ARC shall notify the applicant of its intent to recommend:

(A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or

(B) Denial of the application;

(ii) The Notice of Intent shall contain:

(A) A brief description of the facts or conduct that warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action;

(B) A statement of the nature of the actions that warrant the issuance or denial of a license subject to conditions, restrictions, or other disciplinary action and a citation to the applicable statutory provisions in the Act or the Board rules; and

(C) Notice of the right to a hearing if a written request is received by the Board office within thirty (30) days of the date of mailing the Notice of Intent.

(d) Applicant's Request for Hearing.

(i) The applicant may request a hearing if the ARC recommends approval of the license subject to conditions, restrictions, or other disciplinary action or denial of the application.

(ii) An applicant who desires a hearing shall submit a written request for hearing to the Board office within thirty (30) days of the date of the Notice of Intent or the Board shall not grant a hearing;

(iii) Failure of the applicant to pursue proceedings related to the application after requesting a hearing may result in dismissal.

Section 6. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

(i) Complaints shall be submitted to the Board upon a form provided by the Board. Board staff may initiate complaints.

(ii) Complaints shall be investigated by the DC, Board staff, or an assigned investigative Board member.

(iii) The DC may meet informally with the licensee.

(b) Voluntary Surrender. A licensee may petition the Board in writing to surrender his or her license voluntarily. The Board shall hold an expedited proceeding at its earliest convenience to consider a petition under this section. The Board may accept or reject the petition for voluntary surrender and may consider whether the licensee is under investigation.

(c) Disciplinary Committee Action. Following investigation, the investigating party may:

(i) Recommend dismissal of the complaint;

(ii) Recommend issuance of a notice of warning;

(iii) Recommend approval of a settlement agreement, which may include a reprimand, conditions, restrictions, suspension, voluntary surrender, other discipline, or a combination thereof;

(iv) Recommend disciplinary action, which may include a reprimand, conditions, restrictions, suspension, revocation, other discipline, or a combination thereof.

Section 7. Formal Proceedings for Disciplinary Action.

(a) Notice of Intent to Recommend Disciplinary Action.

(i) The investigating party shall notify the licensee of its intent to recommend disciplinary action.

(ii) The Notice of Intent shall:

(A) Include a brief description of facts or conduct which warrant the intended action; and

(B) Provide the licensee an opportunity to show compliance or respond to allegation for disciplinary action within fifteen (15) days of the date of the mailing.

(b) Informal Conference. The licensee may request an informal conference with the investigating party to provide any additional information or to resolve an administrative complaint without a hearing.

Section 8. Petition. The investigating party shall initiate formal proceedings for disciplinary action by serving a Petition and Notice of Hearing to the licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service at least thirty (30) days prior to the date set for hearing.

Section 9. Notice of Hearing.

(a) Hearing. Upon receipt of a written request for hearing from an applicant or commencement of formal proceedings for disciplinary action against a licensee, the Board shall conduct a hearing. The Board shall service a Notice of Hearing on the applicant or licensee.

(b) Notice of Hearing. The notice of Hearing shall contain:

(i) The name and last known address of the applicant or licensee;

(ii) A brief statement of the matters asserted relating to:

(A) The recommendation to deny the application, the facts upon which the recommendation to deny is based, the statutory provisions and/or the rules the applicant is alleged to have violated; or

(B) The nature of the Petition, the facts upon which the Petition is based, the statutory provisions or rules the licensee is alleged to have violated;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction; and

(v) A statement indicating that:

(A) The applicant's failure to appear at the hearing or pursue proceedings may result in a dismissal; or

(B) The licensee's failure to answer the allegations contained in the Petition within twenty (20) days of the date of mailing and failure to appear at a noticed hearing may result in a default judgment.

Section 10. Lawful Service. There shall be a presumption of a lawful service of a Notice of Intent, Petition, Notice of Hearing, or any other communication required by these rules if sent to the last known address of the applicant or licensee by certified mail, regular mail, electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service.

Section 11. Dismissal or Default.

(a) Dismissal. The Board may enter an order of dismissal based on the allegations contained in the recommendation to deny an application in any case where the applicant or the applicant's representative has not appeared at a noticed hearing.

(b) Default. The Board may hold a default hearing under W.S. 33-27-122(e) in any case where the licensee or the licensee's representative has not answered the allegations contained in the Petition and does not appear at a noticed hearing. The hearing may be held at the time and place of the noticed hearing when it is reasonably apparent the licensee or the licensee's agent will not appear.

Section 12. Contested Case Hearing. The hearing officer shall preside over the contested case hearing which shall be conducted pursuant to the Wyoming Administrative Procedure Act and the Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

Section 13. Burden and Standard of Proof.

(a) Application/Licensure Matters. The applicant shall bear the burden to prove by a preponderance of evidence that they meet the qualifications for licensure. The burden shall shift to the ARC, DC, or other investigating party to prove by clear and convincing evidence that the Board should deny the applicant a license. The applicant bears the burden to persuade the Board that the ARC or DC's grounds for denial are insufficient.

(b) Discipline Matters. The investigating party shall bear the burden to prove by clear and convincing evidence that a licensee violated the Act or the Board's rules.

Section 14. Board Decision and Order.

(a) Board Action. The Board may resolve an application matter, complaint, or Petition by:

(i) Approving the recommendations of the ARC or DC; or

(ii) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:

(A) Issue, renew, reactivate, or reinstate a license;

(B) Issue, renew, reactivate, or reinstate a license with conditions, restrictions, or other disciplinary action;

(C) Deny a license;

(D) Dismiss the complaint or Petition due to lack of clear and convincing evidence;

(E) Issue a Notice of Warning; and

(F) Impose a reprimand, conditions, restrictions, suspension, revocation, other discipline or a combination thereof.

(b) Board Order. The Board shall issue a written decision that:

(i) Shall be sent to the applicant, licensee, or its representative by certified mail or regular mail;

(ii) Shall be deemed a public record and be available for inspection and dissemination in accordance with all federal and state laws; and

(iii) May be published in a regular publication of the Board and on the Board's website.

Section 15. Judicial Review.

(a) Appeals from decisions of the Board are governed by the Wyoming Administrative Procedure Act and Wyoming Rules of Appellate Procedure.

(b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.