

# Regulatory Analysis Form

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 INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

**Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine**

(2) I.D. Number (Governor's Office Use)

**16A-4919**

IRRC Number: **2455**

(3) Short Title

**Acupuncture Registration**

(4) PA Code Cite

**49 Pa. Code §§ 16.1, 16.11, 16.13, 16.15, 16.16, 16.101, 18.11 – 18.14, and 18.15a – 18.19**

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Gerald S. Smith, Senior Counsel in Charge, State Board of Medicine (717) 783-7200**  
 Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

Proposed Rulemaking  
 **Final Order Adopting Regulation**  
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

**No**  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

**These regulations amend the Board's existing regulations so that they editorially comport with the Act 49 amendments to the Acupuncture Registration Act (63 P.S. §§ 1801-1806) by adding definitions, deleting provisions relating to acupuncturist supervisors and adding provisions relating to practitioners of oriental medicine.**

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

**The act of May 16, 2002 (P.L. 326, No. 49) (Act 49) amended the Acupuncture Registration Act. (63 P.S. §§1801 –1806). Section 3 of the Acupuncture Registration Act (63 P.S. §1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture. These proposed regulations seek to amend the Board's existing regulations so that they comport with the Act 49 amendments to the Acupuncture Registration Act.**

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**The act of May 16, 2002 (Pl. 326, No. 49) (Act 49) amended the Acupuncture Registration Act (act) (63 P.S. §§1801 –1806). Section 3 of the act (63 P.S. §1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture. These regulations amend the Board's existing regulations so that they comport with the Act 49 amendments to the Acupuncture Registration Act.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**Failure to comport the existing regulations to the Act 49 amendments has the potential of creating unnecessary confusion pertaining to the acupuncture practice. This regulation would avoid such confusion.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**Acupuncturists practicing in the Commonwealth will benefit by revisions to the current Amendments to comport with amendments to the Registration Law. There are currently 505 acupuncturists registered in the Commonwealth and approximately 30 persons who apply yearly.**

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**No adverse impact is anticipated.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**505 Registered acupuncturists and approximately 30 applicants/year seeking to register as acupuncturists.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**Public comment was received during proposed rulemaking from the Association of Professional Acupuncture in Pennsylvania (APA). The APA generally supports the rulemaking.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**No anticipated costs or identifiable savings.**

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**Local governments will not be affected by the regulation.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**The Board will not incur an increase in administrative costs by implementing the regulation.**

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 7/1/01	FY +1 Year 7/1/02	FY +2 Year 7/1/03	FY +3 Year 7/1/04	FY +4 Year 7/1/05	FY +5 Year 7/1/06
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

**The proposed amendments will not generate costs or savings.**

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 03-04	FY -2 FY 04-05	FY -1 FY 05-06	Current FY FY 06-07
State Board of Medicine	\$ 4,426,129.18	\$5,621,389.18	\$ 8,794,000.00	9,348,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**The proposed amendments are cost benefit-neutral.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**No nonregulatory alternatives were considered because existing regulations need to be amended through the regulatory process.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**The proposed rulemaking would have required all acupuncturists to meet the requirements for education and examination in Chinese herbology. However, in drafting the final rulemaking, the Board learned of a dichotomy in the profession between acupuncturists whose education, training and practice included the use of Chinese herbal therapy (practioners of oriental medicine) and those whose education, training and practice did not include herbal therapy (traditional acupuncturists). The Board determined to amend the final rulemaking to reflect that dichotomy.**

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**There are no specific federal standards addressing the practice of acupuncture or oriental medicine.**

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**This regulation implements statutory amendments to the Acupuncture Registration Act. Those amendments are less restrictive than the prior provisions of the Act. Because these amendments are statutorily established, comparison to other jurisdictions' requirements are irrelevant.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This regulation will have no effect on other regulations of the Board or other state agencies. The Board will be proposing regulations to address the recent amendments to the Acupuncture Registration Act by Act 186 of 2006.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board reviews regulatory proposals at regularly scheduled monthly public meetings. A schedule of board meetings can be found on the Department of State's website at [www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa). The Board provided a draft of the proposed regulations to those persons who have identified themselves as interested in the regulatory proposals of the Board. All public comments were considered in drafting the final rulemaking.**

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**Reporting requirements pertaining to acupuncture supervision are eliminated under the proposed regulation. Record keeping requirements pertaining to patient records are delineated by the regulation but are statutorily mandated.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.**

(31) Provide the schedule for continual review of the regulation.

**The Board reviews its regulations continually.**



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INDEPENDENT REGULATORY  
REVIEW COMMISSION

2455

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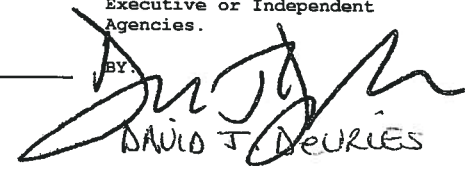
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BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Medicine  
(AGENCY)

BY:   
DAVID J. DEUKRIES

DOCUMENT/FISCAL NOTE NO. 16A-4919

11.29.05  
DATE OF APPROVAL

DATE OF APPROVAL

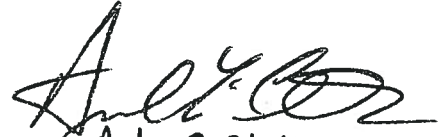
DATE OF ADOPTION: \_\_\_\_\_

BY: \_\_\_\_\_

EXECUTIVE  
(Deputy General Counsel  
(Chief Counsel,  
Independent Agency  
Strike inapplicable  
title)

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Charles D. Honger, Jr, M.D.

  
Andrew C. Clark  
Deputy General Counsel

- Check if applicable Copy not approved. Objections attached.
- Check if applicable. No Attorney General approval or objection within 30 day after submission.

SEP 25 2006

FINAL RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF MEDICINE  
49 PA. CODE, CHAPTERS 16 AND 18  
ACUPUNCTURE REGISTRATION

The State Board of Medicine (Board) hereby amends §§16.11, 16.13, 16.15, 16.16, 16.101, 18.11 – 18.14 and 18.18; adds §§ 18.13a and 18.15a (relating to requirements for registration as a practitioner of oriental medicine; and scope of practice of acupuncturists and practitioners of oriental medicine); and deletes §§ 18.16, 18.17 and 18.19 (relating to responsibilities of acupuncturist supervisor; notice responsibilities; and registration during transitional period), to read as set forth in Annex A.

**A. Effective Date**

The amendments will be effective upon publication as final-form rulemaking in the Pennsylvania Bulletin.

**B. Statutory Authority**

The act of May 16, 2002 (P.L. 326, No. 49) (Act 49) amended the Acupuncture Registration Act (act) (63 P.S. §§1801 –1806). Section 3 of the act (63 P.S. §1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture.

**C. Background and Purpose**

This rulemaking amends the Board's existing regulations so that they comport with the Act 49 amendments to the act.

**D. Summary of Comments and Responses to Proposed Rulemaking**

Proposed rulemaking was published at 35 Pa.B. 1210 on February 12, 2005. The Board entertained public comment for a period of 30 days during which time the Board received comments from the Association for Professional Acupuncture in Pennsylvania (APA). Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC). Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) commented during proposed rulemaking.

During the course of developing final rulemaking, the Board learned that there is a dichotomy in the acupuncture profession between those acupuncturists whose education, training and practice is restricted to basic acupuncture modalities, needling, bodywork and nutritional counseling, on the one hand, and acupuncturists who possess additional education, training and practice in the use of Chinese herbal therapy. Acupuncturists in the latter group are referred to in the profession as "practitioners of oriental medicine." This dichotomy required significant adjustment to the final rulemaking. In order to assure that the public had a full opportunity to comment on the adjustment to the rulemaking, the Board published an Advance Notice of Final Rulemaking (ANFR) on May 20, 2006, at 36 Pa.B. 2411, seeking additional comments from the public.

Subsequent to the publication of the ANFR, the Board received comments from members of the general public who disagreed that the requirement that a patient obtain a medical examination and referral from a physician prior to receiving acupuncture treatment was necessary for the public health and safety. At the time, this requirement was statutory and the Board lacked authority to delete it. However, at the end of the last legislative session the General Assembly enacted the act of November 29, 2006, (P.L. \_\_\_, No. 186) (Act 186) (effective January 29, 2007) which further amended the Acupuncture Registration Act. Act 186 contains two substantive provisions in regard to the practice of acupuncture:

1. Act 186 gives acupuncturists authority to treat patients for 60-days without any physician involvement.
2. Act 186 deletes from the Acupuncture Registration Act the statutory requirement that a patient obtain a referral or prescription for acupuncture services and substitutes a requirement for a medical examination and diagnosis if treatment will continue beyond 60 days.

At this time, there is insufficient time remaining under the Regulatory Review Act process to implement the provisions of Act 186 in this final rulemaking. Therefore, the Board intends to promulgate separate proposed rulemaking to address the Act 186 amendments. In the interim, the proposed amendments to § 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor) have been superseded by Act 186. Therefore, they have been withdrawn from this final rulemaking.

The following is a summary of the comments received during the entire rulemaking process, as well as the Board's response.

During the proposed rulemaking process, the IRRC suggested that the language of § 18.11 (relating to definitions) pertaining to the required components of the acupuncture examination lacks clarity in light of the expanded scope of practice of acupuncturists to include supplemental techniques. The IRRC recommended that the Board clarify the rulemaking by specifically including reference to the component of the examination that addresses supplemental techniques. The Board agrees with the IRRC's recommendation and has included language that clarifies that the Board recognizes the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination components in acupuncture, sterilization procedures and Chinese herbology for registration under these regulations.

Subsequent to the publication of the ANFR, both the HPLC and the IRRC recommended that the Board add "practitioner of oriental medicine" to the definition of board-regulated practitioner contained at §16.1 (relating to definitions). Similarly, the IRRC suggested that §16.13 (relating to licensure, certification, examination and registration fees) include practitioner

of oriental medicine registration. The Board agreed with these suggestions, and also added references to practitioners of oriental medicine throughout Chapter 16, where relevant.

The IRRC noted that the terms herbology, herbal therapy and Chinese herbal therapy are used interchangeably in the rulemaking and suggested one term be used throughout the rulemaking. The Board notes that the term "herbal therapy" is used in the act at section 3(f) with regard to supplemental techniques. However, the Board believes that this reference to herbal therapy in the act must be considered in the context of oriental medical traditions. Chinese herbology is the study of the use of herbs in the oriental medicine tradition, which is why the rulemaking continues to use that term in discussing the educational and examination requirements for registration as a practitioner of oriental medicine. Herbal therapy, in the context of these regulations, then, is the application of Chinese herbology in the treatment of acupuncture patients. Therefore, the Board has added definitions of Chinese herbology and herbal therapy to § 18.11 and uses those terms throughout the rulemaking.

The HPLC and IRRC suggested that the Board separate the substantive scope of practice of an acupuncturist and practitioner of oriental medicine from the definition of acupuncturist. The Board agrees with these suggestions and has made the appropriate changes.

The IRRC's comments on §§18.12 and 18.13a (relating to registration as an acupuncturist; and requirements for registration as a practitioner of oriental medicine) indicated that the language of these sections were not entirely clear as to their application to medical doctors who practice acupuncture. Generally medical doctors hold an unrestricted license to practice any form of the healing art. Only in the area of acupuncture is a medical doctor also required to obtain a separate registration. However, this separate registration relates only to the needling aspects of acupuncture. Generally medical doctors are already qualified by education and training in regard to physical modalities, nutritional counseling and drug interactions that would be at issue in regard to the supplemental techniques now authorized by Act 49 amendments to the act. Accordingly, the Board has modified the final-form regulation to clarify that medical doctors are not limited in the practice of the healing art by the new grant of authority to acupuncturists to expand their scope of practice to include supplemental techniques.

As recommended by the IRRC, the Board has added practitioners of oriental medicine to §18.14 (relating to biennial registration requirements).

The HPLC requested additional information about to whom §18.13a(c) would apply and whether the breadth of the exemptions from the standard licensing requirements was necessary. This subsection is intended to apply to those acupuncturists who have been practicing in the Commonwealth for some period of time prior to these amendments, and who had obtained their qualifications to practice at a time when the study and examination for the practice of acupuncture, including Chinese herbal therapy, was not as well organized as it is today. This

subsection was developed because the APA strongly recommended that the Board find a means of recognizing existing practitioners. The APA has estimated that up to 90 acupuncturists may be impacted by this issue. During the development of final rulemaking, the APA very strongly recommended that the Board accept any course or examination regardless of whether the course or examination was recognized by other jurisdictions. Also, the APA strongly suggested that the examination requirement be divorced from the course requirement. With some misgivings as to whether this was an appropriate means of addressing the issue of existing practitioners, the Board proposed in the ANFR that existing acupuncturists demonstrate one of three qualifications for registration as a practitioner of oriental medicine. These options were a course of study recognized by another United States jurisdiction, an examination recognized by another United States jurisdiction or NCCAOM certification.

The HPLC has requested whether these three options are necessary. The APA has stated that the options are too restrictive and will keep qualified persons out. At issue is a balancing of interests between protecting the public from unqualified practitioners and recognizing the skill and training of individuals who may have previously obtained their qualifications in a manner other than the now established route. The Board believes that as a general rule an individual should demonstrate both recognized education and recognized examination. However, it also recognizes that, especially in this field of the healing art, the regulation of which is still relatively new to the Commonwealth, some individuals may have obtained credentials through a route different than the Commonwealth has now established. Upon reflection, the Board has determined that the best way to ascertain the qualifications of individuals who may have obtained credentials in a manner other than the now established standard process is to recognize the Board's own authority under section 27 of the Medical Practice Act, 63 P.S. § 422.27, to determine and recognize the achievement of cumulative qualifications that the Board determines to be equivalent to the standard requirements for registration. Given the relatively small number of older acupuncturists who may seek to practice oriental medicine, as estimated by the APA, the Board believes that providing them the opportunity to present evidence of their qualifications on a case-by-case basis is reasonable.

Otherwise, the APA has been generally supportive of the rulemaking. During proposed rulemaking both the APA and the IRRC suggested that the examinations for English language include the Test for Spoken English. The Board will examine that question for possible future rulemaking, but believes inclusion in this rulemaking is inappropriate because it is a subject matter that should be considered for all of the Board's licensees, which would expand the scope of this particular rulemaking. The APA also suggested that §18.15 (a)(1) (relating to practice responsibilities of an acupuncturist who is not a medical doctor) would be clearer if the language was changed from "written referral" to "written referral or prescription". The Board has no objection to including this language since it does not alter the intent of the provision and the regulated community believes the language would be more clearly understood by practitioners.

**E. Description of Amendments**

Sections 16.1, 16.11, 16.13, 16.15 and 16.101 are amended to include references to practitioners of oriental medicine. In addition, §§ 16.11, 16.13 and 16.15 (relating to licenses, certificates and registrations; licensure, certification, examination and registration fees; and biennial registration; inactive status and unregistered status) are amended to delete references to registration as an acupuncture supervisor and fees for acupuncture supervisor registration.

Section 18.11 (relating to definitions) is amended to include the statutorily expanded definition of acupuncture to include the use of supplemental techniques, the statutorily established definition of an "acupuncture educational program" and the statutorily established definition of "supplemental techniques". Section 18.11 is also amended to delete definitions rendered unnecessary by Act 49. Specifically, the definition of "acupuncture program" is deleted as superseded by the term "acupuncture educational program." Definitions relating to supervision of acupuncturists are also deleted because Act 49 eliminated the supervisory requirement in regard to the practice of acupuncture. The definitions of "Chinese herbology," "herbal therapy" and "practitioner of oriental medicine" have been added. Section 18.11 is also amended to reflect the name change of the National Commission for the Certification of Acupuncturists and Oriental Medicine (NCCAOM). As noted by IRRC, the proposed rulemaking erroneously identified NCCAOM by an incorrect acronym. Final rulemaking corrects this error. Finally, § 18.11 is also amended pertaining to the required components of the acupuncture examination and the examination for registration as a practitioner of oriental medicine.

Sections 18.12 - 18.14 are amended, and §§18.16 and 18.17 (relating to responsibilities of acupuncturist supervisor, and notice responsibilities) are deleted in their entirety, to delete references to acupuncturist supervisor and provisions pertaining to the supervision of the practice of acupuncture. Section 18.14 (relating to biennial registration requirements) has been amended to add references to practitioners of oriental medicine.

Section 18.13a (relating to requirements for registration as a practitioner of oriental medicine) has been added to distinguish between acupuncturists registered under §18.13 (relating to requirements for registration as an acupuncturist) who do not use herbal therapy and acupuncturists registered as practitioners of oriental medicine who may use herbal therapy. Section 18.13a also establishes the criteria for registration as a practitioner of oriental medicine.

Section 18.15a (relating to the scope of practice of acupuncturists and practitioners of oriental medicine) has been added at the suggestion of the IRRC and the HPLC to delineate the scope of practice of acupuncturists and practitioners of oriental medicine. This section also includes the clarification that the expanded scope of practice of acupuncturists does not limit the practice of medicine by licensed medical doctors.

Section 18.18 (relating to disciplinary and corrective measures) has been amended to include references to practitioners of oriental medicine as recommended by the HPLC and IRRC. Finally, §18.19 (relating to registration during transitional period) pertains to outdated registration requirements under the original act and, therefore, is deleted.

**F. Fiscal Impact and Paperwork Requirements**

The amendments would have no adverse fiscal impact or additional paperwork requirements imposed on the Commonwealth, its political subdivisions or the private sector.

**G. Sunset Date**

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

**H. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 2, 2005, the Board submitted a copy of the notice of proposed rulemaking, published on February 7, 2005, at 35 Pa.B. 1210, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment. In addition on May 20, 2006, the Board published an advanced notice of final rulemaking at 36 Pa.B. 2411 and solicited additional comments for a period of thirty days.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC, were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_ this final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-form rulemaking.

**I. Contact Person**

Further information may be obtained by contacting Gerald S. Smith, Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at [gerasmith@state.pa.us](mailto:gerasmith@state.pa.us).

**J. Findings**

The State Board of Medicine finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 35 Pa.B. 1210.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this Preamble.

**K. Order**

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 16 and 18, are amended to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Charles D. Hummer, Jr., M.D.  
Chairperson



Annex A

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS**

**Subchapter A. BASIC DEFINITIONS AND INFORMATION**

**§ 16.1. Definitions.**

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Board-regulated practitioner*—A medical doctor, midwife, physician assistant, drugless therapist, athletic trainer, acupuncturist, PRACTITIONER OF ORIENTAL MEDICINE or an applicant for a license or certificate that the Board may issue.

\* \* \* \* \*

**Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION**

**PROVISIONS**

**§ 16.11. Licenses, certificates and registrations.**

\* \* \* \* \*

(c) The following registrations are issued by the Board:

\* \* \* \* \*

(3) [~~Registration as an acupuncturist supervisor.~~] REGISTRATION AS A PRACTITIONER OF ORIENTAL MEDICINE.

(4) } Biennial registration of a license without restriction.

{~~(5)~~ } \* \* \*

{~~(6)~~ } \* \* \*

{~~(7)~~ } \* \* \*

{~~(8)~~ } \* \* \*

{~~(9)~~ } \* \* \*

{~~(10)~~ } \* \* \*

(11) BIENNIAL REGISTRATION AS A PRACTITIONER OF ORIENTAL MEDICINE.

**§ 16.13. Licensure, certification, examination and registration fees.**

\* \* \* \* \*

(d) Acupuncturist [Registration] registration:

(1) ACUPUNCTURIST

Application .....\$30

Biennial renewal .....\$40

(2) PRACTITIONER OF ORIENTAL MEDICINE REGISTRATION:

APPLICATION.....\$30

BIENNIAL RENEWAL ..... \$40

[Registration, acupuncture supervisor ..... \$30]

\* \* \* \* \*

**§ 16.15. Biennial registration; inactive status and unregistered status.**

(a) A person licensed or certified by the Board, or registered as an acupuncturist OR AS A PRACTITIONER OF ORIENTAL MEDICINE with the Board, shall register biennially to retain the right to engage in practice unless specifically exempted within this section. Initial registration shall automatically occur when the license, certificate or acupuncturist registration is issued.

(b) The following licenses, certificates and registration are not subject to biennial registration:

\* \* \* \* \*

~~(6) Registration as an acupuncturist supervisor.~~

\* \* \* \* \*

**§ 16.16. Reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice.**

(a) An applicant for a license, certificate or acupuncturist registration issued by the Board shall apprise the Board of any of the following:

\* \* \* \* \*

**Subchapter G. MINIMUM STANDARDS OF PRACTICE—CHILD ABUSE**

**§ 16.101. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Board-regulated practitioner*—A medical doctor, physician assistant, nurse midwife, certified registered nurse practitioner, respiratory care practitioner, drugless therapist, acupuncturist, PRACTITIONER OF ORIENTAL MEDICINE or auxiliary personnel performing radiologic procedures on the premises of a medical doctor.

\* \* \* \* \*

**CHAPTER 18. STATE BOARD OF MEDICINE--PRACTITIONERS  
OTHER THAN MEDICAL DOCTORS**

**Subchapter B. REGISTRATION AND PRACTICE OF  
ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE**

**§ 18.11. Definitions.**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Acupuncture--*

(i) The stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or alleviate the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body.

(ii) The term also includes the use of supplemental techniques.

Acupuncture educational program--Training and instruction in acupuncture or supplemental acupuncture techniques offered by a degree-granting institution authorized by the Department of Education that leads to a master's degree, master's level certificate or diploma or first professional degree, that meets the relevant and appropriate requirements of 22 Pa. Code (relating to education) and 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries) and that meets or exceeds the standards required for acupuncture or oriental

medicine programs established by an accrediting agency recognized by the United States

Department of Education.

*Acupuncture examination*--An examination offered or recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture AND HERBAL THERAPY to qualify for the privilege of practicing as an acupuncturist OR AS A PRACTITIONER OF ORIENTAL MEDICINE. The Board recognizes ~~the combination of the [NCCA] NCCAOM COMPONENT~~ examinations in acupuncture and sterilization procedures as ~~an acupuncture~~ THE examination FOR REGISTRATION AS AN ACUPUNCTURIST AND THE NCCAOM EXAMINATION COMPONENT IN CHINESE HERBOLOGY AS THE EXAMINATION FOR REGISTRATION AS A PRACTITIONER OF ORIENTAL MEDICINE.

\* \* \* \* \*

[*Acupuncture program*--An academic and clinical program of study in acupuncture which has been approved by the Board or by an accrediting body recognized by the Board.]

\* \* \* \* \*

[*Acupuncturist supervisor*--A medical doctor registered with the Board as a supervisor of acupuncturists.

*General supervision*--An acupuncturist supervisor doing the following in supervising an acupuncturist:

- (i) Performing a medical diagnostic examination or reviewing the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture prior to the treatment.
- (ii) Being personally available to the acupuncturist for consultation on the premises or being available by telephone contact, chart review or other means approved by the Board.
- (iii) Placing conditions and restrictions on the course of treatment if that action is required as a matter of sound medical practice.

*NCCA--The National Commission for the Certification of Acupuncturists.]*

*CHINESE HERBOLOGY – THE STUDY OF THE USE OF HERBS IN THE ORIENTAL MEDICINE TRADITION.*

*HERBAL THERAPY – THE APPLICATION OF CHINESE HERBOLOGY TO THE TREATMENT OF ACUPUNCTURE PATIENTS.*

*NCAAOM- NCCAOM - The National Certification Commission for Acupuncture and Oriental Medicine.*

*PRACTITIONER OF ORIENTAL MEDICINE – AN ACUPUNCTURIST WHO IS REGISTERED BY THE BOARD TO USE HERBAL THERAPY.*

*Supplemental techniques--The use of traditional and modern oriental therapeutics, heat therapy, moxibustion, electrical and low level laser stimulation, acupressure and other forms of massage.*

herbal therapy and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

**§ 18.12. Registration as an acupuncturist [and as an acupuncturist supervisor].**

[(a)] A medical doctor who intends to practice acupuncture and any other individual who intends to practice acupuncture [at the direction and under the supervision of a medical doctor] shall register with the Board as an acupuncturist.

[(b)] Only a medical doctor registered as an acupuncturist supervisor may delegate the performance of acupuncture services to an acupuncturist. An acupuncturist who is not a medical doctor may only perform acupuncture services under the direction and supervision of an acupuncturist supervisor, unless otherwise authorized by statute.

(c) An acupuncturist supervisor may not delegate the performance of acupuncture services to an osteopathic doctor, dentist, podiatrist or a veterinary doctor who is approved by his respective licensing board to practice acupuncture, unless that person is also registered as an acupuncturist with the Board.]

**§ 18.13. Requirements for registration as an acupuncturist [and an acupuncturist supervisor].**

(a) The Board will register as an acupuncturist a person who satisfies the following requirements:



(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

[(i) If the acupuncture education program is taken within the United States, the applicant shall complete 2 academic years of acupuncture training and shall complete 2 academic years of a college level educational program.

(ii) If the educational program is taken outside of the United States, an applicant shall graduate from a college with a program of study including Oriental medicine and document 300 class hours of study in acupuncture training.]

(2) Has obtained a passing grade on an acupuncture examination or has been certified by [NCAA during 1985-1986 via credential review. The Board accepts the passing grade on the certifying examination of the NCCA as determined by the NCCA, and accepts a passing grade on any state's acupuncture examination taken prior to January 1, 1987 as determined by the licensing or registering authority in the other state] NCCAOM. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant has also secured a score of 550 on the test of English as a Foreign Language (TOEFL).

\* \* \* \* \*

[(d) The Board will register as an acupuncturist supervisor a medical doctor who satisfies the following requirements:

- (1) Possesses a license without restriction.
- (2) Submits an application to register as an acupuncturist supervisor accompanied by the required fee. For the fee amount, see § 16.13.]

**§ 18.13a. REQUIREMENTS FOR REGISTRATION AS A PRACTITIONER OF ORIENTAL MEDICINE.**

(a) AN ACUPUNCTURIST WHO ALSO INTENDS TO USE HERBAL THERAPY IS REQUIRED TO BE REGISTERED WITH THE BOARD AS A PRACTITIONER OF ORIENTAL MEDICINE.

(b) THE BOARD WILL REGISTER AN ACUPUNCTURIST AS A PRACTITIONER OF ORIENTAL MEDICINE IF THE REGISTRANT, IN ADDITION TO MEETING THE REQUIREMENTS UNDER § 18.13 (RELATING TO REQUIREMENTS FOR REGISTRATION AS AN ACUPUNCTURIST) HAS FULFILLED ONE OF THE FOLLOWING:

(1) SUCCESSFULLY COMPLETED AN ACUPUNCTURE EDUCATION PROGRAM THAT INCLUDES THE STUDY OF CHINESE HERBOLOGY AND HAS PASSED THE NCCAOM EXAMINATION COMPONENT ON CHINESE HERBOLOGY.

- (2) HAS OBTAINED NCCAOM CERTIFICATION IN CHINESE HERBOLOGY OR ORIENTAL MEDICINE, WHICH SHALL INCLUDE PASSING THE NCCAOM EXAMINATION COMPONENT IN CHINESE HERBOLOGY.
- (c) AN ACUPUNCTURIST REGISTERED WITH THE BOARD PRIOR TO \_\_\_\_\_ (Editor's note: insert effective date of rulemaking) MAY OBTAIN A REGISTRATION AS A PRACTITIONER OF ORIENTAL MEDICINE IF THE ACUPUNCTURIST CAN DEMONSTRATE ONE OF THE FOLLOWING:
- (1) SUCCESSFUL COMPLETION OF A CHINESE HERBOLOGY OR ORIENTAL MEDICINE EDUCATION PROGRAM RECOGNIZED BY THE LICENSING AUTHORITY OF ANOTHER STATE OR UNITED STATES TERRITORY FOR THE PRACTICE OF HERBAL THERAPY OR ORIENTAL MEDICINE AND SUCCESSFUL COMPLETION OF AN EXAMINATION IN CHINESE HERBOLOGY OR ORIENTAL MEDICINE RECOGNIZED BY THE LICENSING AUTHORITY OF ANOTHER STATE OR UNITED STATES TERRITORY FOR THE PRACTICE OF HERBAL THERAPY OR ORIENTAL MEDICINE.
  - (2) NCCAOM CERTIFICATION IN CHINESE HERBOLOGY OR ORIENTAL MEDICINE.
  - (3) THE ACHIEVEMENT OF CUMULATIVE QUALIFICATIONS THAT THE BOARD DETERMINES TO BE EQUIVALENT TO THE STANDARD

REQUIREMENTS FOR REGISTRATION AS A PRACTITIONER OF ORIENTAL  
MEDICINE.

(d) THIS SUBSECTION DOES NOT APPLY TO A MEDICAL DOCTOR REGISTERED  
AS AN ACUPUNCTURIST NOR DOES IT RESTRICT THE PRACTICE OF MEDICINE BY  
A MEDICAL DOCTOR.

**§ 18.14. Biennial registration requirements.**

(a) ~~An acupuncturist~~ ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL  
MEDICINE shall register biennially and submit the appropriate registration fee to engage in the  
practice of acupuncture for the biennial period.

(b) Procedures for biennial registration of acupuncturists AND PRACTITIONERS OF  
ORIENTAL MEDICINE are outlined in § 16.15 (relating to biennial registration; inactive status  
and unregistered status).

\* \* \* \* \*

[(d) There is no biennial registration requirement for an acupuncturist supervisor.]

\* \* \* \* \*

**§ 18.15a. SCOPE OF PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF  
ORIENTAL MEDICINE.**

- (a) AN ACUPUNCTURIST MAY PRACTICE ACUPUNCTURE AND USE SUPPLEMENTAL TECHNIQUES BUT MAY NOT USE HERBAL THERAPY.
- (b) A PRACTITIONER OF ORIENTAL MEDICINE MAY PRACTICE ACUPUNCTURE AND USE SUPPLEMENTAL TECHNIQUES INCLUDING HERBAL THERAPY.
- (c) THIS SUBSECTION DOES NOT LIMIT THE SCOPE OF PRACTICE OF A MEDICAL DOCTOR WHO IS REGISTERED AS AN ACUPUNCTURIST.

**§ 18.16. [Responsibilities of acupuncturist supervisor] (Reserved).**

[(a) *Responsibility to acupuncture patient.* In relation to the acupuncture patient, the acupuncturist supervisor shall comply with the following:

(1) Perform or review the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture before the treatment.

(2) Advise the patient of the results of the medical diagnostic examination and the treatment alternatives.

(3) Place conditions or restrictions on the course of treatment in acupuncture to be provided by the acupuncturist, if conditions or restrictions are required as a matter of sound medical practice.

(4) Advise the patient in writing that he is available at reasonable times for consultation by appointment or by telephone. The written notice shall contain an address and telephone number at which the acupuncture supervisor can be reached.

(5) If he is not an acupuncturist, advise the patient in writing that he is not an acupuncturist, that he is not qualified to direct the course of acupuncture treatment and that he does not have responsibility for the course of acupuncture treatment.

(6) Monitor the patient's progress under acupuncture treatment and comply with normal responsibilities to a patient if the patient does not respond to treatment within the anticipated time.

(b) *Responsibility to acupuncturist.* In relation to the supervised acupuncturist, the acupuncturist supervisor shall satisfy the following:

(1) Advise the acupuncturist of the results of the medical diagnostic examination that are relevant to acupuncture treatment and of conditions or restrictions that are to be placed on the course of acupuncture treatment.

(2) Not delegate to the acupuncturist the right to prescribe or dispense drugs or the responsibility for diagnosing a physical or mental ailment or condition.

(3) Confer promptly with the acupuncturist in the event of the following:

(i) The acupuncturist supervisor decides to impose conditions or restrictions on the course of acupuncture treatment.

(ii) The patient has requested further consultation with the acupuncturist supervisor.

(iii) The patient's condition is not improving or the patient requires emergency medical treatment.

(4) Designate an alternative acupuncturist supervisor to provide general supervision of the acupuncturist during periods in which the acupuncturist supervisor is unable to provide general supervision, if the substitute acupuncturist supervisor agrees to accept the responsibility set forth in this section.

(c) *Scope of acupuncturist supervisor's responsibility.*

(1) In providing general supervision to the acupuncturist, the acupuncturist supervisor maintains the diagnostic responsibility and the medical doctor-patient relationship. It is the responsibility of the acupuncturist and not of the acupuncturist supervisor to conduct an acupuncture evaluation and to perform acupuncture treatment.

(2) An acupuncturist supervisor may not provide general supervision to more than two acupuncturists without applying for and receiving specific approval from the Board.]

§ 18.17. [Notice responsibilities] (Reserved).

[(a) The nonmedical doctor acupuncturist and the acupuncturist supervisor shall provide written notice to the Board prior to the date when the acupuncturist supervisor is to begin general supervision of the acupuncturist. The written notice shall comply with the following:

(1) Be filled out on a form supplied by the Board.

(2) Provide the name of the acupuncturist supervisor and the acupuncturist and a current address and the telephone number at which each can be reached.

(3) Contain an acknowledgement by the acupuncturist supervisor that he understands and agrees to accept his responsibilities to the supervised acupuncturist and the acupuncture patient as set forth in this subchapter.

(4) Contain an acknowledgement by the acupuncturist that he understands and accepts his responsibility to the acupuncturist supervisor and the acupuncture patient as set forth in this subchapter.

(5) Contain the verified signatures of the acupuncturist supervisor and the supervised acupuncturist.

(b) Written notice of termination of an arrangement between an acupuncturist supervisor and an acupuncturist shall be given to the Board by both individuals within 10 days



following termination of the relationship. Notice may be provided by both through one document or by each through separate documents.]

**§18.18. Disciplinary and corrective measures.**

(a) The Board may refuse, revoke, suspend, limit or attach conditions to the registration of an acupuncturist OR PRACTITIONER OF ORIENTAL MEDICINE for engaging in conduct prohibited by section 41 of the act (63 P. S. § 422.41) for Board-regulated practitioners.

(b) The Board will order the emergency suspension of the registration of an acupuncturist OR PRACTITIONER OF ORIENTAL MEDICINE who presents an immediate and clear danger to the public health and safety, as required by section 40 of the act (63 P. S. § 422.40).

(c) The registration of an acupuncturist OR PRACTITIONER OF ORIENTAL MEDICINE shall automatically be suspended, as required by section 40 of the act.

**§ 18.19. [Registration during transitional period] (Reserved).**

[Acceptance of applications to register as acupuncturists and acupuncturist supervisors will begin on January 3, 1987. After July 1, 1987, no person may serve as an acupuncturist or as an acupuncturist supervisor unless registered as such with the Board.]

**through unlicensed persons or entities to engage in the sale of funeral services for a person then living.**

[Pa.B. Doc. No. 05-278. Filed for public inspection February 11, 2005, 9:00 a.m.]

## STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

### Registration and Practice of Acupuncturists

The State Board of Medicine (Board) proposes to amend §§ 16.11, 16.13, 18.11—18.17 and 18.19 regarding the registration and practice of acupuncturists to read as set forth in Annex A.

#### A. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The statutory authority for this proposal is the act of May 16, 2002 (P. L. 326, No. 49) (Act 49) which amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806). Section 3 of the act (63 P. S. § 1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture.

#### C. Background and Purpose

The proposed rulemaking would amend the Board's existing regulations so that they comport with the Act 49 amendments to the act.

#### D. Description of Amendments

Sections 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) would be amended to delete references to acupuncture supervisor and fees for acupuncture supervisor registration. Section 18.11 (relating to definitions) would be amended to include the statutorily expanded definition of "acupuncture" to include the use of supplemental techniques, the statutorily established definition of an "acupuncture educational program" and the statutorily established definition of "supplemental techniques." Section 18.11 would also be amended to delete definitions rendered unnecessary by Act 49. Specifically, the definition of "acupuncture program" would be deleted as superseded by the term "acupuncture educational program." Definitions regarding supervision of acupuncturists would also be deleted because Act 49 eliminated the supervisory requirement in regard to the practice of acupuncture. Section 18.11 would also be amended to reflect the name change of the National Commission for the Certification of Acupuncturists and Oriental Medicine.

Sections 18.12—18.15 would be amended and §§ 18.16 and 18.17 (relating to responsibilities of acupuncturist supervisor; and notice responsibilities) would be deleted

to delete references to acupuncturist supervisor and provisions pertaining to the supervision of the practice of acupuncture.

Section 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor) would be amended to incorporate statutorily established requirements that the acupuncturist ensure that prior to the application of acupuncture treatments the patient obtain a written referral from a licensed physician, that the patient has undergone a medical diagnostic examination, and that the results of the examination and the referral are maintained in the patient's record. Existing provisions pertaining to the acupuncturist's obligation to consult with the referring physician as necessary would be retained.

Lastly, § 18.19 (relating to registration during transitional period) pertains to outdated registration requirements under the original act and, therefore, would be deleted.

#### E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact or additional paperwork requirements imposed on the Commonwealth, its political subdivisions or the private sector.

#### F. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

#### H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Joanne Troutman, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Refer to Acupuncture Registration when submitting comments.

CHARLES D. HUMMER, Jr., M.D.,

*Chairperson*

**Fiscal Note:** 16A-4919. No fiscal impact; (8) recommends adoption.

Annex A  
**TITLE 49. PROFESSIONAL AND  
 VOCATIONAL STANDARDS**  
**PART I. DEPARTMENT OF STATE**  
**Subpart A. PROFESSIONAL AND  
 OCCUPATIONAL AFFAIRS**  
**CHAPTER 16. STATE BOARD OF  
 MEDICINE—GENERAL PROVISIONS**  
**Subchapter B. GENERAL LICENSE,  
 CERTIFICATION AND REGISTRATION  
 PROVISIONS**

§ 16.11. Licenses, certificates and registrations.

\* \* \* \* \*

(c) The following registrations are issued by the Board:

\* \* \* \* \*

(3) [ Registration as an acupuncturist supervisor.

(4) ] Biennial registration of a license without restriction.

[ (5) ] (4) \*\*\*

[ (6) ] (5) \*\*\*

[ (7) ] (6) \*\*\*

[ (8) ] (7) \*\*\*

[ (9) ] (8) \*\*\*

[ (10) ] (9) \*\*\*

§ 16.13. Licensure, certification, examination and registration fees.

\* \* \* \* \*

(d) Acupuncturist [ Registration ] registration:

\* \* \* \* \*

[ Registration, acupuncturist supervisor ..... \$30 ]

\* \* \* \* \*

**CHAPTER 18. STATE BOARD OF  
 MEDICINE—PRACTITIONERS OTHER THAN  
 MEDICAL DOCTORS**

**Subchapter B. REGISTRATION AND PRACTICE OF  
 ACUPUNCTURISTS**

§ 18.11. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Acupuncture*—

(i) The stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or alleviate the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body.

(ii) The term also includes the use of supplemental techniques.

*Acupuncture educational program*—Training and instruction in acupuncture or supplemental acupuncture techniques offered by a degree-granting institution authorized by the Department of Education that leads to a master's degree, master's level certificate or diploma or first professional degree, that meets the relevant and appropriate require-

ments of 22 Pa. Code (relating to education) and 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries) and that meets or exceeds the standards required for acupuncture or oriental medicine programs established by an accrediting agency recognized by the United States Department of Education.

*Acupuncture examination*—An examination offered or recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture to qualify for the privilege of practicing as an acupuncturist. The Board recognizes the combination of the [NCCA] NCCAOM examinations in acupuncture and sterilization procedures as an acupuncture examination.

\* \* \* \* \*

[ *Acupuncture program*—An academic and clinical program of study in acupuncture which has been approved by the Board or by an accrediting body recognized by the Board. ]

\* \* \* \* \*

[ *Acupuncturist supervisor*—A medical doctor registered with the Board as a supervisor of acupuncturists.

*General supervision*—An acupuncturist supervisor doing the following in supervising an acupuncturist:

(i) Performing a medical diagnostic examination or reviewing the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture prior to the treatment.

(ii) Being personally available to the acupuncturist for consultation on the premises or being available by telephone contact, chart review or other means approved by the Board.

(iii) Placing conditions and restrictions on the course of treatment if that action is required as a matter of sound medical practice.

*NCCA*—The National Commission for the Certification of Acupuncturists. ]

*NCCAOM*—The National Certification Commission for Acupuncture and Oriental Medicine.

*Supplemental techniques*—The use of traditional and modern oriental therapeutics, heat therapy, moxibustion, electrical and low level laser stimulation, acupressure and other forms of massage, herbal therapy and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

§ 18.12. Registration as an acupuncturist [ and as an acupuncturist supervisor ].

[ (a) ] A medical doctor who intends to practice acupuncture and any other individual who intends to practice acupuncture [ at the direction and under the supervision of a medical doctor ] shall register with the Board as an acupuncturist.

[ (b) ] Only a medical doctor registered as an acupuncturist supervisor may delegate the performance of acupuncture services to an acupuncturist. An acupuncturist who is not a medical doctor may only perform acupuncture services under the direc-

tion and supervision of an acupuncturist supervisor, unless otherwise authorized by statute.

(c) An acupuncturist supervisor may not delegate the performance of acupuncture services to an osteopathic doctor, dentist, podiatrist or a veterinary doctor who is approved by his respective licensing board to practice acupuncture, unless that person is also registered as an acupuncturist with the Board. ]

§ 18.13. Requirements for registration as an acupuncturist [ and an acupuncturist supervisor ].

(a) The Board will register as an acupuncturist a person who satisfies the following requirements:

(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

[ (i) If the acupuncture education program is taken within the United States, the applicant shall complete 2 academic years of acupuncture training and shall complete 2 academic years of a college level educational program.

(ii) If the educational program is taken outside of the United States, an applicant shall graduate from a college with a program of study including Oriental medicine and document 300 class hours of study in acupuncture training. ]

(2) Has obtained a passing grade on an acupuncture examination or has been certified by [ NCAA during 1985-1986 via credential review. The Board accepts the passing grade on the certifying examination of the NCCA as determined by the NCCA, and accepts a passing grade on any state's acupuncture examination taken prior to January 1, 1987 as determined by the licensing or registering authority in the other state ] NCCAOM. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant has also secured a score of 550 on the test of English as a Foreign Language (TOEFL).

\* \* \* \* \*

[ (d) The Board will register as an acupuncturist supervisor a medical doctor who satisfies the following requirements:

(1) Possesses a license without restriction.

(2) Submits an application to register as an acupuncturist supervisor accompanied by the required. For the fee amount, see § 16.13. ]

§ 18.14. Biennial registration requirements.

\* \* \* \* \*

[ (d) There is no biennial registration requirement for an acupuncturist supervisor. ]

§ 18.15. Practice responsibilities of acupuncturist who is not a medical doctor.

(a) *Responsibilities to patient.* In relation to the acupuncture patient, the acupuncturist shall comply with the following:

(1) [ Received, in writing, from the acupuncturist supervisor, approval to initiate acupuncture treat-

ment. ] Ensure that the patient has secured a written referral for treatment by acupuncture from a licensed physician.

(2) Comply strictly with conditions or restrictions that may be placed on the course of acupuncture treatment by the [ acupuncturist supervisor ] referring physician.

(3) Ensure that the patient has undergone a medical diagnostic examination or has had the results of a recently performed medical diagnostic examination reviewed by a licensed physician.

(4) Keep a copy of the referral and the results of the medical diagnostic examination in the patient's file.

(5) Not diagnose a physical or mental ailment or condition or prescribe or dispense a drug.

[ (4) ] (6) \* \* \*

(b) *Responsibility to [ acupuncturist supervisor ] referring physician.* In relation to the [ acupuncturist supervisor ] referring physician, the acupuncturist shall comply with the following:

(1) Consult promptly with the [ acupuncturist supervisor ] referring physician regarding a new ailment or condition or a worsened ailment or condition of an acupuncture patient.

(2) Consult with the [ acupuncturist supervisor ] referring physician upon request of either the [ acupuncturist supervisor ] referring physician or the acupuncture patient.

[ (3) Practice acupuncture only under the general supervision of an acupuncturist supervisor. ]

(c) [ *Scope of acupuncturist's responsibility.*

(1) An acupuncturist is responsible solely for acupuncture evaluation and acupuncture treatment. The medical diagnosis is the responsibility of the acupuncturist supervisor.

(2) An acupuncturist is not required to practice acupuncture in the physical presence of the acupuncturist supervisor or at the location where the acupuncturist supervisor provides medical services. Where the acupuncturist may provide acupuncture services, and whether the acupuncturist may provide acupuncture services without the acupuncturist supervisor being physically present, shall be determined by the acupuncture supervisor.

(d) [ *Identification of acupuncturist.* An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing his name and the title "acupuncturist." The use of the word doctor on this tag or badge is prohibited.

§ 18.16. [ Responsibilities of acupuncturist supervisor ] (Reserved).

[ (a) *Responsibility to acupuncture patient.* In relation to the acupuncture patient, the acupuncturist supervisor shall comply with the following:

(1) Perform or review the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture before the treatment.

(2) Advise the patient of the results of the medical diagnostic examination and the treatment alternatives.

(3) Place conditions or restrictions on the course of treatment in acupuncture to be provided by the acupuncturist, if conditions or restrictions are required as a matter of sound medical practice.

(4) Advise the patient in writing that he is available at reasonable times for consultation by appointment or by telephone. The written notice shall contain an address and telephone number at which the acupuncture supervisor can be reached.

(5) If he is not an acupuncturist, advise the patient in writing that he is not an acupuncturist, that he is not qualified to direct the course of acupuncture treatment and that he does not have responsibility for the course of acupuncture treatment.

(6) Monitor the patient's progress under acupuncture treatment and comply with normal responsibilities to a patient if the patient does not respond to treatment within the anticipated time.

(b) *Responsibility to acupuncturist.* In relation to the supervised acupuncturist, the acupuncturist supervisor shall satisfy the following:

(1) Advise the acupuncturist of the results of the medical diagnostic examination that are relevant to acupuncture treatment and of conditions or restrictions that are to be placed on the course of acupuncture treatment.

(2) Not delegate to the acupuncturist the right to prescribe or dispense drugs or the responsibility for diagnosing a physical or mental ailment or condition.

(3) Confer promptly with the acupuncturist in the event of the following:

(i) The acupuncturist supervisor decides to impose conditions or restrictions on the course of acupuncture treatment.

(ii) The patient has requested further consultation with the acupuncturist supervisor.

(iii) The patient's condition is not improving or the patient requires emergency medical treatment.

(4) Designate an alternative acupuncturist supervisor to provide general supervision of the acupuncturist during periods in which the acupuncturist supervisor is unable to provide general supervision, if the substitute acupuncturist supervisor agrees to accept the responsibility set forth in this section.

(c) *Scope of acupuncturist supervisor's responsibility.*

(1) In providing general supervision to the acupuncturist, the acupuncturist supervisor maintains the diagnostic responsibility and the medical doctor-patient relationship. It is the responsibility of the acupuncturist and not of the acupuncturist supervisor to conduct an acupuncture evaluation and to perform acupuncture treatment.

(2) An acupuncturist supervisor may not provide general supervision to more than two acupuncturists without applying for and receiving specific approval from the Board.]

§ 18.17. [ Notice responsibilities ] (Reserved).

[ (a) The nonmedical doctor acupuncturist and the acupuncturist supervisor shall provide written notice to the Board prior to the date when the acupuncturist supervisor is to begin general supervision of the acupuncturist. The written notice shall comply with the following:

(1) Be filled out on a form supplied by the Board.

(2) Provide the name of the acupuncturist supervisor and the acupuncturist and a current address and the telephone number at which each can be reached.

(3) Contain an acknowledgement by the acupuncturist supervisor that he understands and agrees to accept his responsibilities to the supervised acupuncturist and the acupuncture patient as set forth in this subchapter.

(4) Contain an acknowledgement by the acupuncturist that he understands and accepts his responsibility to the acupuncturist supervisor and the acupuncture patient as set forth in this subchapter.

(5) Contain the verified signatures of the acupuncturist supervisor and the supervised acupuncturist.

(b) Written notice of termination of an arrangement between an acupuncturist supervisor and an acupuncturist shall be given to the Board by both individuals within 10 days following termination of the relationship. Notice may be provided by both through one document or by each through separate documents.]

§ 18.19. [ Registration during transitional period ] (Reserved).

[ Acceptance of applications to register as acupuncturists and acupuncturist supervisors will begin on January 3, 1987. After July 1, 1987, no person may serve as an acupuncturist or as an acupuncturist supervisor unless registered as such with the Board.]

[Pa.B. Doc. No. 05-279. Filed for public inspection February 11, 2005, 9:00 a.m.]

## STATE BOARD OF NURSING

[49 PA. CODE CH. 21]  
Dietitian-Nutritionists

The State Board of Nursing (Board) proposes to add Subchapter G (relating to dietitian-nutritionists) to read as set forth in Annex A.

### *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

### *Statutory Authority*

The proposed rulemaking implements the act of June 29, 2002 (P.L. 651, No. 99) (Act 99), which grants the Board authority to regulate the practice of dietetics and nutrition and licensing of dietitian-nutritionists in this

# PROPOSED RULEMAKING

## STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

### Registration and Practice of Acupuncturists; Advance Notice of Final Rulemaking

The State Board of Medicine (Board) is publishing an advance notice of final rulemaking (ANFR) regarding the registration of acupuncturists and practitioners of oriental medicine. Proposed rulemaking was published at 35 Pa.B. 1210 (February 12, 2005).

#### *Statutory Authority*

The act of May 16, 2002 (P. L. 326, No. 49) (Act 49) amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806). Section 3 of the act (63 P. S. § 1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture.

#### *Background and Summary*

The Board entertained public comment for 30 days during which time the Board received comments from the Association for Professional Acupuncture in Pennsylvania (APA). Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC). Neither the House Professional Licensure Committee nor the Senate Consumer Protection and Professional Licensure Committee commented.

IRRC recommended that the Board clarify the proposed rulemaking by specifically including reference to the component of the examination that addresses supplemental techniques. The Board agreed with IRRC's recommendation and began developing language that would have specified that acupuncturists successfully complete the component of the National Commission for the Certification of Acupuncturists and Oriental Medicine (NCCAOM) examination that addresses supplemental techniques and Chinese herbal therapy.

During the course of developing the final rulemaking, the Board learned that there is a dichotomy in the acupuncture profession between acupuncturists whose education, training and practice is restricted to basic acupuncture modalities, needling, bodywork and nutritional counseling on the one hand, and acupuncturists who possess additional education, training and practice in the use of Chinese herbology. Acupuncturists in the latter group are referred to as "practitioners of oriental medicine."

To protect the public from individuals who do not possess education and training in the use of Chinese herbology, and to accommodate acupuncturists who do not seek to expand their practice to include Chinese herbology, the Board determined to dichotomize the registration to reflect the dichotomy in the profession. Specifically, the Board proposes to issue a registration as an acupuncturist to an individual who has obtained education and training on what are considered in the profession as the entry-level components of acupuncture such as needling, physical modalities and nutritional counseling, but that do not include Chinese herbal therapy. In addition, the Board would issue a new separate and inclusive registration to those acupuncturists who, in addition to the entry-level education, training and examination, have also obtained additional education and training in Chinese herbal therapies. An individual who meets the requirements for the practice of both acupuncture and Chinese herbology would be registered by the Board as a practitioner of oriental medicine. One could not be registered as a practitioner of oriental medicine without meeting the requirements for registration as an acupuncturist.

To assure that the public has a full opportunity to comment on the adjustment to the rulemaking, the Board has determined to publish this ANFR seeking additional comments from the public.

#### *Contact Person, Availability of Draft Final Regulations and Submission of Comments*

The Board will accept written comments as well as comments transmitted by means of e-mail on the draft final rulemaking for the registration of acupuncturists and practitioners of oriental medicine. Comments will not be accepted by facsimile, telephone or voice mail. Comments sent by means of e-mail must include the following in the subject heading of the transmission: "Comments on Acupuncture ANFR." E-mail transmissions as well as written comments must include the commentator's name and address. Written comments must be received by the Board on or before June 20, 2006. To request a copy of the draft final rulemaking or to provide a comment, contact Gerald S. Smith, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, [gerasmith@state.pa.us](mailto:gerasmith@state.pa.us).

CHARLES D. HUMMER, Jr., M.D.,  
*Chairperson*

[Pa.B. Doc. No. 06-869. Filed for public inspection May 19, 2006, 9:00 a.m.]

State Board of Medicine Regulation 16A-4919 – Acupuncture  
Commentators List

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF MEDICINE

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-1400

February 5, 2007

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Medicine  
16A-4919: Acupuncture Registration

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Medicine pertaining to acupuncture registration.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Charles D. Hummer, Jr., M.D.".

Charles D. Hummer, Jr., M.D., Chairperson  
State Board of Medicine

CDH/GSS:kmh

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Albert H. Masland, Chief Counsel  
Department of State  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Gerald S. Smith, Senior Counsel in Charge  
State Board of Medicine  
State Board of Medicine



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4919  
 SUBJECT: ACUPUNCTURE REGISTRATION  
 AGENCY: DEPARTMENT OF STATE  
 STATE BOARD OF MEDICINE

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
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 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2/5/07	<i>Barbara Han</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
2/5/07	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
2/5/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)