

CR 90-46

CERTIFICATE

STATE OF WISCONSIN

DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 10th day of September, 1990.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin, this 10 day of Sept., 1990.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

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SEP 10 1990
9:50 pm
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11-1-90

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BureauSTATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND LICENSING
DEPARTMENT OF REGULATION	:	ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 90-46)

ORDER

An order of the Department of Regulation and Licensing to create chapters RL 70 to 73 of the administrative code relating to definitions, unprofessional conduct, sanitation and safety, and certification qualifications and procedures for acupuncturists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) (a), 451.04 (1) (d), 451.12, 451.14 (2) (g) and 451.16, Stats.

Statutes interpreted: ss. 451.01 to 451.16, Stats.

In this order the Department of Regulation and Licensing creates the rules necessary to the implementation of ss. 451.01 to 451.16, Stats., created by 1989 Wisconsin Act 31, relating to the certification of persons to practice acupuncture within the state. These rules contain definitions of practices of acupuncture which are permitted, but not necessarily defined, by the statutes. The rules also set forth the qualifications and procedures for obtaining a certificate to practice acupuncture, whether as a person who is "grandfathered" because of prior practice of acupuncture within the state, or as a person who has previously been practicing under the authority of another jurisdiction, or as a person who is just beginning to practice acupuncture.

The rules set forth the sanitation and safety requirements of the practice of acupuncture, with specific attention given to sterility of instruments which puncture the skin, and sanitary practices throughout an acupuncture clinic or practice.

The rules also define standards of professional conduct expected of persons practicing acupuncture, and proscribe behaviors and practices which are not compatible with the safe practice of acupuncture or public health, safety, and welfare.

TEXT OF RULECHAPTER RL 70
AUTHORITY AND DEFINITIONS

RL 70.01 AUTHORITY.

RL 70.02 DEFINITIONS.

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CHAPTER RL 71
CERTIFICATION

RL 71.01 APPLICATION FOR CERTIFICATION.

RL 71.02 APPLICATION FOR CERTIFICATION OF A CURRENT PRACTITIONER.

RL 71.03 APPLICATION FOR RECIPROCAL CERTIFICATION. -

CHAPTER RL 72
SAFE PRACTICE

RL 72.01 SANITATION.

RL 72.02 STERILIZATION.

RL 72.03 TREATMENT PROCEDURES.

RL 72.04 DISPOSAL OF NEEDLES.

RL 72.05 PROCEDURE FOR EXPOSURE TO BLOOD.

RL 72.06 PRECAUTIONARY PROCEDURES.

RL 72.07 SAFE PRACTICES.

CHAPTER RL 73
GROUNDS FOR DISCIPLINE

RL 73.01 GROUNDS FOR DISCIPLINE.

SECTION 1. Chapter RL 70 is created to read:

CHAPTER RL 70 (title)

AUTHORITY AND DEFINITIONS

RL 70.01 AUTHORITY. The rules in chs. RL 70 to 73 are adopted by the department of regulation and licensing under the authority of ss. 227.11 (2) (a), 451.04 (1) (d), 451.12, 451.14 (2) (g) and 451.16, Stats., to govern the certification and regulation of acupuncturists.

RL 70.02 DEFINITIONS. As used in chs. RL 70 to 73:

- (1) "Acupressure" means the manual stimulation of acupuncture points.
- (2) "Acupuncture" has the meaning given under s. 451.01 (1), Stats.
- (3) "Acupuncturist" means a person who is certified under ch. 451, Stats., to practice acupuncture.

- (4) "AIDS" means acquired immunodeficiency syndrome.
- (5) "Department" means the department of regulation and licensing.
- (6) "Direct supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.
- (7) "F.D.A." means the federal food and drug administration or its successor.
- (8) "Herbal medicine" means the use of herbs and plants to assist in attaining or maintaining a state of health or relief from symptoms of disease.
- (9) "HIV" means human immunodeficiency virus.
- (10) "Laserpuncture" means the use of lasers to stimulate acupuncture points.
- (11) "Moxibustion" means the application of heat produced by burning dried moxa wool to specific points of the human body other than the burning of moxa wool directly on the skin.
- (12) "NCCA" means the national commission for the certification of acupuncturists.
- (13) "Needle sickness" includes nausea, or dizziness, or other physical discomforts resulting from acupuncture treatment.
- (14) "Secondary therapeutic technique" includes the practice of herbal medicine and the use of lasers in accordance with F.D.A. regulations and other applicable law and regulations.

SECTION 2. Chapter RL 71 is created to read:

CHAPTER RL 71 (title)

CERTIFICATION

RL 71.01 APPLICATION FOR CERTIFICATION. An applicant for certification as an acupuncturist who has never practiced acupuncture or who has never been certified as an acupuncturist elsewhere, or who does not qualify for certification under ss. RL 71.02 or RL 71.03 of this chapter, shall submit to the bureau of health service professions, department of regulation and licensing:

- (1) An application on a form provided by the department.

NOTE: Application forms are available on request to the department at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

- (2) A current, passport-type photograph of the applicant.

(3) The fee specified in s. 440.05 (1), Stats.

(4) Evidence that the applicant has never been the subject of any disciplinary action by any professional or licensing board, or convicted of any offense substantially related to the practice of acupuncture.

(5) Evidence of successful completion of the NCCA examination in acupuncture.

(6) Evidence of successful completion of course of study and residency, the equivalent of at least 2 consecutive years of full-time education and clinical work in Oriental diagnostic and therapeutic theories and practices at a school accredited by the national accreditation commission for schools and colleges of acupuncture and Oriental medicine or the NCCA.

(7) Evidence of successful completion of a clean needle technique course acceptable to the department.

RL 71.02 APPLICATION FOR CERTIFICATION OF A CURRENT PRACTITIONER. (1) An applicant for certification as an acupuncturist who has practiced in Wisconsin between September 1, 1989 and September 1, 1990 and who wishes to obtain certification without examination, shall provide the materials required by s. RL 71.01 (1) to (4) of this chapter, and shall submit the application under this section between September 1, 1990 and January 1, 1991. Applications received by the department on or after January 2, 1991 will be returned to the applicant without action by the department.

(2) Applications shall be reviewed for compliance with the following criteria:

(a) Evidence that the person applying for a certificate as an acupuncturist had established a continuous residence in the state of Wisconsin on or before September 1, 1989, and has resided in the state thereafter.

(b) Evidence that the person applying for a certificate as an acupuncturist has been actively engaged in the practice of acupuncture in Wisconsin between September 1, 1989 and September 1, 1990.

(3) A person is "actively engaged in the practice of acupuncture" if the person uses acupuncture as the primary means of treatment of patients, not as an adjunctive therapy. Acupuncture is the primary means of treatment of a patient when the therapy is dependent upon a thorough understanding and application of Oriental diagnostic theories and practices. Any applicant, whether or not licensed, registered or certified to practice another healing art, shall provide the department with satisfactory evidence that the applicant:

(a) Used acupuncture based on Oriental diagnostic and therapeutic theories and practices as the primary means of treating diseases and disorders in a minimum of 50 patients with a minimum of 250 patient visits between September 1, 1989 and September 1, 1990, as demonstrated by patient records or affidavit; and,

(b) Performs general health care in at least 70% of all patient visits, and performs specialized health care such as anesthetics, cosmetic treatments, addiction therapies, or weight control in no more than 30% of patient visits; and,

(c) Practices consistent with the standards of a clean needle technique course acceptable to the department.

RL 71.03 APPLICATION FOR RECIPROCAL CERTIFICATION. An applicant for certification as an acupuncturist who is certified as an acupuncturist in another state or territory of the United States shall provide the materials required by 1989 Wisconsin Act 336. Applications shall be reviewed for compliance with either (1) or (2) of this section:

(1) Has been actively engaged in the certified practice of acupuncture during the 5 years immediately preceding the application in any other state or territory of the United States. A person is "actively engaged in the practice of acupuncture" if the person uses acupuncture as the primary means of treatment of patients, not as an adjunctive therapy. Acupuncture is the primary means of treatment of a patient when the therapy is dependent upon a thorough understanding and application of Oriental diagnostic theories and practices. Any applicant, whether or not licensed, registered, or certified to practice another healing art, shall provide the department with satisfactory evidence that the applicant:

(a) Used acupuncture based on Oriental diagnostic and therapeutic theories and practices as the primary means of treating diseases and disorders in a minimum of 100 patients with a minimum of 500 patient visits during the 12 months immediately preceding the date of the application, as demonstrated by patient records or affidavits; and,

(b) Performs general health care in at least 70% of all patient visits, and performs specialized health care such as anesthetics, cosmetic treatments, addiction therapies, or weight control in no more than 30% of patient visits; and,

(c) Practices consistent with the standards of a clean needle technique course acceptable to the department.

(2) The requirements for certification in the other state or territory of the United States are substantially equivalent to the requirements for initial certification as an acupuncturist in Wisconsin.

SECTION 3. Chapter RL 72 is created to read:

CHAPTER RL 72 (title)

SAFE PRACTICE

RL 72.01 SANITATION. All areas of an establishment and the equipment used by acupuncturists in the establishment shall be maintained in a clean, sanitary and safe condition.

RL 72.02 STERILIZATION. (1) All nondisposable needles, acupuncture equipment that comes in contact with a patient's blood or body fluids or penetrates the skin (e.g. needle guides), and equipment used to handle or store needles (e.g. trays), and acupuncture equipment that comes in contact with a patient's blood or body fluids or penetrates the skin shall be sterilized after each use.

(2) All equipment required to be sterilized by this section shall be thoroughly wiped clean with a disinfectant or cleansing solution before sterilization.

(3) Sterilization, as required by this section, shall be accomplished by use of one of the following in accordance with manufacturer's instructions:

(a) Autoclave for 30 minutes at 250 degrees F., 15 pounds of steam pressure. If this method is employed, the packaging used to store the needles shall have autoclave tape to verify sterilization.

(b) Dry heat sterilization for 2 hours at 338 degrees F. If this method is employed, the acupuncturist shall check needles for breakage after sterilization.

(c) Ethylene oxide.

(4) The following procedures are not acceptable methods of sterilization:

(a) Boiling.

(b) Soaking in alcohol or other antiseptic solution.

(c) Glass bead sterilizer.

(5) Equipment used to sterilize shall be maintained in good working order. Sterilization equipment shall be monitored as required by the manufacturer to ensure that it is functioning in accordance with manufacturer's specifications.

(6) Any equipment that has been sterilized shall be stored in packaging that protects against contamination and that is clearly marked to distinguish it from unsterile equipment. Sealed packages containing sterilized equipment shall be marked with an expiration date in accordance with the manufacturer's recommendations.

(7) Resterilization of equipment is required if any of the following occur:

(a) It is equipment stored in a sealed package beyond its expiration date.

(b) Its packaging is damaged in any way which adversely affects the ability of the packaging to maintain the sterility of its contents.

(c) It is not used on the day the equipment is removed from its package.

(8) No needle, cup, or other device shall be used on more than one point of any patient, or applied to a single point on any patient more than one time, before it is resterilized.

RL 72.03 TREATMENT PROCEDURES. (1) Before any treatment commences, a patient shall be given the choice, at the patient's own expense, to have treatment with disposable acupuncture needles, which have been sterilized and wrapped in accordance with s. 451.12, Stats., and maintained in accordance with s. RL 72.02 (7).

(2) An acupuncturist shall wash his or her hands by scrubbing thoroughly for at least 10 seconds with soap or anti-microbial products between treatment of patients, immediately before an acupuncture procedure and after contact with blood or body fluids or obvious environmental contaminants.

(3) A clean field shall be maintained to protect sterility of equipment used in acupuncture treatment of each patient.

(4) A topical disinfectant shall be applied to the skin surface in the area prior to needle insertion or treatment that breaks the skin.

(5) A sterile needle shall be maintained in a sterile state prior to insertion into an acupuncture point and its shaft shall not come in contact with fingers during insertion, positioning or other manipulation.

RL 72.04 DISPOSAL OF NEEDLES. All needles shall be placed in a rigid, puncture-proof sealed container for disposal. Containers used for disposal shall be so labeled, and shall carry the Warning "CONTAMINATED CONTENTS--USE PRECAUTIONS." Disposal containers are to be handled and discarded appropriately.

RL 72.05 PROCEDURE FOR EXPOSURE TO BLOOD. When a patient or acupuncturist is exposed to blood by bleeding needles, laceration, or other exposure to broken skin or mucous membrane, the acupuncturist shall stop, thoroughly wash the exposed area or wound on the patient's or acupuncturist's body with soap and water, and disinfect the exposed area or wound with a topical disinfectant. In the case of mucous membrane exposure, the acupuncturist shall wash or rinse the affected area with copious amounts of water.

RL 72.06 PRECAUTIONARY PROCEDURES. (1) An acupuncturist shall cover any abrasions, oozing or open lesions or wounds on his or her hands or forearms prior to patient contact. If an acupuncturist has oozing or open lesions or

weeping dermatitis on his or her hands or forearms that cannot be effectively covered, the acupuncturist shall refrain from direct patient contact until such condition has resolved.

(2) An acupuncturist shall use a new pair of disposable protective gloves in treating each patient who has oozing or open lesions or weeping dermatitis in the area where treatment is to be performed and dispose of the gloves after each such use.

(3) If an acupuncturist learns that a patient has AIDS, hepatitis, or any other blood-borne infectious disease, or has tested positive for the HIV virus, then the acupuncturist shall use disposable needles in treating that patient.

RL 72.07 SAFE PRACTICES. (1) No acupuncturist shall engage in any treatment which violates standards of good and accepted practice of acupuncture, or which makes use of any unsanitary or non-sterile equipment.

(2) When an acupuncturist encounters a patient with a potentially serious disorder including, but not limited to, cardiac conditions, uncontrolled hypertension, acute abdominal symptoms, acute undiagnosed neurological changes, unexplained weight loss or gain in excess of 15% body weight within a 3 month period, suspected fracture or dislocation, suspected systemic infection, communicable disease, any serious undiagnosed hemorrhagic disorder or acute respiratory distress without previous history or diagnosis, the acupuncturist shall:

(a) In a non-emergency situation, request a consultation or written diagnosis from a duly licensed physician prior to commencing acupuncture treatment or continuing treatment if the situation is discovered in the course of treatment.

(b) In an emergency situation, provide life support and transportation to the nearest licensed medical facility.

(3) An acupuncturist shall have on file for each patient treated a written confirmation signed by the patient and the acupuncturist acknowledging that the patient has been advised to consult a physician regarding the conditions for which such patient seeks acupuncture treatment.

SECTION 4. Chapter RL 73 is created to read:

CHAPTER RL 73 (title)

GROUND FOR DISCIPLINE

RL 73.01 GROUND FOR DISCIPLINE. The department shall deny an application for renewal, limit, suspend, or revoke a certificate or reprimand or impose a forfeiture upon an acupuncturist upon a finding of unprofessional conduct. Unprofessional conduct includes, but is not limited, to:

(1) Practicing acupuncture while ability is impaired by a mental or emotional disorder, physical disability, alcohol or other drugs.

(2) Violating, or aiding or abetting violation of any law, the circumstances of which substantially relate to the practice of acupuncture or other healing art.

(3) Practicing acupuncture without a current and valid certificate.

(4) Having been disciplined in another jurisdiction in any way by a certifying, registering, or licensing authority for reasons substantially the same as those set forth in s. 451.14, Stats., or department regulations.

(5) After a request by the department, failing to cooperate in a timely manner with the department's investigation of a complaint filed against an acupuncturist. The department will apply a rebuttable presumption that an acupuncturist who takes longer than 30 days to respond to a request to the department has not acted in a timely manner.

(6) Practicing acupuncture fraudulently, beyond its authorized scope, with gross incompetence or gross negligence, with incompetence on one or more occasion, or with negligence on more than one occasion.

(7) Refusing to provide professional services to a person solely on the basis of such person's race, color, age, sex, sexual orientation, political or religious beliefs, handicap, marital status or national origin.

(8) Failing to provide duplicate patient records, at the acupuncturist's expense, when requested by the patient or the department. If the original record is not in English, the acupuncturist shall provide the duplicate in English translation performed by a competent translator. Thirty days is presumed to be a reasonable period of time in which to obtain the translation.

(9) Failing to maintain complete and accurate records of each patient visit, including summaries of examinations, diagnoses, and treatments performed or prescribed, and referrals to other practitioners of acupuncture or any other healing art, for a period of 7 years past the most recent visit of the patient to whom the record refers, or the time the patient reaches the age of majority.

(10) Advertising in a manner that is false, deceptive or misleading.

(11) Providing acupuncture without the informed consent of a patient. Informed consent requires:

(a) The disclosure to the patient of the availability of all alternate, viable modes of acupuncture treatment and the benefits and risks of these treatments, including the risks and benefits associated with the use of:

1. Acupuncture needles to stimulate acupuncture points and meridians, including the specific risks of needling certain points.

2. Use of mechanical, magnetic or electrical stimulation of acupuncture points, particularly in instances where such stimulation is applied across the midline of the trunk or in patients with a history of heart trouble.

3. Moxibustion.

4. Herbal medicine.

5. Laserpuncture.

6. Acupressure.

(b) The disclosure to the patient shall involve a disclosure of the side effects including:

1. Some pain at the site of needle insertion.

2. Minor bruising.

3. Infection and the risks from needling in the vicinity of an infection.

4. Needle sickness.

5. Broken needles.

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.11 (2) (intro.), Stats.

Dated

9/10/90

Agency

Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

RULES-267
9/7/90

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CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

RECEIVED

DATE: September 10, 1990

SEP 10 1990

TO: Gary Poulson
Assistant Revisor of Statutes

Revisor of Statutes
Bureau

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 90-46

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.