

<b>Regulatory Analysis Form</b> (Completed by Promulgating Agency)		<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b> <b>RECEIVED</b>  <b>JAN 26 2022</b>  <b>Independent Regulatory Review Commission</b>
(All Comments submitted on this regulation will appear on IRRC's website)		IRRC Number: 3332
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine		
(2) Agency Number: 16A Identification Number: 4956		
(3) PA Code Cite:  49 Pa. Code §§ 18.11, 18.13, 18.13a, 18.15, 18.15a, 18.18 and 18.20		
(4) Short Title: <b>Acupuncturists and practitioners of Oriental medicine</b>		
(5) Agency Contacts (List Telephone Number and Email Address):  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.  Secondary Contact: Cynthia K. Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-5923 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.		
(6) Type of Rulemaking (check applicable box):		
<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation: <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)  This proposed rulemaking will update 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 It updates terminology, removes outdated provisions and clarifies the practice responsibilities of individuals who are licensed only as an acupuncturist, those licensed as practitioners of Oriental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 will incorporate the 2014 amendments to the Acupuncture Licensure Act (ALA) relating to liability insurance and circumstances when diagnosis of a condition by another practitioner (physician, dentist or podiatrist) must occur.		

(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). 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. Section 3(f) of the ALA (63 P.S. § 1803(f)) expands the definition of “acupuncture” to include the use of supplemental techniques by licensed acupuncturists. Supplemental techniques include “the use of traditional and modern oriental therapeutics, heat therapy, moxibustion, electrical and low-level laser stimulation, acupressure and other forms of massage, herbal therapy and counseling that shall include the therapeutic use of foods and supplements and lifestyle modifications and any other techniques approved by the board.” Section 3.1 of the ALA (63 P.S. § 1803.1) was amended in 2014 to authorize acupuncturists to, among other things, treat individuals who do not present with any symptoms of a condition for an unlimited period of time. Section 3.2 of the ALA (63 P.S. § 1803.2) was also added at that time imposing a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made.

Additionally, section 3(g) of the ALA (63 P.S. § 1803(g)) provides, in part, that acupuncturists licensed with the Board shall be subject to all disciplinary provisions applicable to medical doctors as set forth in the Medical Practice Act of 1985 (MPA) (63 P.S. §§ 422.1—422.53). Specifically, sections 38 through 42 of the MPA (63 P.S. §§ 422.38—422.42) set forth the Board’s disciplinary authority relating to board-regulated practitioners. Finally, 63 Pa.C.S. § 3108(b) (relating to civil penalties) authorizes the boards and commissions within the Bureau of Professional and Occupational Affairs under their respective practice acts to, among other things, impose a civil penalty of not more than \$10,000 per violation on any licensee or unlicensed person who violates any provision of the applicable licensing act or board regulation.

(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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 of time. As a legislative enactment which has been in effect for several years, the amendments related to referrals and diagnoses found in the proposed rulemaking are unlikely to have any practical effect on the majority of acupuncture licensees or the public; instead, the proposed 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 proposed 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.

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 proposed 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 proposed 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 proposed 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 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 of 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 proposes to maintain 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 the TOEFL®, the Occupational English Test (OET) for healthcare professionals or another English language proficiency examination approved by the Board. Approximately 3 acupuncture/practitioner of Oriental medicine applicants per calendar year have not taken the required licensing examination in English and are required to demonstrate English proficiency requirement.

As part of the Board's ongoing work to continuously review and address outdated regulations, the proposed 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 proposes to delete it. The Board does not anticipate any effect on any licensee or applicant.

All currently licensed acupuncturists (555), practitioners of Oriental medicine (245) and physician-acupuncturists (141) 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?

Of the states in the defined Northeast region, only two states (Connecticut and New York) permit engaging in herbal therapy without first demonstrating competency via an examination on herbology. Three states in the Northeast region (Pennsylvania, Ohio and Delaware) currently issue a separate license as a practitioner of Oriental medicine after completing appropriate education and passing an examination. Rhode Island issues a single license -- "Doctor of Acupuncture and Oriental Medicine." Vermont, Massachusetts, and New Jersey require acupuncturists to pass a Chinese herbology examination as part of their general acupuncture licensing requirement. West Virginia and Maryland do not include herbal therapy within the scope of practice of acupuncture or a directly related authorization to practice. The remaining states -- Maine and New Hampshire -- require passage of an examination on herbology or Oriental medicine prior to engaging in the use of herbs.

Focusing on states which are contiguous to the Commonwealth, two states (Ohio and Delaware) currently have a licensing structure similar to Pennsylvania's current regulations, two states (Maryland and West Virginia) do not include herbal therapy within the scope of practice of acupuncture or a related license; one state (New Jersey) requires all acupuncturists to pass an examination on herbal therapy, and one state (New York) permits the practice of herbal therapy without testing.

Consequently, the Board believes its proposed rulemaking will not place the Commonwealth at an appreciable competitive disadvantage. On the contrary, the Board believes that the potential benefits to the public health and safety by the issuance of an easily recognizable and searchable license to practice Oriental medicine outweigh any minor competitive disadvantages to the Commonwealth which could be caused by eliminating the license and simply permitting individuals to engage in East Asian herbology based on the "honor system," i.e., only those who have achieved the minimum education and competency testing requirements, without the Board assuring that those requirements have been met.

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

The proposed 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 proposed 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 proposed by the Board 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 of 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 proposed rulemaking.

(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 245 practitioners of Oriental medicine and 555 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 141 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 \$8.0 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 \$12 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 proposed rulemaking. Some of the proposed rulemaking provisions have already been implemented because they were a statutorily imposed change (e.g. requirement for professional liability insurance), were implemented 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, or are 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 941 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. Consumers of acupuncture services 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 services and also protects the personal assets of licensed acupuncturists and practitioners of Oriental medicine. These benefits outweigh the costs associated with compliance.

(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 are no estimated savings to the regulated community. Costs to the regulated community 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 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.

There are no expected costs or savings to the Board, the Department or state government generally associated with the proposed 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?

The online initial application forms for licensure as an acupuncturist or as a practitioner of Oriental medicine have been revised to include the professional liability insurance requirement.

(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.**

Attached are the application checklists for initial licensure as an acupuncturist and as a practitioner of Oriental medicine detailing the information required, which reflect the required professional liability insurance.

(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.

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

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

<b>Program</b>	<b>FY -2 18-19</b>	<b>FY -1 19-20</b>	<b>FY -1 20-21 (projected)</b>	<b>Current FY 21-22 (budgeted)</b>
State Board of Medicine	\$8,320,597.59	\$7,791,240.60	\$7,917,000.00	\$8,025,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

(a) If all individuals who hold an acupuncturist, physician-acupuncturist or practitioner of Oriental medicine license are considered to be small businesses or to work for small businesses, the rulemaking would affect 941 small businesses.

(b) The bulk of the proposed rulemaking does not require any additional reporting, recordkeeping or other administrative costs from requirements already imposed by the current regulations. However, the proposed rulemaking does include a new provision related to the requirement that acupuncturists obtain and maintain professional liability insurance. The professional liability insurance requirement is a statutory requirement for licensure/continued licensure and, as such, was implemented by the board several years ago based upon the statutory mandate. Consequently, the promulgation of that portion of the rulemaking is not expected to have any additional adverse impact on small businesses as there is no proposed change from the current, statutorily-imposed requirement. However, the Board estimates that the median cost for professional liability insurance for acupuncturists and practitioners of Oriental medicine is approximately \$425 per year.

(c) The new rulemaking provision related to professional liability insurance is expected to have minimal impact on small businesses.

(d) The Board did not explore less intrusive or less costly alternatives methods of achieving the purpose of the new provision on professional liability insurance as it is a statutorily mandated requirement; consequently, it can be assumed that the legislature determined that the requirement was the least intrusive and less costly acceptable alternative.

(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 permitting 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 proposes to maintain 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 utilize 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 proposed 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 proposes to retain 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 proposed 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 proposes to amend 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 in the proposed regulations 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 proposed 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 that individuals who have received 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 proposes to separate 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 proposed 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 Test of English as a Foreign Language (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 proposed) 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 proposes to maintain the minimal English proficiency requirement.

The Board next reviewed the current regulations with respect to the current English proficiency examinations offered. Investigation revealed that the TOEFL® examination has undergone substantial revisions since the Board last promulgated rulemaking on the subject. There are now two versions of the TOEFL® examination which are currently offered: the TOEFL iBT® (internet-based) and the TOEFL® paper-delivered (a revised paper test first offered in 2017). Complicating matters, the two 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 a number of 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 proposes to accept a total scaled score of 83 or higher on that version or a comparable score on the paper-delivered version. A score of 83 currently 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 alternatives 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](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 2022
- 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 2022: February 1, March 15, April 19, May 24, June 21, July 26, September 13, October 25 and December 13.

Evaluation results:

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

CheckList Name	Instructions
<b>Application</b>	All applications are processed in order of submission. If this application is not completed <b><u>within six months</u></b> , 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 ( <b><u>another application processing fee</u></b> ) and supporting documents, as necessary.
<b>Application Fee</b>	<b>NON REFUNDABLE FEE</b> in the amount of <b>\$30.00</b> , 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 ( <b><u>another application processing fee</u></b> ) and supporting documents, as necessary.
<b>Child Abuse CE</b>	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 DHS-approved child abuse education providers can be found on the Department of State Website.
<b>Criminal History Check</b>	<p>Provide a recent Criminal History Records Check (CHRC) from the state police or other state agency <b>that is the official repository for criminal history record information</b> 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 <a href="https://www.fbi.gov/services/cjis/identity-history-summary-checks">https://www.fbi.gov/services/cjis/identity-history-summary-checks</a>.</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>
<b>Databank Report</b>	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
<b>Education Verification</b>	Complete Section 1 of the Verification of Education (Form 2) and forward to your school for completion of Section 2. <b>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.</b>
<b>Educational Transcripts</b>	Request that your school provide an official transcript <b><u>directly</u> to the Board</b> . 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. <b>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.</b>
<b>Exam Results</b>	Request the NCCAOM or state Board office to submit the certifying examination scores directly to the Board. <b>The NCCAOM must also verify completion of the Clean Needle Technique Course.</b> If the exam was not taken in English, arrange for TOEFL (Test of English as a Foreign Language) scores to be submitted directly to the Board.
<b>Letter of Good Standing (LOGS)</b>	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. <b>The letter(s) of good standing must be sent <u>directly</u> to the Board.</b>
<b>Malpractice Insurance</b>	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. <b>This proof of insurance/certificate must include your name and indicate that you are covered under this policy while performing acupuncture services in the Commonwealth of Pennsylvania.</b>
<b>Resume Curriculum Vitae</b>	You will need to upload, where prompted, a current Curriculum Vitae listing <b><u>all</u></b> 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 <b><u>within six months</u></b> , 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 ( <b><u>another application processing fee</u></b> ) and supporting documents, as necessary.
Application Fee	<b>NON REFUNDABLE FEE</b> in the amount of <b>\$30.00</b> , 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 ( <b><u>another application processing fee</u></b> ) 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 DHS-approved child abuse education providers can be found on the Department of State Website.
Criminal History Check	Provide a recent Criminal History Records Check (CHRC) from the state police or other state agency <b>that is the official repository for criminal history record information</b> 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 <a href="https://www.fbi.gov/services/cjis/identity-history-summary-checks">https://www.fbi.gov/services/cjis/identity-history-summary-checks</a> .  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.
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, you must complete Section 1 of the Verification of Education (Form 2) and forward to your school for completion of Section 2. <b>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.</b></p> <p><b>If you hold NCCAOM certification in Chinese herbology or Oriental Medicine, you do not need to submit the verification of education.</b></p>
Educational Transcripts	<p>If you have passed the NCCAOM examination component on Chinese Herbology, request that your school provide an official transcript <u>directly to the Board</u>. 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. <b>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.</b></p> <p><b>If you hold NCCAOM certification in Chinese herbology or Oriental Medicine, you do not need to submit transcripts.</b></p>
Exam Results	<p>Request the NCCAOM or State Board Office to submit the certifying examination scores for the Acupuncture and Chinese Herbology components directly to the Board. <b>The NCCAOM must also verify completion of the Clean Needle Technique Course.</b> If the exam was not taken in English, arrange for TOEFL (Test of English as a Foreign Language) scores to be submitted directly to the Board.</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. <b>The letter(s) of good standing must be sent directly to the Board.</b></p>
Malpractice Insurance	<p>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. <b>This proof of insurance/certificate must include your name and indicate that you are covered under this policy while performing acupuncture services in the Commonwealth of Pennsylvania.</b></p>
Resume Curriculum Vitae	<p>You will need to upload, where prompted, a current Curriculum Vitae listing <u>all</u> 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.</p>

CDL-1

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

**(Pursuant to Commonwealth Documents Law)**

**RECEIVED**

**JAN 26 2022**

**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><b>Amy M. Elliott</b> BY: <u>Amy M. Elliott</u> (DEPUTY ATTORNEY GENERAL)</p> <p><small>Digitally signed by Amy M. Elliott DN: cn=Amy M. Elliott, o=Pennsylvania Office of Attorney General, ou=Chief Deputy Attorney General, email=amy.elliott@attorneygeneral.gov, c=US Date: 2022.01.19 09:04:05 -0500</small></p> <p><u>1/19/22</u> 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><u>State Board of Medicine</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>16A-4956</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Mark B. Woodland</u> Mark B. Woodland, M.D.</p> <p>TITLE <u>Board Chair</u> (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>[Signature]</u></p> <p><u>December 21, 2021</u> DATE OF APPROVAL</p> <p><u>Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**PROPOSED RULEMAKING**

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

**TITLE 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) proposes to amend 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 is proposing amendments to §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 18.18 and adding § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine).

#### *Effective Date*

The proposed amendments will be effective upon publication of the final-form rulemaking 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 Amendments*

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 is proposing 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 and (6) rename the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered).

#### Updating outdated terminology

As part of its review, the Board explored the feasibility of eliminating the words “Chinese” and “Oriental” from the regulations altogether to eliminate terms that may be considered culturally insensitive.

#### **The term “Chinese herbology”**

The Board proposes to replace the term “Chinese herbology” with the term “East Asian herbology.” While the term “Chinese herbology” is a term of art accepted and utilized within the regulated community, it is generally associated with the traditional herbal practices and theories commonly associated with those utilized in China, Taiwan, Korea and Japan. During the development of this proposed rulemaking, several alternative terms were discussed, including “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, the simple term “herbology” because it appeared to be overly broad. Other board-regulated practitioners may utilize herbs, minerals and compounds as part of their practice (albeit, utilizing Western herbs and philosophies). Consequently, the term “herbology” without further modification was deemed to be too broad of a term 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. In theory, the term “Asian herbology” could include herbal therapies and theories from all areas of Asia; including India, Saudi Arabia and north-central Russia. Those locales are likely to have their own distinct herbal remedy traditions and may utilize herbs which do not naturally grow, and until recently, have not been routinely available in areas which traditionally employed what the current regulations refer to as “Chinese herbology.” Consequently, “Asian herbology” appeared to be a term not compatible with the historic traditions and herbs of what the current regulations refer to as “Chinese herbology.”

“Eastern Asian herbology” likewise suffered from encompassing too broad of a geographic area in its potential reach, as it could potentially include areas such as eastern Russia, the Philippines, Thailand and 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. Consequently, the term “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. The Board has also proposed 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 does propose to retain several references to “Chinese herbology” within the regulations. Those instances were limited to 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.

### **The term “Oriental medicine”**

After much deliberation, the Board proposes to keep the term “Oriental medicine.” Comments from interested stakeholders, additional research, and discussions with the public during Board committee meetings revealed that the term “Oriental medicine” is currently a 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. The term “Oriental medicine” is 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 noted during its outreach, as well as during committee meetings to discuss drafts of the proposed rulemaking, that there was overwhelming opposition within the regulated community itself to changing the title of the “practitioner of Oriental medicine” license. Additionally, the Board considered the potential impact on the regulated community which may occur by changing the name of the license to some other title. Individuals who previously obtained services from a practitioner of Oriental medicine may become confused as to the services which may be lawfully provided by an individual who would be required to describe his or her practice utilizing a new term.

Similarly, utilizing terminology which is different than that used by the certifying and accrediting bodies and educational facilities could lead to reasonable concern by the public whether a practitioner is truly qualified to engage in these activities. Finally, the selection of a different and unique title which is not generally utilized or recognized within 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 if a unique term was utilized, the lack of support within the regulated community to alter the name of the authorization to practice using herbal therapy, and the potential economic impact on the regulated community by altering the name, the Board proposes to maintain the name of the authorization for an acupuncturist to practice East Asian herbology as “practitioner of Oriental medicine.”

The Board additionally noted that it could not 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. Therefore, in addition to maintaining the name “practitioner of Oriental medicine,” the proposed rulemaking also maintains many of the other references to “Oriental medicine” which currently are used within the existing regulations.

#### Removal of outdated regulations related to acupuncture licensure

As part of the Board’s ongoing work to continuously review and address outdated regulations, the proposed amendments will delete § 18.13(c) (relating to requirements for licensure as an acupuncturist). The specific subsection was related to the registration requirements for medical doctors applying for registration as acupuncturists prior to January 1, 1988. As the provision is no longer relevant, the Board proposes to delete it.

#### Amendments to conform to Act 134 of 2014

##### **Diagnosis by a physician, dentist or podiatrist**

The proposed regulation will incorporate statutory amendments to the ALA made by the act of September 24, 2014 (P.L. 2472, No. 134) (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. See section 3.1(c) of the ALA (63 P.S. § 1803.1(c)).

The Board proposes to amend its regulations to more clearly state how long an acupuncturist may treat a person without having received a diagnosis from a physician, dentist, or podiatrist. The Board did receive a comment during consideration of the proposed rulemaking inquiring why the Board limited the authority to diagnose to only physicians, dentists and podiatrists instead of including in the proposed regulations other practitioners who may be authorized to diagnose conditions, such as chiropractors or certified registered nurse practitioners. The Board notes that the General Assembly specified in section 3.1 of the ALA that the required diagnosis be made by “physician, dentist or podiatrist.” Consequently, the Board determined it is without statutory authority to extend the diagnosis authority to other licensing classifications and did not alter the proposed rulemaking in response to the comment.

##### **Professional liability insurance**

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. See section 3.2 of the ALA (63 P.S. § 1803.2). The Board has already implemented the requirement in practice given the statutory requirements expressed within Act 134 of 2014. Nevertheless, the Board has included with this rulemaking package provisions addressing the professional liability insurance requirement to be consistent with Act 134 of 2014, and so that the regulated community and public

may more easily understand the need for acupuncturists to obtain and maintain professional liability insurance.

Restructuring of duties and responsibilities based on license held

The Board proposes to substantially restructure § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician) to more clearly reflect the varying duties and responsibilities of: (1) an individual who is licensed as an acupuncturist but who is not licensed as a physician; (2) an individual who is licensed as a practitioner of Oriental medicine but who is not licensed as a physician; and (3) an individual who is licensed as an acupuncturist and who is also actively licensed as a medical doctor by the Board.

By way of example, the existing regulation at § 18.15(a)(4) requires acupuncturists to refer a patient to a physician, dentist or podiatrist for diagnosis if acupuncture services are contraindicated. In general, the concept of requiring an acupuncturist to refer a patient to another type of practitioner when the services which may be provided via acupuncture are contraindicated is appropriate. However, in considering the literal wording of the regulation, the Board determined that an across-the-board requirement that all individuals licensed as an acupuncturist make such a referral to another practitioner was illogical because there are a number of acupuncturists who are also actively licensed as medical doctors. It appears clear that the ALA contemplated that physicians may also wish to incorporate acupuncture within their practice. See 63 P.S. § 1803(a), which requires physicians who wish to practice acupuncture to obtain separate licensure as an acupuncturist. There appears to be no compelling reason to require a patient to be referred to a second physician under circumstances where a physician-acupuncturist initially evaluates a patient for acupuncture services, but determines that acupuncture will not be effective or is contraindicated. The Board could perceive no compelling reason which would prevent the physician-acupuncturist from simply “changing hats” and then providing an evaluation and medical care according to Western modalities. Requiring a physician who happens to also be licensed as an acupuncturist to refer the patient to a second physician simply because the physician-acupuncturist had initially considered, but ultimately excluded, potential acupuncture treatment did not appear in the best interest of patients and, in fact, could potentially harm the public health by delaying treatment and increasing costs.

Similarly, a prohibition on the use of titles or abbreviations implying that an acupuncturist is a doctor or physician could not reasonably be enforced against an acupuncturist already actively licensed as a physician. Consequently, the Board proposes separating the duties and responsibilities of individuals authorized to perform acupuncture by the types of licenses actually held by the individual. This separation will permit the Board to specifically tailor the duties and responsibilities appropriately and will provide the regulated community and the public with clear guidance regarding what a practitioner may and may not do.



### English proficiency examination

The Board is also proposing to expand the options for an applicant for licensure to demonstrate English language proficiency. The Board's current regulations offer only two options to demonstrate English language proficiency – either the acupuncture licensure examination was taken in English, or the applicant has obtained a passing score (currently set at 550) on the Test of English as a Foreign Language (TOEFL®) examination. After reviewing English language proficiency requirements for acupuncturists in other states, the Board determined that it should be acceptable for an applicant to demonstrate one of the following: (1) that the applicant's licensure examination was taken in English, (2) that the applicant's educational program was conducted in English or (3) that the applicant has achieved an acceptable score on the TOEFL®, the Occupational English Test (OET) for health-related professionals, or a substantially equivalent English language proficiency examination approved by the Board.

With regard to the acceptable score on the TOEFL®, the Board notes that since the last time the Board updated its regulations on this topic, the TOEFL® has been revised numerous times. The current version of the TOEFL® is the TOEFL iBT® (internet-based test). This version of the exam has a total possible scaled score of 120. The Board determined that a score of 83 or higher on this version of the TOEFL® exam (which represents the average score attained by individuals taking the exam for licensure purposes, as well as the average score attained by all test takers) is acceptable to demonstrate English language proficiency for individuals seeking licensure. The Board is providing for the possibility of “a similar score acceptable to the Board” because there is a second version of the TOEFL® which is rarely given and only in those limited circumstances that an individual has no possible access to the internet – the TOEFL® paper-delivered test. This version only includes three of the four sections of the TOEFL iBT® exam (excluding the speaking portion) and is not given a total scaled score – only individual scores on each portion completed. The Board does not expect any applicants to have completed this version of the exam but wants to provide for that possibility in the regulations. In addition, in the event the scoring system for the TOEFL® is altered again in the future, the Board would not need to immediately revise its regulations but could accept a comparable score.

### *Description of Proposed Amendments*

The Board is proposing comprehensive amendments to Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine), including renaming the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered).

The definition of “acupuncture examination” in § 18.11 (relating to definitions) would be amended to reflect that the Board itself does not offer an examination in acupuncture, and to remove references to herbal therapy and the practice of Oriental medicine to more accurately

reflect that the examination required to be licensed as an acupuncturist in the Commonwealth is the NCCAOM Acupuncture Program examination.

The proposed rulemaking would add three new definitions to § 18.11 for “East Asian herbology,” “East Asian herbology examination” and the acronym “TOEFL®.” Additionally, the definition of herbal therapy would be amended by replacing the word “Chinese” with the phrase “East Asian;” and the definition of “Chinese herbology” would be deleted. The definition for the acronym “NCCAOM” would be amended to include potential successor organizations. In addition, minor typographical corrections are being made.

The Board proposes to amend § 18.13(a) (relating to requirements for licensure as an acupuncturist) to update the list of acceptable methods for demonstrating English language proficiency for those applicants who did not take the acupuncture examination in English. In addition, the Board proposes to delete subsection (c) pertaining to requirements for licensure as an acupuncturist by a medical doctor prior to 1988 because it is no longer relevant.

The Board proposes to amend §18.13a (relating to requirements for licensure as a practitioner of Oriental medicine) by changing the required program of study from “Chinese herbology” to a program of study consistent with the new definition of “East Asian herbology,” and by changing the required examination from “the NCCAOM examination component on Chinese herbology” to “an East Asian herbology examination.” The Board is retaining the references to the NCCAOM certification in Chinese herbology to be consistent with the name of the credential issued by NCCAOM.

Section 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a medical doctor) is proposed to be renamed and substantially reorganized into distinct subsections - one for persons licensed solely as an acupuncturist, a second subsection for persons licensed as a practitioner of Oriental medicine and a third subsection for acupuncturists who are also licensed as medical doctors by the Board.

Subsection (a) is proposed to be amended so that it more clearly sets forth the practice responsibilities to the patient and the public for a person licensed as an acupuncturist who is not also licensed as a physician. In summary, the changes to the subsection incorporate the amendments in Act 134 of 2014 by clarifying that an acupuncturist may treat individuals with no symptoms of a condition for an unlimited time; may treat an individual presenting with symptoms of a condition for up to 60 days before referral for diagnosis by a physician, dentist or podiatrist; and may treat an individual presenting with symptoms of a condition after 60 days if the patient has been examined and diagnosed a physician, dentist or podiatrist. Additionally, due to the restructuring of the subsection, a new paragraph has been added specifically addressing the name tag or badge which must be worn and the information which may or may not be present on the name tag or badge.

Subsection (b) is proposed to be deleted and a new subsection (b.1) added that would set forth the practice responsibilities to the patient and the public for a person licensed as a practitioner of Oriental medicine who is not licensed as a physician. In summary, a practitioner of Oriental medicine must comply with the general requirements of acupuncturists found in subsection (a)(1)—(9). Additionally, a practitioner of Oriental medicine is required to perform an herbal therapy evaluation and, if appropriate, develop a treatment plan incorporating East Asian herbology modalities. In the event the practitioner of Oriental medicine determines that the patient's symptoms have worsened, that further treatment by East Asian herbology modalities is contraindicated, or that East Asian herbology practices may interfere with known drugs already prescribed to the patient, the practitioner of Oriental medicine must refer the patient to a physician, dentist or podiatrist as appropriate. Finally, paragraph (3) would address the name tag or badge which must be worn and the information which may or may not be present on the name tag or badge.

A new subsection (c) is proposed to be added to specifically set forth the practice responsibilities to the patient and the public for a person licensed as an acupuncturist who is also actively licensed as a medical doctor by the Board. Many practice duties and responsibilities are already imposed on medical doctors under Chapter 16 (relating to State Board of Medicine—General Provisions), consequently, restating those requirements is not necessary. A medical doctor also licensed as an acupuncturist will be required to include in the patient's medical records evidence of having performed an acupuncture evaluation and development of an acupuncture treatment plan for patients who were considered for, or who receive acupuncture services. Additionally, the subsection clarifies the duty of a medical doctor providing acupuncture services to comply with sterilization standards.

Section 18.15a(a) (relating to scope of practice of acupuncturists and practitioners of Oriental medicine) would be amended to clarify that an acupuncturist may utilize all supplemental techniques except herbal therapy unless licensed by the board as a practitioner of Oriental medicine. The proposed regulation also clarifies that non-prescription topical remedies may be utilized by acupuncturists even though they may contain as active ingredients parts of plants, minerals and other organic materials. Subsection (b) would be amended to clarify that a practitioner of Oriental medicine may utilize therapeutic herbs that contain active ingredients that are similar or equivalent to active ingredients in drugs classified by the Federal Food and Drug Administration unless otherwise prohibited by law or regulation. Additionally, subsection (c) will be amended to correct a typographical error.

Section 18.18 (relating to disciplinary and corrective measures) would be amended to clarify that an individual licensed as an acupuncturist or as a practitioner of Oriental medicine is subject to all of the disciplinary sanctions authorized under section 42 of the MPA (63 P.S. § 422.42) and 63 Pa.C.S. § 3108(b) (relating to civil penalties) for failing to comply with § 18.15, practicing or holding out as being able to practice acupuncture without a current and valid license as an acupuncturist, practicing or holding out as being able to practice East Asian herbology without a

current and valid license as a practitioner of Oriental medicine, practicing acupuncture or East Asian herbology without current professional liability insurance, and engaging in conduct prohibited under section 41 of the MPA (63 P.S. § 422.41).

Finally, the Board proposes to add a new § 18.20 (relating to professional liability insurance coverage for acupuncturists). In conformity with Act 134 of 2014, subsection (a) will require an acupuncturist to maintain professional liability insurance coverage in the minimum amount of \$1,000,000 per occurrence or claims made. Subsection (b) provides that proof of insurance coverage may be provided by: (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 amounts 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 amounts of coverage; or (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). Subsection (c) would provide that a licensee who does not have current professional liability insurance coverage as required may not practice as an acupuncturist or practitioner of Oriental medicine in this Commonwealth. Subsection (d) would require that 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.

#### *Fiscal Impact and Paperwork Requirements*

The only 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.

#### *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 and a copy of a Regulatory Analysis form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Dana Wucinski, Counsel, State Board of Medicine, P.O. Box 69523, Harrisburg, Pennsylvania 17106-9523, or by email to RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please include in the subject line “16A-4956 (Acupuncturists and Practitioners of Oriental Medicine)” when submitting comments.

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

**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].

\* \* \* \* \*

*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.

*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. 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 applicant's acupuncture educational program was conducted in English.

(ii) Demonstrating that the applicant has achieved a scaled score of at least 83, or similar score acceptable to the Board, on the TOEFL®.

(iii) Demonstrating that 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 applicant has achieved a passing score on a substantially equivalent English language proficiency examination, as approved by the Board.



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

\* \* \* \* \*

(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.
  - (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 § 18.15(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).

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

(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).

(c) 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 \$1,000,000 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.

\* \* \* \* \*





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

January 26, 2022

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

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

Dear Chairman Bedwick:

Enclosed is a copy of a proposed rulemaking package of the State Board of Medicine pertaining to 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, Chairperson  
State Board of Medicine

MBW/dmw:bmz  
Enclosure

cc: Arion R. Claggett, Acting Commissioner of Professional and Occupational Affairs  
Pamela Iovino, Deputy Secretary of Regulatory Programs  
Marc Farrell, Deputy Director of Policy, Department of State  
Cynthia Montgomery, Deputy Chief Counsel, Department of State  
Jacqueline A. Wolfgang, Senior Regulatory Counsel, Department of State  
Dana M. Wucinski, Board Counsel, State Board of Medicine  
State Board of Medicine

**From:** [Blauch, Tammy](#)  
**To:** [Zappasodi, Brittany](#); [Smeltz, Jennifer](#)  
**Subject:** RE: DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Date:** Wednesday, January 26, 2022 9:17:56 AM

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Good morning Brittany,  
Yes, we have received your regulation email.  
Have a great day.

*Tammy Blauch*  
Executive Secretary  
Office of Senator Robert M. Tomlinson  
Room 286 Main Capitol Building  
Harrisburg, PA 17120  
(717)-787-5072  
Fax: (717)772-2991  
[tblauch@pasen.gov](mailto:tblauch@pasen.gov)

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**JAN 26 2022**

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Review Commission**

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**From:** Zappasodi, Brittany <[bzappasodi@pa.gov](mailto:bzappasodi@pa.gov)>  
**Sent:** Wednesday, January 26, 2022 8:33 AM  
**To:** Blauch, Tammy <[tblauch@pasen.gov](mailto:tblauch@pasen.gov)>; Smeltz, Jennifer <[jmsmeltz@pasen.gov](mailto:jmsmeltz@pasen.gov)>  
**Subject:** DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Importance:** High

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

Please be advised that the State Board of Occupational Therapy Education and Licensure and the State Board of Medicine are delivering the following proposed rulemakings:

- 16A-6713: Licensure by Endorsement
- 16A-4956: Acupuncturists and Practitioners of Oriental Medicine

**Brittany Zappasodi** | Legal Assistant II  
Office of Chief Counsel | Department of State  
Governor's Office of General Counsel  
P.O. Box 69523 | Harrisburg, PA 17106-9523  
Phone 717.783.7200 | Fax 717.787.0251  
[bzappasodi@pa.gov](mailto:bzappasodi@pa.gov) | [www.dos.pa.gov](http://www.dos.pa.gov)

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**From:** Livingston, Jerry  
**To:** Zappasodi, Brittany  
**Subject:** RE: DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Date:** Wednesday, January 26, 2022 9:38:17 AM

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Thank you

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**From:** Zappasodi, Brittany <bzappasodi@pa.gov>  
**Sent:** Wednesday, January 26, 2022 8:32 AM  
**To:** Livingston, Jerry <Jerry.Livingston@pasenate.com>; Vazquez, Enid <Enid.Vazquez@pasenate.com>  
**Subject:** DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Importance:** High

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**From:** Emily Hackman  
**To:** Zappasodi, Brittany  
**Cc:** Nicole Sidle  
**Subject:** RE: DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Date:** Wednesday, January 26, 2022 9:17:29 AM

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Received.

EMILY EPLER HACKMAN | ADMINISTRATIVE ASSISTANT II

**David S. Hickernell, Majority Chairman**  
Professional Licensure Committee  
98<sup>th</sup> Legislative District  
Room 43, East Wing  
Harrisburg, PA 17120-2098  
717-783-2076

**Representative Mindy Fee**  
37<sup>th</sup> Legislative District  
Room 47, East Wing  
Harrisburg, PA 17120-2037  
717-772-5290

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**From:** Zappasodi, Brittany <bzappasodi@pa.gov>  
**Sent:** Wednesday, January 26, 2022 8:32 AM  
**To:** Nicole Sidle <Nsidle@pahousegop.com>; Emily Hackman <Eepler@pahousegop.com>  
**Subject:** DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Importance:** High

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**From:** Wilson, Marlene  
**To:** Zappasodi, Brittany  
**Subject:** RE: DELIVERY: REGULATIONS 16A-6713 & 16A-4956 (Wheatley)  
**Date:** Wednesday, January 26, 2022 8:55:18 AM  
**Attachments:** image001.png

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Received. Thank you.



*Marlene Wilson, Esquire  
Senior Committee Executive Director  
House Professional Licensure Committee  
Rep. Jake Wheatley, Jr., Chairman  
Phone: (717) 787-4032  
Internal Phone: 6253  
Email - [mwilson@pahouse.net](mailto:mwilson@pahouse.net)*

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**From:** Zappasodi, Brittany <bzappasodi@pa.gov>  
**Sent:** Wednesday, January 26, 2022 8:31 AM  
**To:** Wilson, Marlene <MWilson@pahouse.net>  
**Subject:** DELIVERY: REGULATIONS 16A-6713 & 16A-4956 (Wheatley)  
**Importance:** High

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**From:** Bulletin  
**To:** Zappasodi, Brittany  
**Cc:** Code&Bulletin  
**Subject:** [External] RE: DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Date:** Wednesday, January 26, 2022 8:48:02 AM

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Good morning Brittany,

Thank you for sending these proposed rulemakings. Someone from our office will contact you regarding publication in the Pennsylvania Bulletin.

Take care,

**Ernest L. Engvall | Legal Assistant**

[eengvall@palrb.us](mailto:eengvall@palrb.us) | 717.783.1531

Legislative Reference Bureau

Code and Bulletin Office

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**Sent:** Wednesday, January 26, 2022 8:34 AM  
**To:** Bulletin <[bulletin@palrb.us](mailto:bulletin@palrb.us)>  
**Subject:** DELIVERY: REGULATIONS 16A-6713 & 16A-4956  
**Importance:** High

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**Brittany Zappasodi | Legal Assistant II**

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