

<h2>Regulatory Analysis Form</h2> <p>(Completed by Promulgating Agency)</p> <p><small>(All Comments submitted on this regulation will appear on IRRC's website)</small></p>	<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>RECEIVED</p> <p>MAY 22 2023</p> <p>Independent Regulatory Review Commission IRRC Number: 3332</p>
<p>(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine</p>	
<p>(2) Agency Number: 16A Identification Number: 4956</p>	
<p>(3) PA Code Cite:</p> <p>49 Pa. Code §§ 18.11, 18.13, 18.13a, 18.15, 18.15a, 18.18 and 18.20</p>	
<p>(4) Short Title: Acupuncturists and practitioners of Oriental medicine</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Dana M. Wucinski, Board Counsel, State Board of Medicine, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251); dwucinski@pa.gov.</p> <p>Secondary Contact: Jacqueline Wolfgang, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 717-787-0251) jawolfgang@pa.gov.</p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This final-form rulemaking updates the Board's regulations relating to acupuncturists and practitioners of Oriental medicine. It updates terminology, removes outdated provisions and clarifies the practice responsibilities of individuals who are licensed only as an acupuncturist, those licensed as practitioners of Oriental medicine and those who are also licensed as a medical doctor. It also addresses changes to the options for demonstrating English language proficiency. Finally, the regulation incorporates the 2014 amendments to the Acupuncture Licensure Act (ALA) relating to liability insurance, circumstances when diagnosis of a condition by another practitioner (physician, dentist or podiatrist) must occur and includes the non-compliance provision for the liability insurance requirement.</p>	

(8) State the statutory authority for the regulation. Include specific statutory citation.

The primary statutory authority to regulate acupuncturists is granted by the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801-1806.1). Specifically, section 3(b) of the ALA (63 P.S. § 1803(b)) authorizes the Board to promulgate regulations requiring the proper training of individuals, including physicians, before they may be licensed to practice acupuncture in this Commonwealth and further authorizes the Board to promulgate such other regulations as may be deemed proper and necessary regarding the practice of acupuncture. !

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No. The final rulemaking is not mandated by any Federal or state law or court order, or Federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

On October 24, 2017, Governor Wolf signed Executive Order 2017-3, requiring the Commissioner of Professional and Occupational Affairs to comprehensively review and catalog the processes, fees, training requirements, criminal history policies, portability, and continuing education requirements for occupational and professional licensure within the purview of the 29 licensing boards and commissions under the Commissioner's authority. The order further directed the Commissioner to benchmark that data against regional averages from twelve states with similar or equivalent licenses that comprise the Northeast geographic region—Ohio, West Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont, and Maine—to identify requirements or functions that presented unnecessary burdens to licensure and occupational employment within the Commonwealth.

The report, issued on June 12, 2018, noted that the separate licensure of practitioners of Oriental medicine only occurs within three states in the Northeast region (Ohio, Delaware and Pennsylvania). Subsequent investigation by the Board revealed that Rhode Island issues a single "Doctor of Acupuncture and Oriental Medicine" license. Connecticut and New York include herbal therapy within the scope of practice of an acupuncturist, but do not require passing an examination on herbology prior to engaging in the practice. West Virginia and Maryland do not include herbal therapy within the scope of practice of acupuncture. The remainder of the states within the region (Maine, Massachusetts, New Hampshire, New Jersey, and Vermont) require passage of an examination on Chinese herbology or Oriental medicine prior to engaging in the use of herbal therapy. As a result of the issuance of the report, the Board was asked to reexamine its regulatory scheme for acupuncturists and practitioners of Oriental medicine, including the threshold question of whether the Board should continue to issue a separate license for those acupuncturists who engage in herbal therapy. This final-form rulemaking represents the culmination of that effort. Ultimately, for the reasons set forth in the preamble and in section 26, below, the Board determined that the biennially renewed license as a practitioner of Oriental medicine should be retained.

When developing this rulemaking, the Board was asked to explore the feasibility of eliminating the words "Oriental" and "Chinese" from the relevant regulations. For the reasons more fully detailed in section 26, the Board determined it was not appropriate to eliminate the term "Oriental" from the regulations,

however, the Board was able to determine that it is appropriate to update the phrase “Chinese herbology” to “East Asian herbology” and, when appropriate, proposed to make that alteration within the rulemaking. The change in terminology, when made, is unlikely to have a significant impact on practitioners or the public as the Board’s rulemaking does not alter advertising or other duties of practitioners and does not make use of the revised phrase mandatory by practitioners, accrediting agencies, educational institutions, or the public.

The final-form regulation also incorporates statutory amendments to the ALA made by Act 134 of 2014. Act 134 of 2014 amended the ALA to, among other things, authorize acupuncturists to treat individuals who do not present with any symptoms of a condition for an unlimited period. As a legislative enactment which has been in effect for several years, the amendments related to referrals and diagnoses found in the final-form rulemaking are unlikely to have any practical effect on most acupuncture licensees or the public; instead, the rulemaking will simply align the Board’s regulations with the current state of the law to provide the regulated community and public with clearer guidance on allowable and prohibited actions.

Act 134 of 2014 also imposed a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made. The current regulations do not address professional liability insurance at all. As a legislative enactment, the Board has already implemented the requirement that acupuncturists and practitioners of Oriental medicine demonstrate that they have obtained the required professional liability insurance for new license applications and renewals. Therefore, updating of the regulation will result in no practical change to any licensee or the public; instead, the final-form rulemaking is intended to simply align the Board’s regulations with the current state of the law and board practice so that the regulated community and public may more easily understand the need for acupuncturists to obtain and maintain professional liability insurance when reviewing the board’s regulations and the consequences for non-compliance with this requirement.

During its evaluation of the current regulations related to acupuncturists, the Board considered whether maintaining an English language proficiency requirement was appropriate. The Board noted that, as a practical matter, many of the other licensure categories administered by the Board also have an English proficiency component, either as part of the required licensing examination, as an accreditation requirement to be considered an acceptable educational institution, or as an independent admission requirement by the educational institution. The Board also noted that the ALA, the Board’s current regulations, and the Board’s rulemaking generally require acupuncturists to refer patients presenting with extended-term symptoms of a condition to a physician, dentist or podiatrist for diagnosis. The Board’s regulations and rulemaking also require referral of a patient to other health care practitioners when acupuncture or East Asian herbology are contraindicated or cause a worsening of the condition. Finally, the Board’s current regulations and final-form rulemaking require an acupuncturist to consult with a patient’s physician, dentist or podiatrist upon request of the patient and to comply with restrictions and conditions as directed by the patient’s physician, dentist or podiatrist. See, § 18.15(a)(5) – (6) (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician). Consequently, it is clear that acupuncturists are anticipated to be part of a larger health care team where communication and efficient exchange of health care records between practitioners is expected and required.

Maintaining a common language requirement among licensed health care providers fosters both speedy and accurate transmission of information between practitioner regarding patient healthcare related issues. There is a clear potential for harm to patients which could be caused or exacerbated by delayed communication between health care practitioners while contacting and awaiting the availability of a translation service, delays caused by the physical and mental act of translation via a third party, or by

direct communication between practitioners who do not both have sufficient proficiency in a common language.

The Board also reviewed the statutory and regulatory requirements for acupuncturists in the Northeast region identified by the Governor's Executive Order and noted that a supermajority of states within the region also have an explicit English proficiency requirement for acupuncturists in either law, regulation, or is a clearly stated requirement associated with the licensure application. The states within the region which license acupuncturists require demonstration of English proficiency via either: successfully passing the licensure examination in English; completion of a minimum number of credits of undergraduate or professional education in an English-speaking educational environment; or achieving a passing/acceptable score on the Test of English as a Foreign Language (TOEFL®) or a similar English proficiency examination. Consequently, maintaining an English proficiency requirement in Pennsylvania would not appear to place the Commonwealth at a competitive disadvantage, especially given that all the states that are contiguous to Pennsylvania and which license acupuncturists also have an English proficiency requirement.

Given the determination that maintaining an English proficiency requirement was in the public's interest by helping ensure efficient and accurate communication between health care practitioners, the determination that maintaining the requirement would not place Pennsylvania at a competitive disadvantage when compared to contiguous states, and the determination that it would not make Pennsylvania an outlier among states in the region, the Board maintains the minimal English proficiency requirement. However, the Board added additional options to demonstrate English language proficiency for applicants who did not take the licensing examination in English, including demonstrating that the applicant's acupuncture education program was conducted in English or the applicant obtained an acceptable score on one of the numerous variations of the TOEFL, the Occupational English Test (OET) for healthcare professionals or another equivalent English language proficiency examination approved by the Board. The Board anticipates that there will be less than 3 acupuncture/practitioner of Oriental medicine applicants per calendar year who have not taken the required licensing examination in English and would be required to demonstrate English proficiency requirement.

As part of the Board's ongoing work to continuously review and address outdated regulations, the final-form rulemaking would delete § 18.13(c). That subsection related to the requirements for registration of medical doctors as acupuncturists when applying for licensure prior to January 1, 1988. As the applicability of that provision expired over 30 years ago, it is no longer relevant to Board operations and the Board deletes it. The Board does not anticipate any effect on any licensee or applicant.

All currently licensed acupuncturists (576), practitioners of Oriental medicine (260) and physician-acupuncturists (130) will benefit from the clarity provided by the amendments to the regulations.

(11) 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 regulations.

No. There are no Federal licensure standards for practitioners of Oriental medicine or acupuncturists.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The final-form rulemaking will not negatively affect Pennsylvania's ability to compete with other states. Instead, the rulemaking will make it easier for Pennsylvania to compete with other surrounding states by easing licensure requirements for those acupuncturists and practitioners of Oriental medicine who wish to become licensed in this Commonwealth.

Specifically, the final-form rulemaking enables the Board to approve examinations and certification programs that are deemed by the Board to be equivalent to the NCCAOM while many surrounding states do not have that option. States such as Connecticut, New Hampshire, New Jersey, Ohio, Rhode Island do not offer an alternative to the examinations and certifications offered by NCCAOM. This could create the need for regulatory amendments for those states if another organization begins offering acupuncture and Oriental medicine examinations and certifications. Pennsylvania, along with states such as Delaware, Maine, Maryland, Vermont, West Virginia, and New York will not have that issue since they all allow for alternative Board-approved providers.

Similarly, the final rulemaking broadens the avenues in which an applicant can establish English proficiency, including the option to allow the Board to approve equivalent English proficiency examinations that are not identified in the regulations. The Board has not received any applications in the last 4 years for acupuncturists or practitioners of Oriental medicine who have had to establish English proficiency; therefore, the Board does not anticipate receiving many applications where the applicants have to establish English proficiency. Nevertheless, when the Board receives an application where English proficiency must be established, the Board wants to ensure that applicants have an easy way to demonstrate English proficiency, including successful completion of the outdated versions of the TOEFL, taking their education program or examination in English, taking the OET or taking another equivalent English proficiency examination.

The goal of the Board is not to add additional barriers to applicants but instead to allow them to utilize what they may have already completed such as English proficiency examinations that they may have taken in the past. There are two surrounding states in line with Pennsylvania that allows applicants to establish English proficiency through the TOEFL or other Board-approved examinations - Delaware and New York. Several states utilize the TOEFL, but either fail to state an acceptable score or still list the acceptable score for the PBT, which is no longer offered by TOEFL (New Jersey, Ohio, and Rhode Island). This can be misleading to applicants because the TOEFL does not offer a pass/fail score. Instead, they offer a scaled score which allows the different agencies utilize the examination to determine what score is acceptable. The final-form rulemaking not only outlines the acceptable scores on all versions of the TOEFL, but it also allows a lower score than any of the surrounding states which do specify a passing score. For example, Maryland requires a score of 577 on the PBT, a 233 on the CBT and a 90 on the IBT, while the final form rulemaking accepts a 550 on the PBT, a 220 on the CBT and an 83 on the IBT. This lower acceptable score may place the Commonwealth at a competitive advantage while still ensuring that the passing scores are comparable to the original regulation score approved by the Board. Massachusetts is different from all surrounding states because while they allow for the TOEFL, they also permit an applicant to certify that they will use an interpreter in the scenario where they cannot communicate with a patient. There are a few surrounding states that do not require English proficiency such as Connecticut, Maine, Vermont, West Virginia, and New Hampshire. However, the Board has deemed it necessary to require English proficiency for the safety of the patients as outlined in #10 above. Given all the ways in which an applicant can establish English proficiency, this requirement would not place the Commonwealth at a competitive disadvantage. Additionally, in the last four years, there have been no applicants for licensure as an acupuncturist or practitioner of Oriental medicine that have had to establish English proficiency. The Board's decision to retain the biennially renewed license for practitioners of Oriental medicine is consistent with some of the surrounding states such as Ohio and Delaware. Other surrounding states

require additional certification to practice herbal therapy, including Maine, Massachusetts, and New Jersey. While several surrounding states do not have a separate authorization to practice herbal therapy (Connecticut, Delaware, Maryland, New Hampshire, Vermont, West Virginia, and Rhode Island), the Board does not believe that this will place the Commonwealth at a competitive disadvantage. Especially since these states still require extra training in the practice of herbal therapy even though only one license is required. Some acupuncturists do not want to practice herbal therapy, so to make herbal therapy courses a requirement for licensure would be an unnecessary burden for some practitioners. Additionally, the Board has already utilized this second license type for Oriental medicine, and it has not caused any problems to date.

Finally, the Board notes that its decision to discontinue the use of “Chinese” herbology is also consistent with several surrounding states. The final-form rulemaking refers to East Asian herbology, which is an accurate and appropriate term which is utilized by a few surrounding states such as Maryland and New Jersey. Other surrounding states do not refer to “Chinese” herbology, but instead just to herbal therapy (Massachusetts, Vermont, and Ohio). Some states still use the term “Chinese,” but the Board does not believe updating this term to “East Asian” will create a competitive disadvantage in the Commonwealth but will instead reflect that the Board has updated its terminology to accurate and appropriate terms.

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

The final-form regulation amends the pertinent regulations within the jurisdiction of the Board. The acupuncture and practice of Oriental medicine is referenced in the regulations of the State Board of Chiropractic. *See* 49 Pa. Code § 5.81(1)(xv)). However, the State Board of Chiropractic’s regulation relates to a prohibition on the practice of acupuncture unless licensed as an acupuncturist and the reference to Oriental medicine is merely utilized by describing the title of the State Board of Medicine’s regulation.

The State Board of Osteopathic Medicine also has regulations related to the practice of acupuncture. *See* 49 Pa. Code § 25.301-25.308. As the State Board of Osteopathic Medicine is a distinct licensing board which also has statutory jurisdiction over the practice of acupuncture, the Board’s final-form rulemaking will not affect the State Board of Osteopathic Medicine’s regulations.

The Pennsylvania Department of Health has promulgated regulations related to photo identification badges which must be worn by employees providing care in a health care facility, at the private practice of a physician, and outside of a health care facility or employment agency. Those regulations require that the photo identification badge must include the employee’s full name (at a minimum, first and last name) and the employee’s title. *See* 28 Pa. Code §§ 53.1-53.5. Consequently, the name tag requirement in this rulemaking appears to be in harmony with the Department of Health’s requirements.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

All the Board’s rulemaking proposals are discussed in public committee meetings which are routinely attended by representatives of the public and the regulated community. The Board circulated four exposure draft revisions to over 200 individuals/organizations and held four committee meetings over approximately 9 months in an effort to solicit and reach consensus within the public and regulated

community on as many points as possible. The following individuals/organizations attended the public committee meetings and/or provided specific comments:

- Tansy Madrone Briggs, DACM, L.OM.
- Mikael Bruker
- Susan DeSantis, PA-C, *Pennsylvania Society of Physician Assistants*
- Frances Desmone, L.Ac.
- Laura Ellis
- Dana DePaul Ellis, MSTOM
- Bethleigh Flanagan L.OM.
- Cara O. Frank, L.OM.
- Amy Green
- Benjamin W Griffith, II, M.Ac., L.Ac., *Won Institute*
- Rosanna Giuliani
- Sarah Heiber, L.Ac.
- Jeremy Irvine
- Michael Keane
- Jason Krantz L.Ac., Dipl.Ac.
- Doreen F Lafferty M.Ac., L.Ac., Dipl.Ac., OTR/L, LMT
- Mina M. Larson, M.S., MBA, CAE, Deputy Executive Director, *National Certification Commission for Acupuncture and Oriental Medicine*
- Janet Leidy
- Andrew Macfarlane MS, L.Ac.
- David E. Molony
- Stephanie Massimini, L.Ac.
- Steve Mavros, L.OM.
- Timothy James McCormick, Dipl.L.OM.; CES
- Tanya Miller, MS, LAT, ATC, *Pennsylvania Athletic Trainers' Society*
- Ted Mowatt, CAE, *Wanner Associates for Ass'n for Prof. Acupuncture in PA*
- Ruth Neely, POM
- Arya Nielsen, PhD, Assistant Clinical Professor, *Icahn School of Medicine at Mount Sinai*
- Edward L. Nielsen, M.H.S, *Pennsylvania Chiropractic Association*
- Bobbie Jo Putnam
- Jeremy E. Reidy, D.OM.
- Cynthia Rish, *Rish Law Office, LLC*
- Wesley J. Rish, Esq., *Rish Law Office, LLC*
- Lester Rolf
- Adam Schreiber, L.OM.
- Jamie Scott, L.OM.
- Alicia Shulman, L.Ac., Dipl.Ac.
- Heather Shultz, *Ass'n for Prof. Acupuncture in PA*
- Michael Siget, Esq., *PA Medical Society*
- Jennifer Sobonski, RN, BSN, LOM, MSTOM
- Jacqueline Stefanski, L.Ac.
- Daniel Tague, Acupuncturist, L.Ac., Dipl.Ac.
- Shelby Walters

In addition, the Board received a Change.org petition with in excess of 1,200 participants regarding the consideration of a reduction in the educational requirement for other health care practitioners to obtain licensure as an acupuncturist. In excess of 90% of participants explicitly or implicitly indicated that they did not agree with the proposal to reduce the education requirement. Only approximately 3% were in favor of the proposal, which has been eliminated from the rulemaking.

The Board published notice of proposed rulemaking at 52 Pa.B. 985 (February 12, 2022), for 30 days of public comment. The Board did not receive any public comments. IRRC submitted comments. Neither the House Professional Licensure Committee (HPLC), nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) submitted comments.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The Board licenses approximately 260 practitioners of Oriental medicine and 576 acupuncturists. Practitioner of Oriental medicine is not a recognized occupational subset by the Pennsylvania Department of Labor and Industry (L&I), Center for Workforce Information & Analysis. However, acupuncturists are included in a category of employment referred to as "Health Diagnosing & Treating Practitioners (Other)."

Given the related nature of job functions, practitioners of Oriental medicine and acupuncturists were both considered to be “Health Diagnosing & Treating Practitioners (Other)” when analyzing the effect of the regulation. An additional 130 individuals are licensed as physician-acupuncturists.

For the business entities listed above, small businesses are defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration’s (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). Acupuncturists’ offices are included in the NAICS size standards for “Offices of All Other Miscellaneous Health Practitioners” (code 621399). Similarly, “Offices of All Other Miscellaneous Health Practitioners” (code 621399) was utilized as the most closely aligned with the services of practitioners of Oriental medicine. Per the SBA’s Table of Small Business Size Standards, the NAICS threshold for small businesses in this category is \$9.0 million or less in total income annually. Physician-acupuncturists are included in the NAICS size standards for “Offices of Physicians (except Mental Health Specialists)” (code 621111). Per the SBA’s Table of Small Business Size Standards, the NAICS threshold for small businesses in this category is \$14 million or less in total income annually. As the Board does not collect data on the estimated annual income of its licensees, it is assumed that many acupuncturists and practitioners of Oriental medicine are either employed by or, if self-employed, qualify as a small business.

Licensees who are self-employed or employed in small businesses will generally not be significantly affected by the final-form rulemaking. Some of the rulemaking provisions have already been implemented because they were a statutorily imposed change (e.g. requirement for professional liability insurance). Some amendments were made as an accommodation to applicants due to intervening changes made by a third-party testing organization to its methods of administering and scoring of the English proficiency examination. The changes involving English proficiency would have a positive impact on self-employed licensees and small businesses because it provides an expanded list of opportunities to demonstrate English proficiency, some of which would be at no additional cost to the applicant or the small businesses that may be willing to pay that cost. The remaining rulemaking provisions delete outdated regulations and not expected to impact current licensees (e.g., deletion of references to the method for individuals to obtain licensure prior to January 1, 1988).

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All 926 individuals currently licensed as an acupuncturist, practitioner of Oriental medicine or physician-acupuncturist will be required to comply with the regulation, as well as all future applicants for licensure. The Board estimates that it receives approximately 12 applications for acupuncturists and practitioners of Oriental medicine annually.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulation includes the statutorily mandated professional liability insurance requirement which was implemented by the Board in 2014. The Board is merely updating its regulations to comport with the statutory requirement. However, to the extent that the costs for professional liability insurance can be associated with this regulation, the Board estimates that the median cost of professional liability insurance for acupuncturists and practitioners of Oriental medicine to be \$425 per year. Physician-acupuncturists

were already subject to mandatory professional liability requirements as all physicians are subject to the Medical Care Availability and Reduction of Error (MCare) Act provisions requiring professional liability insurance at 40 P.S. § 1303.711 (relating to medical professional liability insurance).

Apart from several instances of clarifying regulations to provide better guidance to the regulated community and to make the associated regulations conform to amendments to the ALA since the last rulemaking on the subject, the Board does not anticipate any additional financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations.

The regulated community of acupuncturists, practitioners of Oriental medicine and physician-acupuncturists will benefit by the clarity provided by the updated regulations, which now comport with recent statutory amendments, and clarify practice responsibilities. Applicants will also benefit from the expanded options for demonstrating English-language proficiency. An applicant was already able to establish English proficiency by taking their examination in English or by receiving a score of 550 the TOEFL PBT (paper-based test). Applicants will now have the additional option to demonstrate English proficiency by establishing that they received their education in English or through expanded selections of English proficiency examinations. The final-form rulemaking allows the Board to accept various versions of the TOEFL, including the internet-based test (IBT[®]), the computer-based test (CBT[®]) and the paper-based test (PBT[®]), the Occupational English Test (OET[®]) and any other English proficiency examination deemed equivalent by the Board. The Board notes that it will keep a list on its website of all acceptable examinations. The expansion of avenues to demonstrate English proficiency will ease licensure barriers and lower financial impact on the applicants because they will not have to pay for and take an English proficiency examination if they are able to establish that they 1) took their examination in English, 2) attended an English-speaking education program, or 3) already received an acceptable score on the OET or any version of the TOEFL. However, if an applicant has not done any of these things, they would have to take the TOEFL IBT, the OET examination or another equivalent Board-approved English proficiency examination. There would be no new financial impact on an applicant to take the TOEFL because it is already a requirement in the existing regulations. However, if the applicant takes the OET examination to meet the English proficiency requirement, there would be an increased cost as compared to taking the TOEFL, which is the examination accepted under the existing regulations. While there may be an increased cost to take the OET, the individual is not required to take this examination. The Board is providing this as an option so that applicants have a variety of ways to show English proficiency. If the applicant chooses to take the OET, the financial impact to take the OET is \$400 USD. However, the TOEFL examination remains an option and is less costly at \$100.

Consumers of acupuncture benefit from the professional liability insurance requirement because they will have recourse in the event an acupuncturist or practitioner of Oriental medicine engages in malpractice. The professional liability insurance requirement would also benefit licensees because it protects their personal assets in the event of a lawsuit or claim.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation will update terminology utilized in the regulation when appropriate; provide better guidance to the regulated community and the public regarding practice requirements, licensure requirements, and applicable exceptions; and will make the associated regulations conform to statutory amendments to the ALA since the Board's last rulemaking on the subject. The benefit of the requirement of professional liability insurance was apparently determined by the General Assembly to outweigh the cost (estimated at \$425 per year). Professional liability insurance protects consumers of acupuncture and

also protects the personal assets of licensed acupuncturists and practitioners of Oriental medicine. These benefits outweigh the costs associated with compliance. The regulation will also expand the list of opportunities for an applicant to establish English proficiency, including the ability to establish English proficiency by demonstrating that they received their acupuncture education in English or through expanded options of English proficiency examinations. This can include outdated versions of the TOEFL examination which may have been taken by the applicant in the past. This provides cost free alternatives to applicants to establish English proficiency.

(19) 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. Explain how the dollar estimates were derived.

There may be some savings to the regulated community for those applicants who need to establish English proficiency if that applicant took their examination in English or attended an English-speaking education program. If not, the applicant would have to establish English proficiency through a Board-approved English proficiency examination. The Board's existing regulations require an applicant to receive an acceptable score on the TOEFL. The final-form rulemaking approves additional English proficiency examinations, some with no additional cost to the applicant, such as providing proof that they successfully took an outdated version of the TOEFL, proof that they already received an acceptable score on the OET or that they have received a passing score on another English proficiency examination deemed equivalent by the Board to the TOEFL and OET. For those applicants that did not take their education or examination in English and did not already take and pass an English proficiency examination, the existing regulations would require them to take the TOEFL. The final-form rulemaking allows the additional option to take the OET. If the applicant takes the OET examination to meet the English proficiency requirement, there would be an increased cost as compared to taking the TOEFL, which is the examination accepted under the existing regulations. While there may be an increased cost to take the OET, the individual is not required to take this examination. The Board is providing this as an option so that applicants have a variety of ways to show English proficiency. Additionally, under the final-form rulemaking, the applicant can demonstrate English proficiency if they have taken another English proficiency examination which, after review by the Board, is deemed equivalent to the TOEFL and OET examinations. While the Board is not aware of an equivalent examination at this point, there may be at some point in the future.

It should be noted that in the last four years, the Board is not aware of any applicant who has had to take the TOEFL examination for licensure as an acupuncturist or practitioner of Oriental medicine. So, while the expanded options are available to establish English proficiency, it will not likely be utilized often for these license types.

There may be additional cost for applicants to translate their education verification, if the documents are not in English, which can run approximately \$20-\$25 per page. Again, in the last four years, the Board has not needed to request translation of any education verification.

There will also be costs to the regulated community that are associated with the professional liability insurance requirement which was imposed by the General Assembly and implemented by the Board in 2014. This cost is estimated at approximately \$425 per year for each acupuncturist and practitioner of Oriental medicine. (Note: physician-acupuncturists were not included in any calculations because physicians are separately required to maintain professional liability insurance under the MCare Act, and have been since at least 2002.)

The costs for professional liability insurance presented in section (23) were derived as follows:

FY 21-22 – 800 acupuncturists/practitioners of Oriental medicine x \$425 = \$340,000
FY 22-23 – 812 acupuncturists/practitioners of Oriental medicine x \$425 = \$345,100
FY 23-24 – 824 acupuncturists/practitioners of Oriental medicine x \$425 = \$350,200
FY 24-25 – 836 acupuncturists/practitioners of Oriental medicine x \$425 = \$355,300
FY 25-26 – 848 acupuncturists/practitioners of Oriental medicine x \$425 = \$360,400
FY 26-27 – 860 acupuncturists/practitioners of Oriental medicine x \$425 = \$365,500

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no expected costs or savings for local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Other than the costs to promulgate this regulation, there are no expected costs or savings to the Board, the Department or state government generally associated with the final-form rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The Board is unaware of any legal, accounting or consulting procedures which will be required for implementation of the regulation by organizations or individuals. The regulated community of licensed acupuncturists and practitioners of Oriental medicine is required to submit additional paperwork demonstrating compliance with the professional liability insurance requirements.

(22a) Are forms required for implementation of the regulation?

Yes.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The initial application forms for licensure as an acupuncturist or as a practitioner of Oriental medicine are online forms that have been revised to include the professional liability insurance requirement. The Board is attaching the application checklists for initial licensure as an acupuncturist and as a practitioner of Oriental medicine that show the revised requirements, which include the expanded English proficiency options and the required professional liability insurance. (See, Attachment "A")

(23) 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 21-22	FY +1 22-23	FY +2 23-24	FY +3 24-25	FY +4 25-26	FY +5 26-27
SAVINGS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$0	\$0	\$0	\$0	\$0	\$0
COSTS:						
Regulated Community	\$340,000	\$345,100	\$350,200	\$355,300	\$360,400	\$365,500
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$340,000	\$345,100	\$350,200	\$355,300	\$360,400	\$365,500
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -2 20-21 (actual)	FY -1 21-22 (actual)	FY -1 22-23 (estimated)	Current FY 23-24 (budgeted)
State Board of Medicine	\$7,669, 209.91	\$6,789,149.62	\$6,978,000.00	\$6.993,000.00

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

The Board could perceive no particular needs that needed to be accommodated.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Practitioner of Oriental Medicine:

The Board was asked to consider eliminating the current licensure classification of practitioner of Oriental medicine, which had been created by Board regulation in 2007. The Board first considered eliminating the licensure classification as a practitioner of Oriental medicine completely and permit all acupuncturists to engage in herbal therapy without education or examination. While this would result in the most cost savings to the regulated community, significant concern was raised whether such an approach would be in the best interest of the public health and safety. There is a potential for significant harm when utilizing misidentified herbs, when utilizing herbs and minerals in an improper combination, or when certain herbs or minerals are improperly combined with Western pharmaceuticals. Therefore, the Board rejected the proposal to completely eliminate the separate authorization to practice herbal therapy and to allow any licensed acupuncturist to engage in East Asian herbal therapies without any demonstration of minimum education and testing.

The Board next considered requiring acupuncturists who wish to practice herbal therapy to complete the additional (fourth) year of education, pass the examination (or obtain appropriate certification from the Board's currently recognized accrediting agency, the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM®)) and merely maintain and produce evidence of having received appropriate NCCAOM certification and/or passing of the relevant NCCAOM examination currently required for licensure as a Practitioner of Oriental Medicine. However, this approach would have made it difficult for the public to be able to search for persons properly educated in East Asian herbology by utilizing the Department's license verification website. Additionally, such a regulatory approach would have placed the onus on the public to individually educate themselves on appropriate industry standards regarding acupuncture and East Asian herbology education providers, appropriate testing agencies, and appropriate minimum passing scores to determine competency.

Ultimately, the Board decided to maintain the separate license as a practitioner of Oriental medicine, with the Board selecting an appropriate education accreditation organization and acceptable testing services, as the least burdensome acceptable alternative.

Reduction of education for non-physician health care practitioners

During its research and exposure draft discussions, the Board also considered whether it was appropriate to reduce the minimum number of educational hours necessary for licensure as an acupuncturist for non-physicians already licensed as another type of health care practitioner (e.g. chiropractor, certified registered nurse practitioner, physician assistant, physical therapist, etc.). The Board requested comments regarding the concept which would, if promulgated, reduce the required education for persons currently licensed in the Commonwealth as a physical therapist or chiropractor to some lesser number of hours than the minimum 1,905 credit hours required to obtain an acupuncture degree from an NCCAOM accredited school (for the sake of fostering initial discussion on the topic, the board offered 400 credit hours as a possibility).

The Board received significant feedback during review of the relevant exposure drafts calling into question the necessity and wisdom of reducing, by regulation, the number of hours of education necessary to provide treatment modalities based upon East Asian theories simply because an individual had received training in anatomy and physiology which was applied utilizing Western therapies. Acupuncture education providers noted that they already routinely provide candidates possessing appropriate advanced medical education with credit towards normally required courses on anatomy, physiology, etc. This results in affected health care practitioners often being awarded approximately 700 credit hours (1 year of study) by acupuncture schools. The remaining credits of acupuncture education typically involve Eastern

medical theories and practice which would not have been part of a standard physical therapy or chiropractic education.

The Board also noted that subsections 3(a) and 3(b) of the ALA, 63 P.S. §§ 1803(a) and 1803(b), specifically requires physicians (i.e. medical doctors and doctors of osteopathic medicine) to obtain a separate license as an acupuncturist and to be properly trained by education or demonstrated experience in the practice of acupuncture before receiving the license. The Board further noted that while the ALA authorizes dentists, podiatrists, and veterinarians to perform acupuncture without a license from the State Board of Medicine or State Board of Osteopathic Medicine; such practice of acupuncture is limited to only circumstances when it is performed in connection with the practice of dentistry, podiatry, or veterinary medicine (as applicable). Therefore, the scope of acupuncture treatment would necessarily be limited to only treatment of animals or specific areas of the body, and the respective licensing boards must separately determine that the individual has the "proper education or demonstrated experience" in acupuncture. See section 3(h) of the ALA, 63 P.S. § 1803(h).

Consequently, it appeared to the Board that when the General Assembly passed the ALA, it recognized that even advanced Western education in physiology, biology, and anatomy received by medical doctors and doctors of osteopathic medicine was insufficient to properly prepare physicians (and other health care providers) to successfully employ acupuncture treatments based on Eastern treatment modalities without sufficient additional education. Ultimately, the Board determined that it was not necessary or appropriate to specify, via regulation, a specific reduction in the minimum number of educational hours for chiropractors or physical therapists (or other similarly licensed individuals) to obtain licensure as an acupuncturist. Instead, the Board determined that the nationally accredited acupuncture education institutions were in the best position to evaluate education, and were already awarding credit hours to a potential student based on the student's own demonstrated knowledge and experience.

Proposal to change the term "Oriental medicine"

As part of the rulemaking, the Board was also asked to explore the feasibility of eliminating the words "Oriental" and "Chinese" from the regulations. Comments from interested stakeholders, additional research, and discussions with the public during Board committee meetings revealed that the term "Oriental medicine" is the generally accepted term of art within the regulated community and is recognized and understood by members of the public who wish to seek those types of services. Interested stakeholders noted that the use of the term "Oriental" only occurs in conjunction with the term "medicine;" therefore, it is being utilized as an adjective to describe the geographic area from which the underlying philosophies and treatments historically originated --- the Orient. The stakeholders further noted that the term "Oriental" is utilized as an adjective to differentiate the philosophies and treatments from what might be thought of as "Western" or "Occidental" medicine, based on where those treatment philosophies originated.

The Board also noted that the term "Oriental Medicine" continues to be used within the name of the specialized school accrediting body recognized by the United States Department of Education (the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM®)), the name of the certifying body recognized/accepted by the Board as well as approximately 45 other states (the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM®)), the name of one of the two recognized programs of study by NCCAOM (Oriental Medicine Program), and is part of the school name of at least 15 ACAOM accredited and candidate schools. The Board has no effective ability to control the names utilized by other organizations such as accrediting bodies, certification bodies, schools, and the names those organizations may utilize to describe the programs of instruction and examinations

they offer. Consequently, completely removing the term "Oriental" from the regulations would likely lead to confusion among the licensee and consuming public, as the term continues to be utilized by nationally recognized bodies.

The Board noted during its exposure draft outreach and committee meetings that there was overwhelming opposition within the regulated community itself to changing the title of the authorization to practice from "practitioner of Oriental medicine" to "practitioner of East Asian herbology" or some other title. The Board also considered the potential impact on the regulated community which may occur by changing the name of the authorization from its current "practitioner of Oriental medicine" to some other title. Individuals who previously obtained services from a practitioner of Oriental medicine may become confused regarding the services which may be lawfully provided if practitioners are required to describe his/her practice utilizing a new term. Additionally, practitioners who lawfully obtained advertising and other materials which employed the regulated name "practitioner of Oriental medicine" might be required to undergo the expense of changing that advertisement to match whatever title was utilized to take its place as the regulated name for the profession.

Similarly, utilizing terminology which is different than that used by the nationally accepted certifying and accrediting bodies and accredited educational facilities could lead to reasonable concern by the public whether a practitioner holding oneself out under a different title is truly qualified to engage in the activities formerly associated with a practitioner of Oriental medicine. Finally, the Board considered whether the selection of a different and unique title not generally recognized or understood by other jurisdictions may impact the portability of licensure.

Given the potential confusion by the public regarding the scope of licensure and services which may be provided by an individual currently licensed as a practitioner of Oriental medicine if a unique term was utilized, the lack of support within the regulated community to alter the name of the authorization to practice, and the potential economic impact on the regulated community by altering the name, the Board maintains the name of the authorization to practice herbal therapy as "practitioner of Oriental medicine."

Proposal to change the term "Chinese herbology"

The term "Chinese herbology" is also a term of art which appears to be generally accepted and utilized within the regulated community. However, unlike the phrase "Oriental Medicine," the phrase "Chinese Herbology" was noted by the regulated community to be slightly misleading in that it is generally associated with the traditional herbal practices and medical theories utilized not only in mainland China, its special administrative regions, and Taiwan, but also both Koreas, and Japan.

During committee meetings, several alternative terms were discussed, including simply "herbology," "Asian herbology," "Eastern Asian herbology," and "East Asian herbology." The alternative term which appears to be most acceptable to the regulated community and the least likely to cause confusion with the public is "East Asian herbology."

The Board initially considered, but rejected, employing the simple term "herbology" because the word "herbology," without further modification appeared to be overly broad. Another registration category which will be regulated by the Board, doctors of naturopathic medicine, also typically utilizes herbs, minerals, and compounds as part of their practice (albeit, utilizing herbs generally native to the Americas and based on "Western" herbal philosophies). Consequently, the term "herbology," without further modification, was deemed to be too broad to accurately reflect the intended scope of practice for a practitioner of Oriental medicine.

Similarly, “Asian herbology” was considered but rejected because it, too, could imply the inclusion of traditional herbal practices and theories which may be inconsistent with traditional herbs and herbal theories from China, Taiwan, Korea and Japan. The term “Asian herbology” would include herbal therapies and theories from all areas of Asia; including India, Saudi Arabia, and north-central Russia. Those locales have their own distinct herbal remedy traditions and may utilize herbs which do not naturally grow, and until recently, may have not been routinely available in areas which traditionally employed what the current regulations refer to as “Chinese herbology.” Consequently, the potential substitution of “Asian herbology” for “Chinese herbology” did not appear to result in a proper delineation of the historic traditions and herbs of what the current regulations refer to as “Chinese herbology,” with those found in other parts of Asia.

“Eastern Asian herbology” likewise suffered from encompassing too broad of a geographic area in its potential reach. Eastern Asia could be utilized to describe such divergent areas such as significant portions of the Russian Federation, the Republic of the Philippines, the Kingdom of Thailand, and the Republic of Indonesia – countries which have land masses at similar longitudes as countries which utilize traditional “Chinese herbology,” but which do not necessarily share the same herbal theories and traditions.

“East Asia” is a generally recognized geographic term encompassing the countries/territories commonly known as China, Hong Kong, Japan, Macau, Mongolia, North Korea, South Korea and Taiwan. As the geographic term “East Asia” generally encompassed the same landmasses as which utilized traditional “Chinese herbology,” the phrase “East Asian herbology” was selected as the most appropriate substitute term for “Chinese herbology” and, where appropriate, the Board has substituted “East Asian herbology” for that term. Additionally, the Board has also created a new definition of “East Asian herbology” to assist the public and regulated community in understanding the scope of the practice. It should be noted that the Board retains several references to “Chinese herbology” within the regulations; those instances were necessitated by circumstances where a third-party certifying organization requires completion of a specified examination or educational program and the examination/educational program continues to utilize the term “Chinese herbology” within the name.

Diagnosis by a physician, dentist or podiatrist

The final-form rulemaking will incorporate statutory amendments to the ALA made by Act 134 of 2014. Act 134 of 2014 amended the ALA to authorize acupuncturists to treat individuals who do not present any symptoms of a condition for an unlimited period of time. The Board amends its regulations to more clearly state when an acupuncturist may provide services without having received a diagnosis from a physician, dentist, or podiatrist.

The Board did receive a comment during consideration of the various exposure drafts inquiring why the board’s regulation specified that the diagnosis must be performed by a physician, dentist or podiatrist instead of including other practitioners who may be authorized to diagnose conditions, such as chiropractors. The Board notes that the General Assembly specified in section 3.1 of the ALA (63 P.S. § 1803.1) that the required diagnosis be made by a “physician, dentist or podiatrist.” The Board further noted that the General Assembly had specified the licensure categories which could provide the diagnosis; it did not utilize generalized terms or descriptions of persons who could provide the diagnosis, such as “an independent health care practitioner,” “primary care provider,” etc. The General Assembly also did not specifically authorize the board to extend by regulation the permissible classifications which may provide a diagnosis. Consequently, it appears that the General Assembly did not wish other licensure categories to provide the requisite diagnoses and the Board did not alter the text in response to the comment.

Name Tags

The Board also received an inquiry during review of the various exposure drafts regarding what was perceived to be a new requirement that persons licensed as an acupuncturist wear a name tag or badge with their title and prohibiting the use of word “doctor” or “physician” on the badge. The Board notes that the current regulation at § 18.15(b) already requires the use of a name tag or badge which (a) includes the individual’s title as ‘acupuncturist’ or “practitioner of Oriental medicine” and (b) prohibits utilizing the word “doctor” on the name tag or badge. Consequently, the requirement of a badge or name tag is not a new requirement, it is simply being clarified within the regulation.

The Board further noted it is relatively common for health care licensing boards to require that name tags and advertisements include other descriptors to ensure that there is no confusion regarding the education and nature of practice of the practitioner. See e.g., 49 Pa. Code § 18.171(d) (requiring physician assistants to wear an identification tag which uses the term “Physician Assistant” in easily readable type); 49 Pa. Code § 33.201 (prohibiting dentists from advertising as “Dr.” or “Doctor” without also utilizing a professional designation or title which indicates that the individual is licensed as a dentist); 49 Pa. Code § 40.55 (requiring physical therapists to identify themselves as a physical therapist to patients). Other allied health professionals currently licensed by the Board (i.e. certified nurse midwives, respiratory therapists, perfusionists, etc.), are not typically awarded a doctorate upon graduation from their education institution and, therefore, would typically not have obtained an academic degree which would entitle them to utilize the term doctor. By contrast, the ACAOM has established standards for doctorate level programs in both acupuncture as well as Oriental medicine. See, <http://acaom.org/comp-standards-7/>.

Additionally, for acupuncturists and practitioners of Oriental medicine who elect to provide services in certain locations (e.g. a health care facility or private physician’s office) the Pennsylvania Department of Health has promulgated regulations related to photo identification badges which must be worn by employees. See, 28 Pa. Code, Chapter 53 (relating to Photo Identification Badges). In summary, Department of Health regulations require employees in a health care facility, at the private practice of a physician, and outside of a health care facility or employment agency to wear a the photo identification badge which includes, among other things, the employee’s full name (at a minimum, first and last name) and the employee’s title. Consequently, a number of acupuncturists and practitioners of Oriental medicine may already be required to wear a name tag due to Department of Health regulations.

The general public typically correlates a medical practitioner holding him or herself out with the title “doctor” or “physician” as being an individual who has obtained training according to Western philosophies and has received a degree and licensure as a medical doctor or doctor of osteopathic medicine. The Board notes that the word “physician” is generally defined in Pennsylvania as being a person licensed as a “medical doctor or doctor of osteopathy”. See e.g. section 2 of the MPA, 63 P.S. § 422.2 (relating to definitions) at Physician. See also section 1991 of the Statutory Construction Act, 1 Pa. C.S. § 1991 (relating to definitions) at physician.

The ALA specifically envisions the individuals who have receive a degree and licensure as a medical doctor, or doctor of osteopathic medicine, would also seek and obtain a separate license as an acupuncturist, and 141 individuals are licensed as both a medical doctor and an acupuncturist. Consequently, it is reasonably foreseeable that there could be two acupuncture licensees practicing in the same facility who have both earned doctorate-level degrees; one who obtained a doctor of medicine degree, and the other who obtained a doctorate in acupuncture or Oriental medicine. Under such a circumstance, the acupuncturist in examination room A who is also licensed as a physician could lawfully

prescribe a patient a controlled substance and offer/perform surgical intervention, while the acupuncturist in examination room B who obtained a doctorate in acupuncture could not lawfully prescribe controlled substances or perform surgery. Allowing both individuals to hold out as a doctor could reasonably be expected to confuse the public without providing some method for the public to distinguish the authorizations held. Therefore, the Board declined to eliminate the name tag requirement.

To help ensure that the consuming public may properly differentiate between an acupuncturist/practitioner of Oriental medicine who has obtained a doctorate in acupuncture or in Oriental medicine (i.e. a doctorate based on Eastern medical philosophies), with an acupuncturist who has also obtained a license as a medical doctor in the Commonwealth (i.e. based upon Western treatment philosophies), to resolve the previously noted discrepancy between the heading of the relevant section and the wording of the section, and to provide greater clarity to the regulated community and public, the Board separates the duties and responsibilities, including the requirements for name tags or badges, by the types of license/registration actually held.

Under the revised § 18.15, an individual who holds a license as a practitioner of Oriental medicine, would be authorized to utilize a name tag or badge which corresponds with that license – “Practitioner of Oriental medicine,” (245 practitioners) whereas an individual licensed solely as an “Acupuncturist” would be authorized to wear a name tag utilizing the title “Acupuncturist” (555 practitioners). However, unless licensed as a physician-acupuncturist, an acupuncturist or practitioner of Oriental medicine would not be permitted to utilize the words “Doctor” or “physician” on a name tag.

With respect to physician-acupuncturists (i.e. those licensed as medical doctor and also licensed as an acupuncturist), the concern that the general public may inadvertently confuse the scope of education or permitted practice with that which is typically expected is not present. Consequently, the regulations would not prohibit a physician-acupuncturist from utilizing the term “physician” or “doctor” on name tags or badges (141 practitioners).

English proficiency examination

The Board’s regulations currently in effect with respect to acupuncturists require applicants for licensure to either have completed the required examination in English, or for applicants who completed the examination in a language other than English, to also demonstrate English proficiency via a specified score on the TOEFL.

During its review, the Board considered whether maintaining an English proficiency requirement was appropriate. The Board noted that, as a practical matter, many of the other licensure categories administered by the Board also have an English proficiency component as part of the required licensing examination, as an accreditation requirement for the educational institution, or as an independent admission requirement for initial education. By way of example, for approximately the last 30 years the typical medical doctor seeking licensure in United States has been required to successfully pass the United States Medical Licensing Examination (USMLE). That examination is only provided in English. Other health care practitioners such as osteopathic physicians, nurses, pharmacists, and physical therapists have a similar English proficiency requirement, either specifically within regulations, as a function of a national test only offered in English, or as an admission requirement of accredited institutions.

The Board further noted that the ALA requires that an acupuncturist refer patients presenting with extended-term symptoms of a condition to a physician, dentist or podiatrist for diagnosis. The Board’s regulations (both currently, and as final) also require referral of a patient to other health care practitioners when acupuncture or East Asian herbology are contraindicated or cause a worsening of conditions.

Consequently, it is clear that in both statute and regulations, acupuncturists are anticipated, and required, to be part of a larger health care team -- a team which as previously noted, requires other practitioners to demonstrate English proficiency as a stated or implicit licensure requirement.

Maintaining this common language requirement throughout health care practitioners is likely to foster speedy and accurate transmission of information regarding health care related issues. There is a clear potential for patient harm which could be directly caused by, or exacerbated by, delayed communication between health care practitioners while contacting and awaiting the availability of a translation service, delays caused by the physical and mental act of translation via a third party, or by miscommunication between practitioners who do not both have sufficient proficiency in a common language.

The Board also completed a survey of acupuncture requirements in the Northeast region identified by the Governor's Executive Order and noted that a supermajority of states within the region have an English proficiency requirement for acupuncturists. The four states in the region which appear to have no requirement of English proficiency for acupuncturists are Connecticut, Maine, New Hampshire and Vermont. The remaining states which license acupuncturists and require some demonstration of English proficiency require either: successfully passing the licensure examination in English; completion of a minimum number of credits of undergraduate or professional education in an English-speaking school; or achieving a passing/acceptable score on the TOEFL or a similar English proficiency examination. Consequently, continuing to maintain an English proficiency requirement in Pennsylvania would not appear to place the Commonwealth at a competitive disadvantage, especially given that all of the states that are contiguous to Pennsylvania also require some demonstration of English proficiency. Given the determination that maintaining an English proficiency requirement was likely to increase public health and safety by fostering efficient and accurate communication amongst practitioners and would not likely place Pennsylvania at a competitive disadvantage when compared to contiguous and neighboring states, the Board maintains the minimal English proficiency requirement.

The Board next reviewed the current regulations with respect to the current English proficiency examination offered. Investigation revealed that the TOEFL examination has undergone substantial revisions since the Board last promulgated rulemaking on the subject. There is now only one version of the TOEFL examination which is currently offered: the TOEFL IBT (internet-based). There are older versions of the TOEFL including the PBT paper-based test and the computer-based test CBT. Complicating matters, the different TOEFL test variants utilize a different scoring method.

The Board considered the various English proficiency requirements for acupuncturists in the Northeast region via the other state boards which explicitly indicated acceptable TOEFL® scores. The Board noted that several states require achieving a passing/acceptable score on the TOEFL® or a similar English proficiency examination, but do not clearly state in law or regulation what is an acceptable score.

In Pennsylvania, for those individuals who do not take the accepted licensure examination in English, the current regulation also requires the applicant to demonstrate a scaled score of 550 on what is now known as the TOEFL PBT test – a test that is no longer offered. The TOEFL IBT test is currently offered and the Board accepts a total scaled score of 83 or higher on that version. The final-form rulemaking allows the Board to accept a score of 220 on the CBT (computer-based test) and a score of 550 on the PBT (paper-based test) versions. While the CBT and PBT versions of the examination have been discontinued, including these examination scores in the rulemaking will enable the Board to accept a passing score on these versions of the examination for those individuals who have taken the examination in the past. The Board concludes that a score of 83 on the current IBT version represents the average score attained by individuals taking the test for licensure purposes, as well as those taking the test overall.

The Board also determined that it should offer alternative means of demonstrating English language proficiency, including demonstrating that the applicant's acupuncture education program was conducted in English, or the applicant attained an acceptable score on the Occupational English Test (OET) for healthcare professionals or another English language proficiency examination approved by the Board, which is consistent with what other states in the region accept.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation implements several statutorily required provisions, including the statutory requirement that all acupuncturists (regardless of business size) obtain professional liability coverage of at least \$1 million; consequently, the regulation it is not expected to have a significant adverse impact on small businesses. The Board could perceive of no less stringent compliance or reporting requirements for individuals based on the size of business for which they work. Excluding an acupuncturist, practitioner of Oriental medicine or physician-acupuncturist from all or any part of the licensure requirements would be contrary to the statutory intent of the ALA and the public interest.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The data relating to licensure requirements in other states is summarized in the Executive Report on Occupational Licensing (Executive Report):

(<http://www.dos.pa.gov/ProfessionalLicensing/Documents/EO2017-03-Executive-Report-Occupational-Licensing.pdf>). The description of the data gathering methods are available in Executive Report.

In addition, information related to the various practices of states regarding scope of practice, licensing and testing requirements regarding Chinese herbology was obtained from the Board's currently recognized accrediting agency, the NCCAOM®.

See <https://www.nccaom.org/advocacy-regulatory/state-relations/>

The data reviewed by the Board in establishing the acceptable scaled score on the TOEFL® exam is available at the following link: https://www.ets.org/s/toefl/pdf/toefl_tsd_data_2019.pdf.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: The Board meets in public session 9 times each year. Upcoming dates are set forth in (30) below.
- C. The expected date of delivery of the final-form regulation: Spring 2023
- D. The expected effective date of the final-form regulation: Upon publication as final
- E. The expected date by which compliance with the final-form regulation will be required: Upon publication as final
- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board continuously evaluates the effectiveness of the Board's regulations and implementation of regulations. The Board discusses all regulatory proposals in conjunction with its regularly scheduled public meetings. The Board meets 9 times a year. The Board is scheduled to meet on the following upcoming dates in 2023: April 18, May 23, June 20, July 18, September 12, October 24, and December 12.

ATTACHMENT “A”

Evaluation results:

Board/Commission: Medicine**License Type:** Acupuncturist**Obtained By:** Application

CheckList Name	Instructions
Application	All applications are processed in order of submission. If this application is not completed <u>within six months</u> , updates of certain sections and/or supporting documents will be required. If the application has not been completed within one year from the date it was received, applicants will be required to submit a new application (<u>another application processing fee</u>) and supporting documents, as necessary.
Application Fee	NON-REFUNDABLE FEE in the amount of \$30.00 , made payable by credit/debit card. If the application has not been completed within one year from the date it was received, applicants will be required to submit a new application (<u>another application processing fee</u>) and supporting documents, as necessary.
Child Abuse CE	All health-related licensees/certificate holders and funeral directors are considered "mandatory reporters" under section 6311 of the Child Protective Services Law (23 P.S. § 6311). Therefore, all persons applying for issuance of an initial license or certificate from any of the health-related boards (except the State Board of Veterinary Medicine) or from the State Board of Funeral Directors are required to complete, as a condition of licensure, 3 hours of approved training by the Department of Human Services (DHS) on the topic of child abuse recognition and reporting. After you have completed the required course, the approved provider will electronically submit your name, date of attendance, etc. to the Bureau. For that reason, it is imperative that you register for the course using the information provided on your application for licensure/certification. A list of DRS-approved child abuse education providers can be found on the Department of State Website.
Criminal History Check	<p>Provide a recent Criminal History Records Check (CHRC) from the state police or other state agency that is the official repository for criminal history record information for every state in which you have lived, worked, or completed professional training/studies for the past five (5) years. The report(s) must be dated within 90 days of the date the application is submitted. For applicants living, working, or completing training/studies in Pennsylvania, your CHRC request will be automatically submitted to the Pennsylvania State Police upon submission of this application. The PATCH fee will be included at checkout. Your PA CHRC will be sent directly to the Board/Commission. You will be notified if additional action is required. For individuals living, working, or completing training/studies outside of Pennsylvania during the past five (5) years, in lieu of obtaining individual state background checks, you may elect to provide BOTH a state CHRC from the state in which you currently reside, AND your FBI Identity History Summary Check, available at https://www.fbi.gov/services/cjis/identity-history-summary-checks.</p> <p>Please note: For applicants currently living, working, or completing training/studies in California, Arizona, or Ohio: Due to the laws of these states, the Board is not an eligible recipient of CHRC's or your CHRC will not be issued to you for upload to the Board. Please obtain your Federal Bureau of Investigation (FBI) Identity History Summary Check, available at the link noted above.</p>
Databank Report	Provide an official notification of information (Self Query) from the National Practitioner Data Bank. Please refer to the NPDB website for additional information. When you receive the "Response to your Self Query," you will need to upload it to your online application. The report will need to be uploaded, where prompted, in order to submit your application.

CheckList Name	Instructions
Education Verification	Complete Section 1 of the Verification of Education (Form 2) and forward to your school for completion of Section 2. The school must return the completed verification <u>directly</u> to the Board. All documents must be in ENGLISH, or an official translation must be submitted to the Board from an official translation agency or professor of the language. The form will be available for download and printing when the application is submitted.
Educational Transcripts	<p>Request that your school provide an official transcript <u>directly</u> to the Board. If the official transcript does not provide detailed information regarding the courses attended from which the applicant's eligibility is determined, the Board retains the right to request a copy of the acupuncture school curriculum. All documents must be in ENGLISH, or an official translation must be submitted to the Board from an official translation agency or professor of the language.</p> <p>If your educational program or acupuncture examination was not taken in English, arrange for TOEFL (Test of English as a Foreign Language), OET (Occupational English Test), or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.</p> <p>All Board-approved English proficiency examinations will be listed on the Board's website.</p>
Exam Results	<p>Request the NCCAOM, or other examination provider approved by the Board, to submit the certifying examination scores directly to the Board. The NCCAOM, or other examination provider, must also verify completion of the Clean Needle Technique Course.</p> <p>All Board-approved acupuncture examinations will be listed on the Board's website.</p> <p>If your educational program or acupuncture examination was not taken in English, arrange for TOEFL (Test of English as a Foreign Language), OET (Occupational English Test), or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.</p> <p>All Board-approved English proficiency examinations will be listed on the Board's website.</p>
Letter of Good Standing (LOGS)	Contact the licensing authorities of the states, territories, or countries where you hold or have ever held a license, certificate, permit, registration, or other authorization to practice a health-related profession (whether active, inactive, expired, or current) and request letters of good standing/verification of licensure in that state or jurisdiction. The letter must include the following: license issue and expiration date, license status (current or expired) and disciplinary standing. The letter(s) of good standing must be sent directly to the Board.
Malpractice Insurance	You will need to upload, where prompted, proof of professional liability insurance coverage through self-insurance, personally purchased insurance or insurance provided by your employer for the minimum amount of \$1,000,000.00 per occurrence or claims made. This proof of insurance/certificate must include your name and indicate that you are covered under this policy while performing acupuncture in the Commonwealth of Pennsylvania.
Resume Curriculum Vitae	You will need to upload, where prompted, a current Curriculum Vitae listing all periods of employment or unemployment (i.e., child rearing, research, etc.) from graduation from acupuncture school to present. The list must be in chronological order, include the month and year, and indicate the state/territory in which the employment occurred. The resume/curriculum vitae will need to be uploaded, in order to submit your application.

Evaluation results:

Board/Commission: Medicine**License Type:** Practitioner of Oriental Medicine**Obtained By:** Application

CheckList Name	Instructions
Application	All applications are processed in order of submission. If this application is not completed <u>within six months</u> , updates of certain sections and/or supporting documents will be required. If the application has not been completed within one year from the date it was received, applicants will be required to submit a new application (<u>another application processing fee</u>) and supporting documents, as necessary.
Application Fee	NON-REFUNDABLE FEE in the amount of \$30.00 , made payable by credit/debit card. If the application has not been completed within one year from the date it was received, applicants will be required to submit a new application (<u>another application processing fee</u>) and supporting documents, as necessary.
Child Abuse CE	All health-related licensees/certificate holders and funeral directors are considered "mandatory reporters" under section 6311 of the Child Protective Services Law (23 P.S. § 6311). Therefore, all persons applying for issuance of an initial license or certificate from any of the health-related boards (except the State Board of Veterinary Medicine) or from the State Board of Funeral Directors are required to complete, as a condition of licensure, 3 hours of approved training by the Department of Human Services (DHS) on the topic of child abuse recognition and reporting. After you have completed the required course, the approved provider will electronically submit your name, date of attendance, etc. to the Bureau. For that reason, it is imperative that you register for the course using the information provided on your application for licensure/certification. A list of DRS-approved child abuse education providers can be found on the Department of State Website.
Criminal History Check	<p>Provide a recent Criminal History Records Check (CHRC) from the state police or other state agency that is the official repository for criminal history record information for every state in which you have lived, worked, or completed professional training/studies for the past five (5) years. The report(s) must be dated within 90 days of the date the application is submitted. For applicants living, working, or completing training/studies in Pennsylvania, your CHRC request will be automatically submitted to the Pennsylvania State Police upon submission of this application. The PATCH fee will be included at checkout. Your PA CHRC will be sent directly to the Board/Commission. You will be notified if additional action is required. For individuals living, working, or completing training/studies outside of Pennsylvania during the past five (5) years, in lieu of obtaining individual state background checks, you may elect to provide BOTH a state CHRC from the state in which you currently reside, AND your FBI Identity History Summary Check, available at https://www.fbi.gov/services/cjis/identity-history-summary-checks.</p> <p>Please note: For applicants currently living, working, or completing training/studies in California, Arizona, or Ohio: Due to the laws of these states, the Board is not an eligible recipient of CHRC's or your CHRC will not be issued to you for upload to the Board. Please obtain your Federal Bureau of Investigation (FBI) Identity History Summary Check, available at the link noted above.</p>
Databank Report	Provide an official notification of information (Self Query) from the National Practitioner Data Bank. Please refer to the NPDB website for additional information. When you receive the "Response to your Self Query," you will need to upload it to your online application. The report will need to be uploaded, where prompted, in order to submit your application.

CheckList Name	Instructions
Education Verification	<p>If you have passed the NCCAOM examination component on Chinese Herbology, its successor examination or other equivalent Board-approved East Asian herbology examination, you must complete Section 1 of the Verification of Education (Form 2) and forward to your school for completion of Section 2. The school must return the completed verification <u>directly</u> to the Board. All documents must be in ENGLISH, or an official translation must be submitted to the Board from an official translation agency or professor of the language. The form will be available for download and printing when the application is submitted.</p> <p>If you hold NCCAOM certification in Chinese herbology or Oriental Medicine, you do not need to submit the verification of education.</p>
Educational Transcripts	<p>If you have passed the NCCAOM examination component on Chinese Herbology, its successor examination or other equivalent Board-approved East Asian herbology examination, request that your school provide an official transcript directly to the Board. If the official transcript does not provide detailed information regarding the courses attended from which the applicant's eligibility is determined, the Board retains the right to request a copy of the acupuncture school curriculum. All documents must be in ENGLISH, or an official translation must be submitted to the Board from an official translation agency or professor of the language.</p> <p>If you hold NCCAOM certification in Chinese herbology or Oriental Medicine, you do not need to submit transcripts.</p> <p>If your educational program or practitioner of Oriental medicine examination was not taken in English, arrange for TOEFL (Test of English as a Foreign Language), OET (Occupational English Test), or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.</p> <p>All Board-approved English proficiency examinations will be listed on the Board's website.</p>
Exam Results	<p>Request the NCCAOM or other examination provider approved by the Board to submit the certifying examination scores directly to the Board. The NCCAOM or other approved examination provider must also verify completion of the Clean Needle Technique Course.</p> <p>All Board-approved acupuncture and East Asian herbology examinations will be listed on the Board's website.</p> <p>If your educational program or East Asian herbology examination was not taken in English, arrange for TOEFL (Test of English as a Foreign Language), OET (Occupational English Test), or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.</p> <p>All Board-approved English proficiency examinations will be listed on the Board's website.</p>
Letter of Good Standing (LOGS)	<p>Contact the licensing authorities of the states, territories or countries where you hold or have ever held a license, certificate, permit, registration or other authorization to practice a health-related profession (whether active, inactive, expired or current) and request letters of good standing/verification of licensure in that state or jurisdiction. The letter must include the following: license issue and expiration date, license status (current or expired) and disciplinary standing. The letter(s) of good standing must be sent directly to the Board.</p>

Malpractice Insurance	You will need to upload, where prompted, proof of professional liability insurance coverage through self-insurance, personally purchased insurance or insurance provided by your employer for the minimum amount of \$1,000,000.00 per occurrence or claims made. This proof of insurance/certificate must include your name and indicate that you are covered under this policy while performing acupuncture and herbal therapy in the Commonwealth of Pennsylvania.
Resume Curriculum Vitae	You will need to upload, where prompted, a current Curriculum Vitae listing all periods of employment or unemployment (i.e., child rearing, research, etc.) from graduation from acupuncture school to present. The list must be in chronological order, include the month and year, and indicate the state/territory in which the employment occurred. The resume/curriculum vitae will need to be uploaded, in order to submit your application.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

MAY 22 2023

**Independent Regulatory
Review Commission**

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>_____ State Board of Medicine (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-4956</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Mark B. Woodland</u></p> <p>Mark B. Woodland, MS, MD Board Chair</p> <p>TITLE _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>Deputy General Counsel</u> (Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p>May 11, 2023 _____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL RULEMAKING

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

STATE BOARD OF MEDICINE

49 PA. CODE CHAPTER 18

§§ 18.11, 18.13, 18.13a, 18.15, 18.15a, 18.18, and 18.20

ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

The State Board of Medicine (Board) hereby amends Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to read as set forth in Annex A. Specifically, the Board amends §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 18.18 and adds § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine).

Effective Date

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

Statutory Authority

The primary statutory authority to regulate acupuncturists is granted by the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801-1806.1). Specifically, section 3(b) of the ALA (63 P.S. § 1803(b)) authorizes the Board to promulgate regulations requiring the proper training of individuals, including physicians, before they may be licensed to practice acupuncture in this Commonwealth and further authorizes the Board to promulgate such other regulations as may be deemed proper and necessary regarding the practice of acupuncture. !

Background and Need for this Final-Form Rulemaking

Beginning in 2018, the Board undertook a comprehensive review of its regulatory scheme for acupuncturists and practitioners of Oriental medicine. As a result of that review, the Board proposed comprehensive amendments to Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to (1) update outdated terminology, (2) remove outdated licensure provisions, (3) conform the regulations to Act 134 of 2014, (4) restructure requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a medical doctor) based on the type of license held, (5) expand the list of opportunities to demonstrate English language proficiency, (6) rename the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered) and (6) impose a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made.

Notice of the proposed rulemaking was published at 52 Pa.B. 985 (February 12, 2022). Publication was followed by a 30-day public comment period during which the Board received no public comments. The Independent Regulatory Review Commission (IRRC) submitted comments. Neither the House Professional Licensure Committee (HPLC), nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) submitted comments.

Summary and Responses to Comments

IRRC Comment

IRRC submitted the following five comments on the proposed rulemaking.

1. Compliance with the RRA

IRRC commented about the application checklist for initial licensure as a practitioner of Oriental medicine, which details the information required for licensure. IRRC asked the Board to ensure that the terminology in the checklist is consistent with the regulatory language in the final annex. Specifically, IRRC points to the checklist item entitled “Malpractice Insurance” and notes that this checklist item references “acupuncture services,” however, the proposed annex does not define what “acupuncture services” entail. The Board agrees that including the term “services” is confusing and unnecessary. Thus, the Board has removed the term “services” from both the final annex, RAF, and both checklists. Additionally, the Board reviewed the remainder of the language used in both checklists and made the language consistent with the regulatory language in the annex.

Next, IRRC suggests that the Practitioner of Oriental Medicine checklist item entitled “Malpractice Insurance” should specify that the insurance must cover claims related to acupuncture and herbal therapy. To address this concern, the Board added the recommended language indicating that the insurance must cover claims related to acupuncture and herbal therapy under the “malpractice insurance” checklist name on the practitioner of Oriental medicine checklist.

IRRC next refers to the checklist item entitled “Exam Results” and suggests that the Board should include all methods available to the applicant to demonstrate English language proficiency. To address this concern, the Board added the following language: “If your educational program was not conducted in English, arrange for TOEFL (Test of English as a Foreign Language), OET (Occupational English Test), or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.” Additionally, the Board noted in the checklist that all Board-approved English proficiency examinations will be listed on the Board’s website. This way, the applicant is notified of all ways they can establish English proficiency.

The Board also amended the language in both the acupuncture checklist and the practitioner of Oriental medicine checklist entitled “Exam Results” to include “or other examination provider approved by the Board” to allow applicants to seek Board approval of other acupuncture or East Asian herbology examinations. Additionally, the Board noted in the checklists that all Board-

approved acupuncture and East Asian herbology examinations will be listed on the Board's website. This way, as the Board approves additional examinations, they will be clearly listed for applicants to review prior to applying for licensure.

2. Section 18.11. Definitions – Clarity.

In its second comment, IRRC questions the definitions of “*acupuncture examination*” and “*East Asian herbology examination*” and notes that the definitions for both provide that the Board recognizes the NCAAOM component examinations. IRRC questions whether this language precludes all other examinations that may come along in the future. In the final-form rulemaking, the Board removed its recognition of the NCAAOM component examination from the definition section. The Board also amended § 18.13(a)(2) to require the NCCAOM examination component in acupuncture and sterilization procedures, its successor examination or other equivalent Board-approved examination should such an examination be presented to the Board at some point in the future. Additionally, the Board amended § 18.13(b)(1) to adopt the NCCAOM examination component in Chinese herbology, its successor examination or other equivalent Board-approved East Asian herbology examination. In both amendments, the Board adds language that all Board-approved examinations will be made available on the Board's website.

Next, IRRC commented regarding the Board's adoption of the NCAAOM examinations for licensure, indicating that the recognition is substantive and should not be included in the definition section, but must instead be in the body of the regulation. To correct this, the Board moved the examination approval language for acupuncturists to § 18.13 (relating to requirements as an acupuncturist) in subsection (a)(2) and the examination approval language for the East Asian herbology examination to § 18.13a (relating to requirements for licensure as a practitioner of Oriental medicine) in subsection (b)(1).

In response to IRRC's final comment under this section, the Board inserted a definition of the Occupational English Test in the Definitions section of the final-form rulemaking. This definition includes successor examinations.

3. Section 18.13. Requirements for licensure as an acupuncturist. – Clarity and lack of ambiguity; Need for the regulation; and Economic and fiscal impacts of the regulation.

IRRC's third comment relates to the amendments that updates the list of acceptable methods for demonstrating English language proficiency for applicants who did not take their acupuncture examination in English. Specifically, IRRC listed three concerns with the Board's proposed amendments to § 18.13(a)(2)(ii) relating to the phrase “or similar score acceptable to the Board.” First, there is concern that the current language does not account for the TOEFL test

variants as described by the Board in the Preamble and RAF. Second, the current language, “or similar score acceptable to the Board” uses non-regulatory language because it is not clear and unambiguous as it is not a binding norm that could be predicted by the regulated community. Third, there is concern that the Board is impermissibly changing a regulatory requirement without a new rulemaking. To address these concerns, the Board revised § 18.13(a)(2)(ii) to provide greater clarity and more regulatory certainty.

In the final-form rulemaking, the Board amends § 18.13(a)(2)(ii) to clarify that an applicant must achieve a scaled score of at least 83 on the TOEFL®IBT (internet-based test), which is the most recent version of the examination. The Board deletes the phrase “or similar score acceptable to the Board” and replaces it with the acceptable scores for the outdated versions of the TOEFL®. The comparable score for the TOEFL® CBT (computer-based test) is 220 which the Board will accept for that version of the examination. The comparable score for the TOEFL® PBT (paper-based test) is 557-560; however, since the Board’s regulations previously accepted a scaled score of 550 on the PBT, the Board will continue accepting that same score to maintain consistency on this version of the examination. The Board obtained comparable score information from the 2005 *TOEFL Score Comparison Table* which was created by Educational Testing Services (ETS), the company that currently manages the TOEFL. [TOEFL iBT Score Comparison Tables \(xtremepape.rs\)](#) The Board includes the acceptable scores for the outdated versions of the TOEFL. While the CBT and PBT versions of the examination have been discontinued, including these examinations will enable the Board to accept a passing score on these versions of the examination for those individuals who have taken the examination in the past. Finally, the final-form rulemaking adds language that allows the Board to accept future versions of the TOEFL so that when future versions are adopted, the Board’s regulations will recognize those examinations immediately.

IRRC recommends either deleting Section 18.13(a)(2)(iv) or explaining why the language is necessary. Instead of deleting this language, the Board amends Section 18.13a(a)(2)(iv) to allow an applicant to demonstrate English proficiency by achieving a passing score on an English proficiency examination that is deemed equivalent by the Board to either the TOEFL or the OET. This amended language will allow the Board to approve other English proficiency examinations without having to amend its regulations. While there is no equivalent examination known to the Board at this point, the Board does not want to rule out the possibility. To provide greater clarity to the licensed community, the Board included language that it will make available a list of all Board-approved English language proficiency examinations on its website should there be any additional examinations deemed equivalent by the Board. This language is important because it gives the Board the authority to review new examinations to determine whether they are equivalent to the TOEFL or OET. This could potentially save applicants from having to re-take an English proficiency examination if the examination they have already taken is deemed equivalent by the

Board. It will also eliminate an unnecessary barrier to licensure because the Board will have a mechanism to approve equivalent English proficiency examinations without delay.

IRRC points out that the Board's response to RAF question #17 notes that applicants will benefit from the expanded options for demonstrating English proficiency but does not discuss the financial impact on individuals. Similarly, the Board's response to RAF question #19 does not provide a specific estimate of the cost and/or savings to the regulated community to comply with the English proficiency provisions in 18.13(a)(2). To address these concerns, RAF question #17 is amended to include language explaining the expanded options available to establish English proficiency and the financial impact these different options will have on the applicant. Specifically, the Board added discussion on cost savings for applicants who would not have to pay for an English proficiency examination if they attended an English-speaking education program, took their examination in English or already took and passed the OET or any version of the TOEFL examination. If the applicant takes the OET examination to meet the English proficiency requirement, there would be an increased cost as compared to taking the TOEFL, which is the examination accepted under the existing regulations. While there may be an increased cost to take the OET, the individual is not required to take this examination. The Board is providing this as an option so that applicants have a variety of ways to show English proficiency.

The Board also amends the response to RAF question #19 to include the financial costs and savings to the regulated community to comply with the English proficiency requirement. Applicants who did not take their examination in English, but who attended an English-speaking education program would save money on having to take an English proficiency examination. Additionally, applicants will save money on having to take the TOEFL examination, which costs about \$100, if they can establish that they have already taken the OET examination, an older version of the TOEFL or another English proficiency examination that is deemed equivalent by the Board.

IRRC's final concern under the third comment relates to § 18.13(a)(2)(i), which requires that an applicant demonstrate that their acupuncture program was conducted in English by submitting the documents in English or by submitting an official translation. It has been noted by IRRC that there is no mention of this cost in the RAF. The final-form version of the RAF has been revised to account for this cost.

In § 18.13(a)(2)(i)-(iv),

4. Section 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is a licensed medical doctor. – Clarity.

The fourth comment submitted by IRRRC relates to the Board's reference to "acupuncture services" in § 18.15(c) and the fact that "acupuncture services" is not defined. To address this concern, the Board has deleted the term "services" throughout the annex so that only the term "acupuncture" remains. As mentioned in response to the first comment, the term "acupuncture" is already defined, so the term "services" is unnecessary.

5. Section 18.18. Disciplinary and corrective measures. – Clarity.

IRRC's fifth and final comment relates to section 3.2(c) of Acupuncture Act, which requires a licensee to notify the Board within 30 days of their failure to be covered by insurance. A failure to notify the Board is actionable under sections 3 and 5 of the Act. The license to practice will be automatically suspended upon failure to be covered by the required license and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance coverage. IRRRC suggests that this non-compliance provision be incorporated in the final-form rulemaking. To address this concern, the Board has amended § 18.18 by adding paragraph (6), which provides for disciplinary sanctions for a licensee's failure to notify the Board within 30 days of the licensee's failure to be covered by the required liability insurance. To clarify the disciplinary and corrective measures, the Board added a cross reference to § 18.20 in § 18.18 (a)(4). The Board also amends § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine) by adding subsection (e), which provides for automatic suspension for failure to be covered by insurance.

Fiscal Impact and Paperwork Requirements

The costs and additional paperwork associated with the rulemaking are related to the requirement for acupuncturists and practitioner of Oriental medicine to obtain professional liability insurance and to provide proof to the Board, which was imposed by the General Assembly in 2014, and was implemented by the Board at that time. The Board estimates these costs to be approximately \$425 annually per licensee. Additionally, there are costs related to the English proficiency examination if the applicant's examination was not conducted in English. The Board's existing regulations already require that in this scenario, an applicant must take the TOEFL examination to demonstrate English proficiency. The final-form rulemaking provides a new mechanism for applicants to demonstrate English proficiency with no additional cost to the applicant if their educational program was conducted in English. The Board also provides additional alternatives to the TOEFL examination, including the OET examination, which costs \$400 USD. Additionally, the applicant can now demonstrate English proficiency if they have taken an older version of TOEFL examination or if they have taken another English proficiency

examination which, after review by the Board, is deemed equivalent to the TOEFL and OET examinations. While the OET and other Board-approved English proficiency are both now additional options, the Board does not anticipate applicants using these options often. In the last four years, there have been no applicants who have had to demonstrate English proficiency through an examination. However, the Board wants to ensure that when an applicant does have to demonstrate English proficiency, they will be able to do so in the easiest way possible. There may be additional cost for applicants to translate their education verification, if the documents are not in English, which can run approximately \$20-\$25 per page.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 26, 2022, the Board submitted a copy of this proposed rulemaking published at 52 Pa.B. 985, and a copy of a Regulatory Analysis form to IRRC and to the Chairpersons HPLC and the SCP/PLC for review and comment. A copy of this material is available to the public upon request.

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 received from IRRC. No public comments were received. The Board also received no comments from the HPLC and the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on May 22, 2023, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on _____, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Jasmira Hunter, Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@pa.gov.

Findings

The State Board of Medicine finds that:

- (1) Public notice 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), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.
- (3) The amendments to this final-form rulemaking do not enlarge the original purpose for the proposed regulation published at 52 Pa.B. 985.
- (4) These amendments to the regulations of the State Board of Medicine are necessary and appropriate for the regulation of the practice of acupuncturists and practitioners of Oriental medicine in the Commonwealth.

Order

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

- (A) The regulations of the State Board of Medicine, 49 Pa. Code §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 8.18 are amended and § 18.20 is added to read as set forth in Annex A.
- (B) The Board shall submit a copy of this final-form rulemaking to the Office of the Attorney General and the Office of General Counsel for approval as required by law.
- (C) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.
- (D) The Board shall certify this final-form rulemaking and shall deposit it with the Legislative Reference Bureau as required by law.

- (E) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Mark B. Woodland, MS, M.D., Chairman
State Board of Medicine

16A-4956: Acupuncturists and Practitioners of Oriental Medicine
List of Public Commentators

No Comments Received

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

**Subchapter B. [REGISTRATION] LICENSURE 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 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] in the Commonwealth ~~The Board recognizes the NCCAOM component examinations in acupuncture and sterilization procedures as the examination for~~ [registration] licensure as an acupuncturist [and the NCCAOM examination component in Chinese herbology as the examination for registration as a practitioner of Oriental medicine].

Acupuncture medical program—An academic or clinical program of study in acupuncture which has been given category I continuing medical education credit by an institution accredited or

recognized by the Accreditation Council on Continuing Medical Education to conduct category I continuing medical education courses.

* * * * *

Acupuncturist—An individual licensed to practice [acupuncture] acupuncture by the Board.

[*Chinese herbology*—The study of the use of herbs in the Oriental medicine tradition.]

East Asian herbology – The use of herbal preparations and products that contain as active ingredients parts of plants, minerals and other organic materials, or a combination thereof, administered according to East Asian medicine tradition to normalize function.

East Asian herbology examination— An examination recognized by the Board to test whether an acupuncturist has accumulated sufficient academic knowledge with respect to the practice of herbal therapy to qualify for licensure as a practitioner of Oriental medicine in the Commonwealth.
~~The Board recognizes the NCCAOM examination component in Chinese herbology and the NCCAOM examination for Oriental medicine as the examinations for licensure as a practitioner of Oriental medicine.~~

Herbal therapy—The application of [Chinese] East Asian herbology to the treatment of acupuncture patients.

NCCAOM—The National Certification Commission for Acupuncture and Oriental Medicine or its successor organization.

OET – THE ENGLISH LANGUAGE TEST FOR HEALTHCARE PROFESSIONALS OR ITS SUCCESSOR EXAMINATION.

Practitioner of Oriental medicine —An acupuncturist who is licensed by the Board to use herbal therapy.

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

TOEFL® – The Test of English as a Foreign Language offered by Educational Testing Service (ETS).

* * * * *

§ 18.13. Requirements for licensure as an acupuncturist.

(a) The Board will license 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.
- (2) ~~Has obtained a passing grade on an acupuncture examination or has been certified by NCCAOM.~~ HAS BEEN CERTIFIED BY NCCAOM OR HAS OBTAINED A PASSING GRADE ON THE NCCAOM EXAMINATION COMPONENT IN ACUPUNCTURE AND STERILIZATION PROCEDURES, ITS SUCCESSOR EXAMINATION OR OTHER EQUIVALENT BOARD-APPROVED EXAMINATION. THE BOARD WILL MAKE AVAILABLE A LIST OF SUCCESSOR OR OTHER EQUIVALENT BOARD-APPROVED EXAMINATIONS ON ITS WEBSITE. 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)] demonstrated English language proficiency by one of the following methods:

- (i) ~~Demonstrating that the~~ THE applicant's acupuncture educational program was conducted in English.
- (ii) ~~Demonstrating that the~~ THE applicant has achieved a scaled score of at least 83 ~~or similar score acceptable to the Board,~~ on the TOEFL® IBT (INTERNET-BASED TEST), A 220 FOR THE TOEFL® CBT (COMPUTER-BASED TEST) OR A 550 ON THE TOEFL® PBT (PAPER BASED TEST) OR AN EQUIVALENT SCORE ON A SUCCESSOR EXAMINATION OF THE TOEFL®. THE BOARD WILL MAKE AVAILABLE A LIST OF BOARD-APPROVED SUCCESSOR EXAMINATIONS ON ITS WEBSITE.
- (iii) ~~Demonstrating that the~~ THE applicant has achieved a score of at least 350 on each of the four sub-tests of the Occupational English Test (OET) for any of the health-related professions.
- (iv) ~~Demonstrating that the~~ THE applicant has achieved a passing score on a ~~substantially equivalent~~ AN English language proficiency examination, ~~as approved by the Board~~ EQUIVALENT TO THE TOEFL® OR OET, AS DETERMINED BY THE BOARD. THE BOARD WILL MAKE AVAILABLE A

LIST OF EQUIVALENT BOARD-APPROVED ENGLISH LANGUAGE
PROFICIENCY EXAMINATIONS ON ITS WEBSITE.

(b) The Board will license as an acupuncturist a medical doctor who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs.

(2) Submits an application to register as an acupuncturist accompanied by the required fee as provided under § 16.13 (relating to licensure, certification, examination and registration fees).

(c) [Prior to January 1, 1988, the Board will register as an acupuncturist a medical doctor who satisfies the requirements of subsection (a), (b) or the following:

(1) Has at least 3 years of acupuncture practice—a minimum of 500 patient visits per year—documented to the satisfaction of the Board.

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

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine.

(a) An acupuncturist who also intends to use herbal therapy is required to be licensed by the Board as a practitioner of Oriental medicine.

(b) The Board will license an acupuncturist as a practitioner of Oriental medicine if the licensee, in addition to meeting the requirements under § 18.13 (relating to requirements for licensure as an acupuncturist) has fulfilled one of the following:

(1) Successfully completed an acupuncture education program that includes the study of [Chinese] East Asian herbology and has passed [the NCCAOM examination component on Chinese herbology] an East Asian herbology examination. BOARD-APPROVED EAST ASIAN HERBOLOGY EXAMINATIONS INCLUDE THE NCCAOM EXAMINATION COMPONENT IN CHINESE HERBOLOGY, ITS SUCCESSOR EXAMINATION OR OTHER EQUIVALENT BOARD-APPROVED EAST ASIAN HERBOLOGY EXAMINATION. THE BOARD WILL MAKE AVAILABLE A LIST OF SUCCESSOR OR OTHER EQUIVALENT BOARD-APPROVED EXAMINATIONS ON ITS WEB SITE.

(2) Has obtained NCCAOM certification in Chinese herbology or Oriental medicine, which includes passing the NCCAOM examination component in Chinese herbology.

(c) An acupuncturist registered with the Board prior to April 14, 2007, may obtain a license as a practitioner of Oriental medicine if the acupuncturist can demonstrate one of the following:

(1) Successful completion of [a Chinese] an East Asian 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] East Asian 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] section does not apply to a medical doctor licensed as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

* * * * *

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is licensed as a medical doctor.

(a) *Responsibilities to patient and public – acupuncturist who is not a physician.* [In relation to the acupuncture patient, the acupuncturist and the practitioner of Oriental medicine] An acupuncturist who is not a physician:

(1) Shall perform an acupuncture [or Oriental medicine] evaluation and develop an acupuncture [or Oriental medicine] treatment plan.

(1.1) May treat an individual presenting with no symptoms of a condition for an unlimited period of time.

(2) May treat [the patient's symptoms without the condition being diagnosed by a physician, dentist or podiatrist] an individual presenting with symptoms of a condition for

60 calendar days from the date of the first treatment without the condition being diagnosed by a physician, dentist or podiatrist.

(3) May treat [the patient's] an individual presenting with symptoms of a condition beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall promptly refer the patient presenting with symptoms of a condition to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist [or practitioner of Oriental medicine] determines that further acupuncture [or Oriental medicine] treatment is contraindicated for the patient or determines that the patient's symptoms have worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist in regard to the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) May not diagnose a physical or mental ailment or condition or prescribe or dispense a drug. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

(8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with § 16.95 (relating to medical records).

(10) Shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(b) *[Identification of acupuncturist or practitioner of Oriental medicine. An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist" or "practitioner of Oriental medicine," as appropriate. The use of the word doctor on this tag or badge is prohibited.] (Reserved.)*

(b.1) *Additional responsibilities to patient and public – practitioner of Oriental medicine who is not a physician. In addition to the responsibilities in subsection (a)(1)–(9), a licensed practitioner of Oriental medicine who provides, or contemplates providing, herbal therapy:*

(1) Shall perform an herbal therapy evaluation and, if appropriate, develop an appropriate treatment plan utilizing, in whole or in part, East Asian herbology modalities.

(2) Shall promptly refer a patient presenting with symptoms of a condition to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the practitioner of Oriental medicine determines that further treatment of the patient by East Asian herbology modalities is contraindicated for the patient, may interfere with known drugs prescribed to the patient, or determines that the patient's symptoms have worsened.

(3) Shall wear a tag or badge with lettering clearly visible to the patient bearing the licensee's name, as well as the title "Practitioner of Oriental Medicine." The use of the

words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(c) Responsibilities to patient and public – acupuncturist who is currently licensed as a medical doctor. An acupuncturist who also holds a current and active license as a medical doctor in this Commonwealth:

(1) Shall include in the patient’s medical records evidence of having performed an acupuncture evaluation and development of an acupuncture treatment plan for patients considered for, or who receive, acupuncture services.

(2) Shall comply strictly with sterilization standards relative to aseptic practices when providing acupuncture services to patients.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

(a) An acupuncturist may practice acupuncture and use supplemental techniques, including the use of non-prescription topical remedies which contain as active ingredients parts of plants, minerals and other organic materials, but may not use herbal therapy as defined in § 18.11 (relating to definitions) unless licensed by the Board as a practitioner of Oriental medicine.

(b) A practitioner of Oriental medicine may practice acupuncture and use supplemental techniques including herbal therapy. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Federal Food and Drug Administration, unless otherwise prohibited by law or regulation.

(c) This [subsection] section does not limit the scope of practice of a medical doctor who is [registered] licensed as an acupuncturist.

§ 18.18. Disciplinary and corrective measures.

(a) The Board may [refuse, revoke, suspend, limit or attach conditions to the license of an acupuncturist or practitioner of Oriental medicine for engaging] impose any of the disciplinary sanctions authorized under section 42 of the act (63 P.S. § 422.42) or 63 Pa.C.S. § 3108(b) (relating to civil penalties) for any of the following:

- (1) Failing to comply with the duties and requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of medical doctor licensed as an acupuncturist).
- (2) Practicing or holding out as being able to practice acupuncture without a current and valid license to practice acupuncture.
- (3) Practicing or holding out as being able to practice East Asian herbology without a current and valid license as a practitioner of Oriental medicine.
- (4) Practicing acupuncture or East Asian herbology without current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act (63 P.S. § 1803.2) and § 18.20 (RELATING TO PROFESSIONAL LIABILITY INSURANCE COVERAGE FOR ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE).

(5) Engaging in conduct prohibited under section 41 of the act (63 P. S. § 422.41) for Board-regulated practitioners.

(6) FAILURE TO NOTIFY THE BOARD WITHIN 30 DAYS OF LICENSEE'S FAILURE TO BE COVERED BY INSURANCE UNDER AS REQUIRED UNDER § 3.2 OF THE ACUPUNCTURE LICENSURE ACT AND § 18.20.

(b) The Board will order the emergency suspension of the license of an acupuncturist or practitioner of Oriental medicine who presents an immediate and clear danger to the public health and safety, as required under section 40 of the act (63 P. S. § 422.40).

(e) The license of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended, as required under section 40 of the act.

§ 18.20. Professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine.

(a) A licensed acupuncturist shall maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made, as required under section 3.2 of the Acupuncture Licensure Act (63 P. S. § 1803.2).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from a personally purchased professional liability insurance policy setting forth the effective date, expiration date and dollar amount of coverage.

(2) A certificate of insurance or copy of the declaration page from an employer purchased professional liability insurance policy describing the licensee by name as a

covered party under the policy, the effective date, expiration date and dollar amount of coverage.

(3) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(c) A licensee who does not have current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act may not practice as an acupuncturist or as a practitioner of Oriental medicine in this Commonwealth.

(d) The professional liability insurance coverage for a licensed practitioner of Oriental medicine shall cover claims related to acupuncture as well as claims related to the provision of herbal therapy.

(E) THE LICENSE OF AN ACUPUNCTURIST OR PRACTITIONER OF ORIENTAL MEDICINE SHALL AUTOMATICALLY BE SUSPENDED UPON FAILURE TO BE COVERED BY THE REQUIRED PROFESSIONAL LIABILITY INSURANCE REQUIRED IN THIS SECTION AND SHALL NOT BE RESTORED UNTIL SUBMISSION TO THE BOARD OF SATISFACTORY EVIDENCE THAT THE LICENSEE HAS THE REQUIRED PROFESSIONAL LIABILITY INSURANCE COVERAGE.

* * * * *



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

May 22, 2023

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisburg 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Medicine
16A-4956: Acupuncturists and Practitioners of Oriental Medicine

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Medicine pertaining to 16A-4956: Acupuncturists and Practitioners of Oriental Medicine.

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, appearing to read "Mark B. Woodland".

Mark. B. Woodland, MS, MD, Chairman
State Board of Medicine

MBW/dmw
Enclosure

cc: Arion Claggett, Acting Commissioner of Professional and Occupational Affairs
K. Kalonji Johnson, Deputy Secretary for Regulatory Programs
Andrew LaFratte, Executive Policy Specialist, Department of State
Cynthia Montgomery, Deputy Chief Counsel, Department of State
Jacqueline A. Wolfgang, Regulatory Unit Counsel, Department of State
Dana M. Wucinski, Counsel, State Board of Medicine
State Board of Medicine

Solomon, Douglas

From: Smeltz, Jennifer <jmsmeltz@pasen.gov>
Sent: Monday, May 22, 2023 11:37 AM
To: Solomon, Douglas
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

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MAY 22 2023

Independent Regulatory
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Received.

*Jen Smeltz
Executive Director
Office of Senator Pat Stefano
Consumer Protection and Professional Licensure Committee
Phone: (717) 787-7175*

From: Solomon, Douglas <dousolomon@pa.gov>
Sent: Monday, May 22, 2023 8:20 AM
To: Smeltz, Jennifer <jmsmeltz@pasen.gov>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

© CAUTION : External Email ©

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

Please be advised that the Occupational Therapy, Optometry Boards and Medical Boards are delivering the below final rulemakings.

Thank you for your attention to this matter.

- **16A-6713– Occupational Therapy – Licensure by Endorsement**
Final rulemaking of the State Board of Occupational Therapy Education and Licensure relating to Licensure by Endorsement - This final rulemaking is needed to effectuate 63 Pa.C.S. § 3111 (relating to licensure by endorsement) for applicants licensed in other jurisdictions where the licensure requirements are substantially equivalent or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application, and must establish, by regulation, the expiration of provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.
- **16A-5218 – Optometry Board – Licensure by Endorsement**
Final rulemaking of the State Board of Optometry relating to License by Endorsement - This final rulemaking is needed to effectuate 63 Pa.C.S. § 3111 (relating to licensure by endorsement) for applicants licensed in other jurisdictions where the licensure requirements are substantially equivalent or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application, and must establish, by regulation, the expiration of provisional endorsement license. This

proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

➤ **16A-4956 – Medical Board – Acupuncturists and Practitioners of Oriental Medicine**

This final rulemaking updates the Board's regulations as it pertains acupuncturists and practitioners of Oriental medicine. The rulemaking makes the following changes: (1) removes outdated terminology, (2) removes outdated licensure provisions, (3) conforms the regulations to Act 134 of 2014 (Acupuncture Licensure Act), (4) restructures requirements relating to practice responsibilities of acupuncturists and practitioners of Oriental medicine who are not a medical doctors based on the type of license held, (5) expands the list of opportunities to demonstrate English language proficiency, (6) renames the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered) and (6) imposes a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made.

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MAY 22 2023

Doug P. Solomon | Legal Assistant
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax 717.787.0251
dousolomon@pa.gov | www.dos.pa.gov

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Solomon, Douglas

From: Orchard, Kari L. <KOrchard@pahouse.net>
Sent: Monday, May 22, 2023 11:09 AM
To: Solomon, Douglas; Barton, Jamie; Brett, Joseph D.
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

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Received. Thank you!

MAY 22 2023

Kari Orchard
Executive Director (D) | House Professional Licensure Committee
Chairman Frank Burns, 72nd Legislative District

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Review Commission

From: Solomon, Douglas <dousolomoh@pa.gov>
Sent: Monday, May 22, 2023 8:37 AM
To: Orchard, Kari L. <KOrchard@pahouse.net>; Barton, Jamie <JBarton@pahouse.net>; Brett, Joseph D. <JBrett@pahouse.net>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

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Doug P. Solomon | Legal Assistant
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax 717.787.0251
dousolomon@pa.gov | www.dos.pa.gov

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Solomon, Douglas

From: Nicole Sidle <Nsidle@pahousegop.com>
Sent: Monday, May 22, 2023 10:58 AM
To: Solomon, Douglas; Francesca Summa
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

Good Morning Doug—

These have been received.

Nicole

From: Solomon, Douglas <dousolomon@pa.gov>
Sent: Monday, May 22, 2023 8:42 AM
To: Nicole Sidle <Nsidle@pahousegop.com>; Francesca Summa <Fsumma@pahousegop.com>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

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Doug P. Solomon | Legal Assistant
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
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Solomon, Douglas

From: Rolko, Seth <Seth.Rolko@pasenate.com>
Sent: Monday, May 22, 2023 10:01 AM
To: Solomon, Douglas
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

RECEIVED

MAY 22 2023

Received. Thanks.

Independent Regulatory
Review Commission

From: Solomon, Douglas <dousolomon@pa.gov>
Sent: Monday, May 22, 2023 8:27 AM
To: Rolko, Seth <seth.rolko@pasenate.com>; Vazquez, Enid <enid.vazquez@pasenate.com>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

■ EXTERNAL EMAIL ■

Please provide a written (email) confirmation of receipt of delivery of the attached rulemakings.

Please be advised that the Occupational Therapy, Optometry Boards and Medical Boards are delivering the below final rulemakings.

Thank you for your attention to this matter.

➤ **16A-6713– Occupational Therapy – Licensure by Endorsement**

Final rulemaking of the State Board of Occupational Therapy Education and Licensure relating to Licensure by Endorsement - This final rulemaking is needed to effectuate 63 Pa.C.S. § 3111 (relating to licensure by endorsement) for applicants licensed in other jurisdictions where the licensure requirements are substantially equivalent or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application, and must establish, by regulation, the expiration of provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

➤ **16A-5218 – Optometry Board – Licensure by Endorsement**

Final rulemaking of the State Board of Optometry relating to License by Endorsement - This final rulemaking is needed to effectuate 63 Pa.C.S. § 3111 (relating to licensure by endorsement) for applicants licensed in other jurisdictions where the licensure requirements are substantially equivalent or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application, and must establish, by regulation, the expiration of provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

➤ **16A-4956 – Medical Board – Acupuncturists and Practitioners of Oriental Medicine**

This final rulemaking updates the Board's regulations as it pertains acupuncturists and practitioners of Oriental medicine. The rulemaking makes the following changes: (1) removes outdated terminology, (2) removes outdated licensure provisions, (3) conforms the regulations to Act 134 of 2014 (Acupuncture Licensure Act), (4) restructures requirements relating to practice responsibilities of acupuncturists and practitioners of Oriental medicine who are not a medical doctors based on the type of license held, (5) expands the list of opportunities to demonstrate English language proficiency, (6) renames the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered) and (6) imposes a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made.

Doug P. Solomon | Legal Assistant
Office of Chief Counsel | Department of State
Governor's Office of General Counsel
P.O. Box 69523 | Harrisburg, PA 17106-9523
Office Phone 717.783.7200 | Fax 717.787.0251
dousolomon@pa.gov | www.dos.pa.gov

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Solomon, Douglas

From: Vazquez, Enid <Enid.Vazquez@pasenate.com>
Sent: Monday, May 22, 2023 10:30 AM
To: Solomon, Douglas; Rolko, Seth
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

Received.

Thanks,

Enid Vazquez

State Senator Lisa M. Boscola
One E. Broad Street – Suite 120
Bethlehem, PA 18018
O: 610-868-8667
F: 610-861-2184
www.senatorboscola.com

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From: Solomon, Douglas <dousolomon@pa.gov>
Sent: Monday, May 22, 2023 8:27 AM
To: Rolko, Seth <seth.rolko@pasenate.com>; Vazquez, Enid <enid.vazquez@pasenate.com>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

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Solomon, Douglas

From: Brett, Joseph D. <JBrett@pahouse.net>
Sent: Monday, May 22, 2023 9:16 AM
To: Solomon, Douglas
Subject: RE: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

Received.

Thank you,

Joe Brett
Research Analyst | House Professional Licensure Committee (D)
Chairman Frank Burns, 72nd Legislative District

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Review Commission

From: Solomon, Douglas <dousolomon@pa.gov>
Sent: Monday, May 22, 2023 8:37 AM
To: Orchard, Kari L. <KOrchard@pahouse.net>; Barton, Jamie <JBarton@pahouse.net>; Brett, Joseph D. <JBrett@pahouse.net>
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Importance: High

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Solomon, Douglas

From: Rolko, Seth <Seth.Rolko@pasenate.com>
To: Solomon, Douglas
Sent: Monday, May 22, 2023 10:01 AM
Subject: Read: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

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MAY 22 2023

Your message

To: Rolko, Seth
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Sent: Monday, May 22, 2023 8:26:31 AM (UTC-05:00) Eastern Time (US & Canada)

Independent Regulatory
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was read on Monday, May 22, 2023 10:00:38 AM (UTC-05:00) Eastern Time (US & Canada).

Solomon, Douglas

From: Francesca Summa <Fsumma@pahousegop.com>
To: Solomon, Douglas
Sent: Monday, May 22, 2023 8:43 AM
Subject: Read: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

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Your message

MAY 22 2023

To:
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Sent: Monday, May 22, 2023 12:43:19 PM (UTC+00:00) Monrovia, Reykjavik

Independent Regulatory
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was read on Monday, May 22, 2023 12:43:14 PM (UTC+00:00) Monrovia, Reykjavik.

Solomon, Douglas

From: Orchard, Kari L. <KOrchard@pahouse.net>
To: Solomon, Douglas
Sent: Monday, May 22, 2023 11:09 AM
Subject: Read: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

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Your message

MAY 22 2023

To:
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Sent: Monday, May 22, 2023 3:08:58 PM (UTC+00:00) Monrovia, Reykjavik

Independent Regulatory
Review Commission

was read on Monday, May 22, 2023 3:08:54 PM (UTC+00:00) Monrovia, Reykjavik.

Solomon, Douglas

From: Nicole Sidle <Nsidle@pahousegop.com>
To: Solomon, Douglas
Sent: Monday, May 22, 2023 8:45 AM
Subject: Read: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956

Your message

To:
Subject: DELIVERY NOTICE: REGULATION(S): 16A-6713, 16A-5218 & 16A-4956
Sent: Monday, May 22, 2023 12:45:00 PM (UTC+00:00) Monrovia, Reykjavik

was read on Monday, May 22, 2023 12:44:54 PM (UTC+00:00) Monrovia, Reykjavik.

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