

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE  
[49 PA. CODE CHS. 16 AND 18]

### Registration and Practice of Acupuncturists

The State Board of Medicine (Board) amends §§ 16.1, 16.11, 16.13, 16.15, 16.16, 16.101, 18.11—18.14 and 18.18, adds §§ 18.13a and 18.15a (relating to requirements for registration as a practitioner of Oriental medicine; and scope of practice of acupuncturists and practitioners of Oriental medicine) and deletes §§ 18.16, 18.17 and 18.19 to read as set forth in Annex A.

#### A. Effective Date

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

#### B. Statutory Authority

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

#### C. Background and Purpose

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

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

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

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

Subsequent to the publication of the ANFR, the Board received comments from members of the general public

who disagreed that the requirement that a patient obtain a medical examination and referral from a physician prior to receiving acupuncture treatment was necessary for the public health and safety. At the time, this requirement was statutory and the Board lacked authority to delete it. However, at the end of the last legislative session, the General Assembly enacted the act of November 29, 2006, (P. L. 1625, No. 186) (Act 186), effective January 29, 2007, which further amended the act. Act 186 contains two substantive provisions in regard to the practice of acupuncture:

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

At this time, there is insufficient time remaining under the process of the Regulatory Review Act (71 P. S. §§ 745.1—745.15) to implement the provisions of Act 186 in this final-form rulemaking. Therefore, the Board intends to promulgate a separate proposed rulemaking to address the Act 186 amendments. In the interim, the proposed amendments to § 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor) have been superseded by Act 186. Therefore, § 18.15 has been withdrawn from this final-form rulemaking.

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

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

Subsequent to the publication of the ANFR, both the HPLC and IRRC recommended that the Board add "practitioner of Oriental medicine" to the definition of "Board-regulated practitioner" in § 16.1 (relating to definitions). Similarly, IRRC suggested that § 16.13 (relating to licensure, certification, examination and registration fees) include practitioner of Oriental medicine registration. The Board agreed with these suggestions and also added references to practitioners of Oriental medicine throughout Chapter 16 when relevant.

IRRC noted that the terms "herbology," "herbal therapy" and "Chinese herbal therapy" are used interchangeably and suggested one term be used throughout the rulemaking. The Board notes that the term "herbal therapy" is used in section 3(f) of the act with regard to supplemental techniques. However, the Board believes that this reference to "herbal therapy" in the act must be

considered in the context of Oriental medical traditions. Chinese herbology is the study of the use of herbs in the Oriental medicine tradition, which is why the rulemaking continues to use that term in discussing the educational and examination requirements for registration as a practitioner of Oriental medicine. Herbal therapy, in the context of the regulations, is the application of Chinese herbology in the treatment of acupuncture patients. Therefore, the Board added definitions of "Chinese herbology" and "herbal therapy" in § 18.11 and uses those terms throughout the final-form rulemaking.

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

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

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

The HPLC requested additional information about to whom § 18.13a(c) would apply and whether the breadth of the exemptions from the standard licensing requirements was necessary. This subsection is intended to apply to acupuncturists who have been practicing in this Commonwealth for some period of time prior to this final-form rulemaking, and who had obtained their qualifications to practice at a time when the study and examination for the practice of acupuncture, including Chinese herbal therapy, was not as well organized as it is today. This subsection was developed because the APA strongly recommended that the Board find a means of recognizing existing practitioners. The APA estimated that up to 90 acupuncturists may be impacted by this issue. During the development of this final-form rulemaking, the APA very strongly recommended that the Board accept any course or examination regardless of whether the course or examination was recognized by other jurisdictions. Also, the APA strongly suggested that the examination requirement be divorced from the course requirement. With some misgivings as to whether this was an appropriate means of addressing the issue of existing practitioners, the Board proposed in the ANFR that existing acupuncturists demonstrate one of three qualifications for registration as a practitioner of Oriental medicine. These options were a course of study recognized by another United States jurisdiction, an examination recognized by another United States jurisdiction or NCCAOM certification.

The HPLC requested whether these three options are necessary. The APA stated that the options are too restrictive and will keep qualified persons out. At issue is

a balancing of interests between protecting the public from unqualified practitioners and recognizing the skill and training of individuals who may have previously obtained qualifications in a manner other than the now established route. The Board believes that as a general rule an individual should demonstrate both recognized education and recognized examination. However, it also recognizes that, especially in this field of the healing arts, the regulation of which is still relatively new to this Commonwealth, some individuals may have obtained credentials through a route different than the Commonwealth has established. Upon reflection, the Board has determined that the best way to ascertain the qualifications of individuals who may have obtained credentials in a manner other than the now established standard process is to recognize the Board's own authority under section 27 of the Medical Practice Act of 1985 (63 P. S. § 422.27) to determine and recognize the achievement of cumulative qualifications that the Board determines to be equivalent to the standard requirements for registration. Given the relatively small number of older acupuncturists who may seek to practice Oriental medicine, as estimated by the APA, the Board believes that providing them the opportunity to present evidence of their qualifications on a case-by-case basis is reasonable.

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

#### *E. Description of Amendments*

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

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

NCCAOM by an incorrect acronym. This error is corrected in this final-form rulemaking. Finally, § 18.11 is also amended pertaining to the required components of the acupuncture examination and the examination for registration as a practitioner of Oriental medicine.

Sections 18.12—18.14 are amended and §§ 18.16 and 18.17 are rescinded to delete references to acupuncturist supervisor and provisions pertaining to the supervision of the practice of acupuncture. Section 18.14 has been amended to add references to practitioners of Oriental medicine.

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

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

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

#### F. Fiscal Impact and Paperwork Requirements

The final-form rulemaking has no adverse fiscal impact or additional paperwork requirements imposed on the Commonwealth, its political subdivisions or the private sector.

#### G. Sunset Date

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

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 1210, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment. In addition, the Board published an ANFR at 36 Pa.B. 2411 and solicited additional comments for 30 days.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 13, 2007, this final-form rulemaking was approved by the HPLC. On February 28, 2007, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 1, 2007, and approved the final-form rulemaking.

#### I. Contact Person

Further information may be obtained by contacting Gerald S. Smith, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, gerasmith@state.pa.us.

#### J. Findings

The Board finds that:

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

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

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

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

#### K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapters 16 and 18, are amended by amending §§ 16.1, 16.11, 16.13, 16.15, 16.16, 16.101, 18.11—18.13, 18.14, 18.18, by adding §§ 18.13a and 18.15a and by deleting §§ 18.16, 18.17 and 18.19 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

*(Editor's Note:* The Board has withdrawn the proposal to amend § 18.15, which was included in the proposed rulemaking at 35 Pa.B. 1210.)

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

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

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

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

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 1284 (March 17, 2007).)

**Fiscal Note:** Fiscal Note 16A-4919 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

#### Subchapter A. BASIC DEFINITIONS AND INFORMATION

#### § 16.1. Definitions.

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

\* \* \* \* \*

Board-regulated practitioner—A medical doctor, midwife, physician assistant, drugless therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine or an applicant for a license or certificate that the Board may issue.

\* \* \* \* \*

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

(a) The following medical doctor licenses are issued by the Board:

- (1) License without restriction.
(2) Institutional license.
(3) Extraterritorial license.
(4) Graduate license.
(5) Temporary license.
(6) Interim limited license.

(b) The following nonmedical doctor licenses are issued by the Board:

- (1) Midwife license.
(2) Physician assistant license.

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

- (1) Registration as a supervising physician of a physician assistant.
(2) Registration as an acupuncturist.
(3) Registration as a practitioner of Oriental medicine.
(4) Biennial registration of a license without restriction.
(5) Biennial registration of an extraterritorial license.
(6) Biennial registration of a midwife license.
(7) Biennial registration of a physician assistant license.
(8) Biennial registration of a drugless therapist license.
(9) Biennial registration of a limited license-permanent.
(10) Biennial registration of an acupuncturist registration.
(11) Biennial registration as a practitioner of Oriental medicine.

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

\* \* \* \* \*

(d) Acupuncturist registration:

Table with 2 columns: Description, Fee. Row 1: (1) Acupuncturist Application, \$30. Row 2: Biennial renewal, \$40.

(2) Practitioner of Oriental medicine registration:

Table with 2 columns: Description, Fee. Row 1: Application, \$30. Row 2: Biennial renewal, \$40.

(e) Drugless therapist license:

Table with 2 columns: Description, Fee. Row 1: Biennial renewal, \$35.

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

(a) A person licensed or certified by the Board, or registered as an acupuncturist or as a practitioner of Oriental medicine with the Board, shall register biennially to retain the right to engage in practice unless specifically exempted within this section.

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

- (1) Institutional license.
(2) Graduate license.
(3) Temporary license.
(4) Interim limited license.
(5) Registration as a physician assistant supervisor of a physician assistant.

(c) Registration for a biennium expires December 31 of every even-numbered year. Application for biennial registration shall be made upon forms supplied by the Board.

\* \* \* \* \*

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

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

- (1) A license, certificate or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, another country or a branch of the Federal government.
(2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, another country or a branch of the Federal government.

(3) A finding or verdict of guilt, an admission of guilt, a plea of nolo contendere, probation without verdict, a disposition in lieu of trial or an accelerated rehabilitative disposition with respect to a felony offense or a misdemeanor offense relating to a health care practice or profession.

(b) Portions of applications provided by the Board will be reserved to assist applicants in meeting the reporting responsibilities enumerated in subsection (a).

(c) The reporting responsibilities enumerated in subsection (a) continue after the Board issues a license, certificate or registration. If, after the Board has issued a license, certificate or registration, any of the events in subsection (a) occur, the person shall report that matter to the Board in writing within 30 days after its occurrence.

Subchapter G. MINIMUM STANDARDS OF PRACTICE—CHILD ABUSE

§ 16.101. Definitions.

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

Board-regulated practitioner—A medical doctor, physician assistant, nurse midwife, certified registered nurse

practitioner, respiratory care practitioner, drugless therapist, acupuncturist, practitioner of Oriental medicine or auxiliary personnel performing radiologic procedures on the premises of a medical doctor.

*Child abuse*—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

*ChildLine*—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.

*Perpetrator*—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

*Person responsible for the child's welfare*—

(i) A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control.

(ii) The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

*Recent acts or omissions*—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

*Serious mental injury*—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

*Serious physical injury*—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

*Sexual abuse or exploitation*—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual

depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

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

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

#### § 18.11. Definitions.

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

*Acupuncture*—

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

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

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

*Acupuncture examination*—An examination offered or recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture and herbal therapy to qualify for the privilege of practicing as an acupuncturist or as a practitioner of Oriental medicine. The Board recognizes the NCCAOM component examinations in acupuncture and sterilization procedures as the examination for registration as an acupuncturist and the NCCAOM examination component in Chinese herbology as the examination for registration as a practitioner of Oriental medicine.

*Acupuncture medical program*—An academic or clinical program of study in acupuncture which has been given category I continuing medical education credit by an institution accredited or recognized by the Accreditation Council on Continuing Medical Education to conduct category I continuing medical education courses.

*Acupuncturist*—An individual registered to practice acupuncture by the Board.

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

*Herbal therapy*—The application of Chinese herbology to the treatment of acupuncture patients.

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

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

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

**§ 18.12. Registration as an acupuncturist.**

A medical doctor who intends to practice acupuncture and any other individual who intends to practice acupuncture shall register with the Board as an acupuncturist.

**§ 18.13. Requirements for registration as an acupuncturist.**

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

(1) Has successfully completed an acupuncture education 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).

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

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

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

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

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

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

**§ 18.13a. Requirements for registration as a practitioner of Oriental medicine.**

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

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

(1) Successfully completed an acupuncture education program that includes the study of Chinese herbology and has passed the NCCAOM examination component on Chinese herbology.

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

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

(1) Successful completion of a Chinese herbology or Oriental medicine education program recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine and successful completion of an examination in Chinese herbology or Oriental medicine recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine.

(2) NCCAOM certification in Chinese herbology or Oriental medicine.

(3) The achievement of cumulative qualifications that the Board determines to be equivalent to the standard requirements for registration as a practitioner of Oriental medicine.

(d) This subsection does not apply to a medical doctor registered as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

**§ 18.14. Biennial registration requirements.**

(a) Acupuncturists and practitioners of Oriental medicine shall register biennially and submit the appropriate registration fee to engage in the practice of acupuncture for the biennial period.

(b) Procedures for biennial registration of acupuncturists and practitioners of Oriental medicine are outlined in § 16.15 (relating to biennial registration; inactive status and unregistered status).

(c) The biennial registration fee is set forth in § 16.13 (relating to licensure, certification, examination and registration fees).

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

(a) An acupuncturist may practice acupuncture and use supplemental techniques but may not use herbal therapy.

(b) A practitioner of Oriental medicine may practice acupuncture and use supplemental techniques including herbal therapy.

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

**§ 18.16. (Reserved).**

**§ 18.17. (Reserved).**

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

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

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

(c) The registration of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended, as required by section 40 of the act.

**§ 18.19. (Reserved).**

[Pa.B. Doc. No. 07-635. Filed for public inspection April 13, 2007, 9:00 a.m.]

## Title 67—TRANSPORTATION

### DEPARTMENT OF TRANSPORTATION

#### [67 PA. CODE CH. 457]

#### Prequalification of Bidders

The Department of Transportation (Department), under section 404.1 of the State Highway Law (act) (36 P. S. § 670-404.1), amends Chapter 457 (relating to prequalification of bidders).

#### *Purpose of this Chapter*

The purpose of this chapter is to provide a method and manner, determined to be desirable by the Secretary of Transportation, to prequalify all contractors and subcontractors who seek to perform highway project work in this Commonwealth.

#### *Purpose of this Final-Form Rulemaking*

The purpose of this final-form rulemaking is to amend the table in § 457.5 (relating to classification) by deleting the specific classification for Rest Area Structures and Buildings.

This final-form rulemaking is necessary because work associated with the "N" Work Classification Code (rest area structures, buildings) is not traditionally performed by highway construction contractors. Contractors who have expertise in this work are generally not prequalified by the Department. To attract a greater number of competent bidders, this type of work should be classified as miscellaneous work.

#### *Statutory Authority*

The regulation is amended under section 404.1 of the act.

#### *Persons and Entities Affected*

This final-form rulemaking affects contractors who wish to perform project work regarding the construction of rest area structures and buildings along highways in this Commonwealth.

#### *Fiscal Impact*

The final-form rulemaking will have little or no fiscal impact on contractors. The Commonwealth may realize cost savings in the construction of rest area structures and buildings in the availability of a greater number of contractors able to bid on such work.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 21, 2006, the Department submitted a copy of the notice of proposed rulemaking,

published at 36 Pa.B. 3273 (July 1, 2006), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on February 27, 2007, the final-form rulemaking was deemed approved by the Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective February 28, 2007.

#### *Sunset Provisions*

The Department is not establishing a sunset date for the regulation, since the regulation is needed to administer provisions required under the act. The regulation will be continuously monitored for effectiveness by the Department and the affected industry.

#### *Contact Person*

The contact person for this final-form rulemaking is Joseph F. Cribben, P. E., Contract Evaluation Engineer, Contract Management Division, Bureau of Construction and Materials, P. O. Box 2855, Harrisburg, PA 17105-2855.

#### *Order*

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 457, are amended by amending § 457.5 to read as set forth at 36 Pa.B. 3273.

(b) The Secretary of the Department shall submit this order and 36 Pa.B. 3273 to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary shall certify this order and 36 Pa.B. 3273 and deposit them with the Legislative Reference Bureau as required by law.

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

ALLEN D. BIEHLER, P. E.,  
*Secretary*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 37 Pa.B. 1284 (March 17, 2007).)

**Fiscal Note:** Fiscal Note 18-407 remains valid for the final adoption of the subject regulation.

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