

# TITLE 24

## Professions and Occupations

### CHAPTER 17. MEDICAL PRACTICE ACT

#### Subchapter X. Acupuncture and Eastern Medicine Practitioners

##### **§ 1796 Acupuncture Advisory Council.**

(a) The Acupuncture Advisory Council (Council) consists of 5 voting members, and 1 ex officio member. The 5 voting members shall consist of 1 physician member of the Board of Medical Licensure and Discipline who possesses knowledge of acupuncture and 4 Council members licensed and trained in acupuncture or acupuncture and eastern medicine who have been primarily employed in the practice of acupuncture or acupuncture and eastern medicine in this State for at least 3 years immediately prior to appointment. The ex officio member shall be a Delaware physician who has expertise in acupuncture or acupuncture and eastern medicine. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member, other than the ex officio member, serving on the Council may not be an elected officer or a member of the board of directors of any professional association of acupuncture practitioners. The members of the Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel expenses at the State's current approved rate.

(c) The Council shall promulgate rules and regulations governing the practice of acupuncture and eastern medicine, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject within a reasonable amount of time proposed rules or regulations submitted to it by the Council.

(d) The Council shall meet quarterly, and at such other times as license applications are pending. The Council shall present to the Board the names of individuals qualified to be licensed and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations. The Board shall approve or reject these recommendations within a reasonable time period.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [77 Del. Laws, c. 319, § 1](#); [78 Del. Laws, c. 139, § 1](#); [80 Del. Laws, c. 316, § 2](#);

##### **§ 1797 Acupuncture practitioners.**

(a) As used in this subchapter:

(1) "Acupuncture" is the stimulation of points on the body by the insertion and manipulation of acupuncture needles using both traditional and modern scientific methods of evaluation and point selection. It also refers to a form of health care, based on a theory of energetic physiology that describes and explains the interrelationship of the body organs or functions with an associated acupuncture point or combination of points located on "channels" or "meridians". Acupuncture points

shall include the classical points defined in authoritative acupuncture texts and special groupings of acupuncture points elicited using generally accepted diagnostic techniques of eastern medicine and selected for stimulation in accord with its principles and practices. Acupuncture points are stimulated in order to restore the normal function of the aforementioned organs or sets of functions. Acupuncture shall also include the ancillary techniques of eastern medicine including moxibustion, acupressure or other forms of manual meridian therapy and recommendations that include eastern dietary therapy, supplements and lifestyle modifications.

(2) "Board" means the Board of Medical Licensure and Discipline.

(3) "Council" means the Acupuncture Advisory Council.

(4) "Eastern medicine" means the practice of acupuncture, Chinese herbology and Asian bodywork therapy as part of a comprehensive healthcare system encompassing a variety of traditional healthcare therapies that have been used for more than 3,000 years to diagnose and treat illness, prevent disease and improve well-being.

(5) "License" means, unless the context requires otherwise, a license issued by the Board to practice acupuncture.

(6)a. "Practice of acupuncture" means the use of needles with or without electrical stimulation for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

b. Needles used in the practice of acupuncture shall only be pre-packaged, single use, sterile acupuncture needles. These needles shall only be used on an individual patient in a single treatment session and disposed of according to federal standards for biohazard waste.

(7) "Practice of eastern medicine" includes the practice of acupuncture and further means making recommendations or prescriptions based in eastern dietary therapy, supplements and lifestyle modifications according to the principles of eastern medicine. Eastern dietary therapy shall be defined as recommending, advising or furnishing nonfraudulent information about herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, foods, other food supplements, or dietary supplements. For purposes of this paragraph, "fraud" shall be defined as an intentional misrepresentation for financial gain. Legitimate disagreement about the role of the above-listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud. These supplemental techniques may be used within the public domain or by another licensed or registered healthcare or bodywork professional, according to state law or regulation.

(b) Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers who are allowed to perform acupuncture. This includes chiropractic, medical and osteopathic physicians.

(c) An individual who is licensed pursuant to this subchapter, who is not being investigated or sanctioned in relation to unprofessional conduct or physical, mental, emotional, or other impairment, may not be prohibited from performing those professional activities included in this section.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [77 Del. Laws, c. 319, § 1](#); [77 Del. Laws, c. 449, §§ 1, 2](#); [80 Del. Laws, c. 316, § 3](#);

### **§ 1798 Licensure.**

(a) All applicants must meet the following requirements for licensure by the Board as an acupuncture and eastern medicine practitioner:

(1) Achievement of a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(b) All applicants must meet the following requirements for licensure by the Board as an acupuncture practitioner:

(1) Achievement of a Diplomate in Acupuncture from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(8) An acupuncturist who obtains licensure pursuant to this section may go on to become a licensed acupuncture and eastern medicine practitioner by achieving a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board.

(c) *Waiver of requirements.* — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive any of the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing acupuncture in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

(5) For waiver of a misdemeanor conviction or violation, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

(d) *License denial.* — If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(e) *Temporary license.* — The Executive Director of the Board, with the approval of a physician member of the Board, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this subsection is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this subsection.

(f) *License suspension, revocation, or nonrenewal.* —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and Board may take necessary action

against a licensee who is unable to render acupuncture or eastern medicine services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against a licensee must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a licensee consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members.

(2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning the activity of a licensee and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may recommend that the Board issue an order temporarily suspending the licensee's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Board, unless the licensee or the licensee's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the licensee or the licensee's attorney can be heard in opposition to the proposed suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended licensee requests a continuance of the hearing date. If the licensee requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A licensee whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the licensee or sent by certified mail, return receipt requested, to the licensee's last known address.

c. A licensee whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the licensee received notification of the decision of the Board, to temporarily suspend the licensee's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a licensee's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the licensee pursuant to paragraph (f)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended licensee requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [77 Del. Laws, c. 319, § 1](#); [77 Del. Laws, c. 325, § 19](#); [78 Del. Laws, c. 44, §§ 20, 21](#); [80 Del. Laws, c. 316, §§ 4-6](#);

### **§ 1798A Procedure or action not described.**

This subchapter governs the practice of acupuncture and eastern medicine practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of acupuncture and eastern medicine practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [80 Del. Laws, c. 316, § 7](#);

### **§ 1799 Fees; license renewal.**

The Division of Professional Regulation shall establish reasonable fees for licensing and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to acupuncture pursuant to the continuing education requirements for acupuncture practitioners established by the Acupuncture Advisory Council.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [80 Del. Laws, c. 316, § 8](#);

### **§ 1799A Current practitioners.**

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#); [repealed by 80 Del. Laws, c. 316, § 9, eff. Oct. 17, 2016](#);

### **§ 1799B Exemptions.**

(a) Acupuncture or supplemental or eastern medicine techniques may be performed by a student, trainee or visiting teacher who is designated as a student, trainee or visiting teacher while participating in a course of study or training under supervision of a licensed acupuncturist or acupuncture and eastern medicine practitioner in a program that the Council has recommended to the Board for approval. This includes continuing education programs and any acupuncture or eastern medicine programs that are a recognized route to certification as an acupuncturist by the NCCAOM or any Board-approved agency.

(b) Any herbalist, retailer or other person who does not hold himself or herself out to be a licensed acupuncturist shall not be limited by this subchapter.

[76 Del. Laws, c. 261, § 1](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 101, § 1](#); [80 Del. Laws, c. 316, § 10](#);

### **§ 1799C Renewal.**

Licenses must be renewed biennially and every licensee for renewal shall be required to complete continuing education credits as determined by regulation. The Board shall determine acceptable sources of continuing education credits as recommended by the Council.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#);

### **§ 1799D Reciprocal licensing.**

All applicants for reciprocal licensing must possess a current license in another state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints against the applicant.

[76 Del. Laws, c. 261, § 1](#); [77 Del. Laws, c. 101, § 1](#);

### **§ 1799E Prohibited acts; penalties; enforcement.**

(a) No person in this State shall use the title "licensed acupuncturist" or "L. Ac.," or use in connection with that person's name any letters, words or symbols indicating or implying that the person is a licensed acupuncturist, or advertise

services under the description of "licensed acupuncturist", unless that person holds a license as an acupuncturist issued pursuant to this subchapter. Nothing in this subsection shall be construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

(b) No person in this State shall use the title "eastern medicine practitioner" or use in connection with that person's name any letters, words, or symbols indicating or implying that the person is a licensed eastern medicine practitioner, or advertise services under the description of "licensed eastern medicine practitioner," unless that person holds a license issued pursuant to this subchapter. Nothing in this subsection shall be construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

(c) A person who, contrary to the provisions of this subchapter, practices or attempts to practice acupuncture within the State or represents that the person is an acupuncture practitioner or knowingly allows himself or herself to be represented as an acupuncture practitioner shall be fined not less than \$500 nor more than \$2,000 or imprisoned not more than 1 year, or both.

(d) The Office of the Attorney General is charged with the enforcement of this subchapter.

[76 Del. Laws, c. 261, § 1](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 101, § 1](#); [80 Del. Laws, c. 316, § 11](#);

**§ 1799F Acupuncture detoxification specialist (ADS); license required.**

(a) An individual who is not licensed as an acupuncturist under this subchapter shall not practice as an acupuncture detoxification specialist using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol for the purpose of preventing and treating alcoholism, nicotine dependency, substance abuse, or chemical dependency in the State without first obtaining a license issued by the Board upon the recommendation of the Council. Applications for licensure shall be upon written forms provided by the Council and Board and upon payment of a fee established by the Division of Professional Regulation. An applicant for a license to practice as an acupuncture detoxification specialist pursuant to the NADA or equivalent organization auricular point protocol in Delaware must meet the following criteria:

(1) Has successfully completed the NADA auricular point protocol training program or an equivalent training program satisfactory to the Council and Board for the treatment of alcoholism, nicotine dependency, substance abuse, or chemical dependency that meets or exceeds the standards of training set by the NADA including instruction in clean needle technique;

(2) Must provide evidence of a current license or certificate in good standing in a health-care related profession as approved by the Council and the Board; and

(3) Is in good standing as defined in § 1798(a)(4)-(7) of this title.

(b) *Waiver of requirements.* — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board, may waive the requirements of paragraph (a)(4) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as an acupuncture detoxification specialist in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare; and

(4) For waiver of a crime substantially related to the practice of acupuncture, more than 5 years have elapsed since the applicant has fully discharged all imposed sentences. As used herein, the term "sentence" includes, but is not limited to,

all periods of modification of a sentence, probation, parole or suspension. However, "sentence" does not include fines, restitution or community service, as long as the applicant is in substantial compliance with such fines, restitution and community service.

(c) ADS are prohibited from needling any body acupuncture points and may not advertise themselves as acupuncturists.

(d) ADS shall be subject to the disciplinary provisions of § 1798(f) of this title.

(e) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division and proof of continued competency as established in the Board's regulations.

[77 Del. Laws, c. 449, § 3](#); [80 Del. Laws, c. 316, § 12.](#);