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ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State
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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas State Board of Acupuncture and Related Techniques

Department _____

Contact Christina Hamilton E-mail asbart@cgiresults.com Phone (501) 687-1396

Statutory Authority for Promulgating Rules ACA 25-15-201 et. seq.

Rule Title: Rules and Regulations

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Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Contact Person	E-mail Address	Date
Christina Hamilton	asbart@cgiresults.com	Jul 5, 2012

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Christina Hamilton
Signature

(501) 687-1396 — Phone Number
asbart@cgiresults.com — E-mail Address

Executive Director
Title

Jul 5, 2012
Date

Revised 7/2011 to reflect new legislation passed in 2011.

FILED
REGISTER DIV.
12 JUL -6 AM 9:47
MARK MARTIN
SECRETARY OF STATE
STATE OF ARKANSAS
BY_____

RULES AND REGULATIONS
ARKANSAS STATE BOARD OF ACUPUNCTURE
&
RELATED TECHNIQUES

TITLE I

A. **DEFINITIONS:** For the purpose of these rules the following definitions apply in addition to those in the Act.

1. "**Act**" is the Arkansas Acupuncture Practices Act, as found in Ark. Code Ann. § 17-102-101 et seq.
2. "**Acupuncture**" means the insertion, manipulation, and removal of acupuncture needles from the body, and the use of other modalities and procedures at specific locations on the body, for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder by controlling and regulating the flow and balance of energy and functioning of the patient to restore and maintain health. Acupuncture shall not be considered surgery.
3. "**Acupuncturist**" means a person licensed under the Act to practice acupuncture and related techniques in the State of Arkansas, and includes the term licensed acupuncturist, and the abbreviation "L.Ac."
4. "**Applicant**" is a person who has submitted to the Board an application for licensure.
5. "**Board**" is the Arkansas State Board of Acupuncture and Related Techniques.
6. "**Clinical Experience**" is the practice of acupuncture and related techniques as defined in the Act, after graduation from an educational program in acupuncture and related techniques as required herein. A year of clinical experience shall be consistent with the National Commission for the Certification of Acupuncture and Oriental Medicine's (NCCAOM) requirements.
7. "**Institution**" is a school that teaches an educational program in acupuncture and related techniques, certified by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and that has been approved by the Board, pursuant to Ark. Code Ann. § 17-102-304(b).
8. "**Licensee**" is an individual licensed pursuant to the Act and defined as an acupuncturist under Title I. A.3. of these Rules. Those persons exempted under § 17-102-311 shall not be considered as licensed under the Act and shall not use the descriptive term "licensed" referring to an acupuncture practice in Arkansas.
9. "**Moxibustion**" means the use of heat on, or above, or on acupuncture needles, at specific locations on the body for the prevention, cure, or correction of a malady, illness, injury, pain, or other condition or disorder.
10. "**Office**" is the physical facility used for the practice of acupuncture and related techniques.
11. "**Related Techniques**" are the techniques used in the Chinese and Asian traditional healing arts in addition to acupuncture as set out in Title I, Section B, Scope of Practice herein, including Chinese herbs.
12. "**Rules**" are the rules and regulations, promulgated pursuant to the Act, governing acupuncturists, applicants, educational programs, educational institutions, and all matters covered by the Act.
13. "**Supervised Clinical Practice**" is the observation and application of acupuncture and related techniques in actual treatment situations under appropriate supervision, as defined by NCCAOM.
14. "**Supervision**" is the coordination, direction and continued evaluation at first hand of the person in training or engaged in obtaining clinical practice and shall be provided by a qualified instructor or tutor as set forth in a board-approved institute of acupuncture and related techniques .

B. **SCOPE OF PRACTICE:** The practice of acupuncture and related techniques in Arkansas is a distinct system of primary health care with the goal of prevention, cure, or correction of any illness, injury pain or other disorder or condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health. Acupuncture and related techniques include all of the allied

traditional and modern diagnostic, treatment, and therapeutic methods of the Chinese/Asian healing arts. The scope of practice of acupuncturists shall include but is not limited to:

1. Evaluation and management services.
2. Examination and diagnostic testing.
3. The ordering of radiological, laboratory or other diagnostic tests.
4. The stimulation of points or areas of the body using needles, moxabustion and other heating modalities, cold, light, lasers, sound, vibration, magnetism, electricity, cupping, bleeding, suction, pressure, ion pumping cords, or other devices or means.
5. Physical medicine modalities and techniques, including, tuina, gua sha, shiatsu, anmo, and other massage incidental to acupuncture and related techniques.
6. Therapeutic exercises, breathing techniques, meditation, and the use of biofeedback and other devices that utilize color, light, sound, electromagnetic energy and other means therapeutically.
7. Dietary and nutritional counseling and the administration of food, beverages and dietary supplements therapeutically.
8. The recommendation of any Chinese herbal medicine, Western herbal medicine, or substances such as vitamins, minerals, enzymes, amino acids, nutritional supplements, and glandulars, lawfully and commercially available in the United States.
9. Counseling regarding physical, emotional and spiritual lifestyle balance.

C. Provided, however, the practice of acupuncture in Arkansas shall not involve:

a. Manipulation, mobilization or adjustment to the spine or extra-spinal articulations;

b. The prescribing, dispensing, injection or administering of any substance or legend drug as defined under A.C.A. 20-64-503;

TITLE II

A.1 **BOARD COMPOSITION AND DUTIES:** In addition to its duties described in the Act, the Board shall:

1. Meet in special meetings at any time. Notice of special meetings shall be provided to Board members, the media which have requested notification, and all other interested parties who have requested notification of such meeting at least twenty-four (24) hours in advance of such special meetings.
2. Meet in regular meetings upon such a schedule as shall be set by the Board. Notice of regular meetings shall be provided to Board members, the media, and all interested parties who have requested notification of such meeting at least three (3) days in advance of such regular meetings.
3. Incur and pay expenses for the employ of personnel, legal counsel, independent contractors, or such assistants, as it may deem necessary for the functioning of and fulfilling the duties of the Board as prescribed in the Act.
4. Keep a file of all approved educational programs.
5. Keep a file of all licensees and provisional licensees.
6. Issue certificates of approval of educational programs and educational institutions.
7. Delegate its ministerial duties if it so chooses, as provided by the Act.

8. Notify the Governor when any board member has missed three consecutive meetings, whether special or regular meetings.

9. Elect a President, Secretary, and Treasurer at the first Board meeting held each May.

10. Perform such other duties and shall exercise such other powers as may be conferred upon it by statute, or as may be reasonably implied from such statutory powers and duties and as may be reasonably necessary in the performance of its responsibilities under the Act, pursuant to Ark. Code Ann. § 17-102-108.

A.2 **PUBLIC RECORDS:** All records kept by the Board shall be available for public inspection pursuant to the Arkansas Freedom of Information Act and the Arkansas Administrative Procedures Act.

B. **MEETINGS OF THE BOARD**

(a) **Regular Meetings.** The Board shall meet at least once in every six (6) months, and may meet more often.

(b) **Special Meetings.** The Board may meet in special meetings called at any time at the pleasure of the President or by the Secretary upon the request of any two (2) full members of the Board.

(c) **Quorum.** A quorum of the Board shall consist of three (3) full members of the Board in attendance at any meeting. For purposes of determining a quorum, the ex officio member shall not be considered a full member.

(d) **Voting.** Any and every official action taken by the Board shall require an affirmative vote of a majority of the full membership of the Board that is three (3) out of the five (5) full members. No vote on any official action shall include a vote by the ex officio member.

C. **ADOPTION OF RULES AND REGULATIONS**

The Board may adopt such rules and regulations as are necessary to conduct its business and administer its duties as found in the Act. All rules and regulations shall be adopted pursuant to the provisions of the Arkansas Administrative Procedures Act. Prior to any proposed rule being submitted to the Administrative Rules and Regulations Committee of the Arkansas Legislative Council, said rule shall be approved in writing by the Arkansas State Medical Board.

In addition to rules and regulations proposed by the Board, interested parties may petition the Board for a change in or addition to the rules and regulations pursuant to the Arkansas Administrative Procedure Act. The Board shall consider such written request at its next regular meeting.

TITLE III

A.1 **GENERAL**

All agency action regarding licensure shall be governed by the Arkansas Acupuncture Practice Act, A.C.A. 17-102-101 and, when applicable, A.C.A. §§25-15-208 to 213.

A.2 **REQUIREMENT TO KEEP CURRENT ADDRESSES ON FILE**

All persons holding a license issued by Arkansas State Board of Acupuncture and Related Techniques are required to provide the board with information so that the board can remain in contact and provide notice of complaints and/or hearings. The licensee is required to provide written notice to the board of any change in business and/or residence address within 10 working days of the change. Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.

A.3 **APPLICATION FOR LICENSURE**

The Board shall not cause a license to be issued to any person it has deemed to be unqualified pursuant to the provisions of the Act and these rules and regulations. All applicants are required to be at least 21 years of age, be a citizen of the United States and/or a legal resident, not have had a license to practice acupuncture and related techniques in any other state suspended or revoked nor have been placed on probation for any cause, not have been convicted of a felony and not be a habitual user of intoxicants, drugs or hallucinatory preparations.

(a) Every Applicant must provide a statement signed by the Applicant and the signature verified by a Notary Public as to whether he or she:

(1) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and related techniques, or related to any other health care professions for which the Applicant is licensed, certified, registered or legally recognized to practice;

(2) Has been a defendant in litigation in any jurisdiction related to his or her practice of acupuncture, and related techniques, or related to any other health care professions for which the Applicant is licensed, certified, registered or legally recognized to practice; and

(3) Has been convicted of a felony in any jurisdiction.

(b) Any Applicant who is licensed, certified, registered or legally recognized to practice any other health care professions, in any jurisdiction, pursuant to any authority other than the Arkansas Acupuncture Practices Act shall provide a certificate from each such jurisdiction stating the disciplinary record of the Applicant. A copy of the certificate may be substituted if verified as a true and correct copy by the keeper of the records in that jurisdiction.

(c) Any Applicant who has been subject to any disciplinary action or proceeding in another jurisdiction comprehended by this section may be denied a license by the Board.

A.4 **APPLICATION:** Every person seeking a license to practice acupuncture and related techniques shall file an application on the current form provided by the Board. All applications must be complete and in English.

(a) **EXHIBITS REQUIRED:** Every application shall be accompanied by:

1. The fee for application for licensure specified in Title III, C.
2. A passport-type photograph of the Applicant taken not more than six months prior to the submission of the application.
3. Two (2) affidavits certifying the Applicant's good moral character by acupuncturists not related to the Applicant, who have known the Applicant not less than one year. These affidavits shall be on a form provided by the Board.
4. A notarized form signed by the Applicant authorizing the release to the Board of additional information regarding the Applicant and his or her qualifications for licensure, including but not limited to educational background, criminal background check, transcripts, credentials, and accreditation information on educational institutions.

(b) **VERIFICATION:** Verification of the Applicant's education shall include:

1. A copy of the Applicant's certificate or diploma from an accredited educational institution evidencing completion of the required program of study in acupuncture and related techniques. This copy shall include on it an affidavit certifying that it is a true copy of the original.
2. An official copy of the Applicant's transcript that shall be sent directly to the Board by the approved educational institution from which the Applicant received the certificate or diploma, and that shall verify the Applicant's satisfactory completion of the required academic and clinical education and that shall designate the completed subjects and the hours of study completed in each subject; and

(c) **DOCUMENTS IN A FOREIGN LANGUAGE:** All documents submitted in a foreign language must be accompanied by a certified translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the Applicant certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an Applicant's application shall be at the expense of the Applicant.

(d) **SUFFICIENCY OF DOCUMENT:** The Board shall determine the sufficiency of the documentation to support the application for licensure. The Board may, in its sole discretion, request further documentation, proof of qualifications and/or require a personal interview with any Applicant to establish his or her qualifications.

B. **AUTHORIZED FORMS**

The Board shall authorize such forms as are necessary from time to time for the application for licenses, and the renewal of licenses. The authorized forms may be reproduced without permission from the Board but shall not be altered or changed in any way by any prospective Licensee. Authorized forms shall be available from the Board to any member of the public or any prospective Licensee. Requests for forms may be made in writing or by telephone call to the Board at its offices, or to the Board Secretary.

C.1 **REQUIREMENTS FOR LICENSING**

(a) **EDUCATIONAL REQUIREMENTS:** Every Applicant shall provide satisfactory proof that he or she has completed and graduated from an approved four year academic educational program in acupuncture and related techniques and has received a certificate or diploma for completion of the approved educational program from an institute approved under C.1. (a)1. The program must include an extensive education in Chinese herbal medicine.

(1) **APPROVED EDUCATIONAL INSTITUTION AND PROGRAM.** For the Board to determine that an institution meets the standards of professional education, the institution must require a program of study of at least four (4) academic years which must meet Accreditation Commission for Acupuncture and Oriental Medicine's (ACAOM) level of education and standards or other criteria as found reasonable by the Board, require participation by students in a supervised clinical or internship program which includes a minimum of eight hundred (800) hours of supervised clinical practice, and confer a certificate, diploma, or degree only after personal attendance in classes and clinics. An applicant from a foreign institution shall provide documentation to show that the institution and program meets the same or higher standards.

(2) **PREREQUISITES:** Has successfully completed not fewer than sixty (60) semester credit hours of college education, to include a minimum of thirty (30) semester credit hours in a relevant field of science, including but not limited to biology, chemistry, anatomy, physiology, and psychology.

C.2 **FEES:** The Board shall charge fees for the following, in compliance with A.C.A. Section 17-102-304(d) (1)-(7):

(a) Initial application for licensing, set at $250.00;

(b) Biennial licensing renewal, set at $400.00;

(c) Late renewal (in addition to the application fee), set at $100.00;

(d) Continuing education provider one-time registration fee, set at $200.00;

(e) Administrative support fee (annual), set at $100.00;

The board will set each of the above fees at its initial meeting of each fiscal year. A schedule of fees will be provided in writing to each licensee subsequent to that meeting.

D. **RECIPROCAL LICENSING:** The Board may enter into reciprocal licensing agreements with other states or jurisdictions, provided the requirements and qualifications for licensure in that state or jurisdiction meet or exceed the requirements and qualifications for licensure in Arkansas.

E. **EXAMINATIONS:** The Board shall be authorized to give examinations to all Applicants for licensure, or to accept the scores of an Applicant on Board-approved nationally recognized examinations on acupuncture and Chinese herbal medicine.

(a) Examination topics to be covered shall be anatomy and physiology, pathology, diagnosis, hygiene, sanitation, sterilization techniques, acupuncture and related principles, practices and techniques, and Chinese herbal medicine.

(b) If the Board conducts its own examination of applicants for licensure, applicants for a license shall be notified in writing by the Board at least sixty (60) days in advance of the date set for the examination.

(c) Every applicant for a license pursuant to the Act shall achieve a score of not less than seventy percent (70%) on each topic on the examination administered by the Board, or a passing score on a Board-approved nationally recognized examination on acupuncture and Chinese herbal medicine.

(d) The Board shall maintain a list of every Board-approved nationally recognized examination at its offices.

F. **ACUPUNCTURE DETOX SPECIALISTS.** Detox specialists shall register with the Board by providing a certified copy of documentation of the completion of the National Acupuncture Detoxification Association (NADA) certification course. They shall be permitted to practice only under the supervision of an acupuncturist who is licensed by the Arkansas State Board of Acupuncture and Related Techniques. They shall be permitted to use only the five (5) point ear protocol of NADA for substance abuse and shall not treat or offer treatment in any other capacity.

TITLE IV

A.1 **LICENSE RENEWAL:** Every Applicant for license renewal must provide a statement as to whether he or she, since applying for licensure or since last applying for license renewal, which ever occurred most recently:

(a) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and related techniques, or related to any other health care professions for which the Applicant for license renewal is licensed, certified, registered or legally recognized to practice;

(b) Has been a defendant in any litigation in any jurisdiction related to his or her practice of acupuncture and related techniques, or related to any other health care professions for which the Applicant for license renewal is licensed, certified, registered or legally recognized to practice; and

(c) Has been convicted of a felony in any jurisdiction.

Any Applicant for license renewal who has been subject to any action or proceeding comprehended by Title III.A.1 may be subject to disciplinary action, including denial, suspension or revocation of licensure.

A.2 **LICENSING PERIOD:** The licensing period shall run from January 1 to the second consecutive December 31. A newly licensed acupuncturist shall be issued a license that shall be required to be renewed on the second December 31following the initial date of licensure. If license is not renewed by this date, license shall expire and licensee shall not practice until such time that renewal requirements have been met. The Board shall send renewal notifications to licensees no later than December 1.

A.3 **LICENSE RENEWAL:** Except as provided otherwise in the Act, or in these Rules, or pursuant to other State law, each licensed acupuncturist shall be granted renewal of his or her license for two years upon receipt by the Board of his or her renewal application that shall include any continuing education documentation required by Ark. Code Ann. 17-102-308 and Title IV.B. of these Rules and the fee for the biennial license renewal specified in Title III.C.2.

A.4 **LATE LICENSE RENEWAL:** Each licensee shall be required to pay biennial license renewal fees and meet continuing education requirements as specified in the Act and in these Rules. During a grace period of 30 days after the expiration of the license (December 31), no late fee will be required. However, if a license is expired for thirty (30) days to one (1) year, the late renewal fee shall be assessed and the licensee shall meet all of requirements of renewal. Practice of acupuncture and related techniques is not allowed during any period of expiration. A licensee who fails to renew his or her license within one (1) year after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets the following requirements:

(1) Meets all current standards of the Arkansas State Board of Acupuncture and Related Techniques; and

(2) Takes and passes the required examination(s) and pays all fees associated therewith as if seeking a license for the first time.

A.5 **EXPIRED LICENSE:** A licensee shall not practice acupuncture and related techniques following the expiration of the license, until such time that the expired license is renewed pursuant to Title IV.A.3 and Title IV.A.4.

B.1 **CONTINUING EDUCATION:** The Board shall not renew the license of any licensee unless the licensee presents to the Board evidence of attendance at a board- approved educational session or sessions of not less than twenty-four (24) hours of continuing education within the previous biennial period, which shall include a CPR course for healthcare professionals, to be considered as two (2) hours of the required twenty-four (24) hours of continuing education.

Approved continuing education courses may not be retaken for credit in consecutive biennial periods. Proof of teaching courses related to acupuncture or related techniques may be applied to a maximum of four (4) hours of continuing education, subject to approval by the board.

B.2 The Board may accept hours from Board approved courses or NCCAOM approved courses as valid continuing education hours, provided that documentation contains: provider contact information, course information (including any relevant NCCAOM reference), and official seal or signature.

(a) If the course has not been approved by NCCAOM or the Board for continuing education, the licensee shall submit information to the Board about the course, including the person or organization sponsoring or presenting the course, an outline of the subject matter covered by the course and the length of the course in hours.

(b) It is the Board's intention to respond to all submissions of continuing education courses for approval in a timely manner. If the submission is not specifically denied in writing by the Board within 60 days after the postmark of the applicant's submission, the submission shall be approved.

(c) Applications for approval of providers of continuing education shall be on an individual course basis, provider applicants shall be responsible for obtaining and submitting the proper information and fees to the Board.

(d) If the Board denies approval for any course or courses upon application for license renewal, the applicant shall have an additional 90 days to obtain the required hours during which time the applicant can continue to practice. Failure to acquire the proper hours within said 90 days shall result in non-renewal of the license.

TITLE V

A. HEARING PROCEDURES ON DENIED APPLICATIONS

(a) If a preliminary determination is made by the board that an application for license should be denied the board will inform the applicant of the grounds or basis of the proposed denial in writing. Any Applicant who is denied the issuance of a license by the Board may appeal such decision and request a hearing before the full Board on the application. The Applicant shall file the appeal in writing with the Board within thirty (30) days of receipt of the notice of denial.

(b) Within thirty (30) days of the filing of the appeal on the denial of a license, the Board shall hold a hearing on the application. The Applicant shall be notified in writing of the date, time, and location of the hearing at least twenty (20) days in advance of the hearing on the appeal.

(c) The Board and the Applicant shall disclose no later than ten (10) days before the hearing on the merits the names, addresses and telephone numbers of all persons who they intend to call as witnesses at the hearing, and shall provide a list of exhibits which will be offered for introduction into evidence.

(d) The Applicant shall not engage in communications with any member of the Board on any matter related to the application or the appeal prior to the date set for the hearing, nor shall the Board members engage in communications in violation of the Arkansas Administrative Procedures Act or the Arkansas Freedom of Information Act.

(e) At the hearing, the Applicant shall be provided the opportunity to present evidence, by testimony or by documents, cross examine all witnesses, and call witnesses for the Board to consider with respect to the grant or denial of the license sought by the Applicant.

(f) Hearings before the Board are governed by the Arkansas Administrative Procedures Act, and the Board shall not be bound by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure in its proceedings. However, the Rules may serve as a guide to the presiding officer for the conduct of the hearing. The President of the Board shall rule on all motions as well as all evidentiary and procedural matters that arise during the hearing. The Board may appoint an impartial hearing officer to preside at or assist the Board.

(g) The Board shall not cause a license to be issued to a person it has deemed to be unqualified until and unless the Board has been satisfied that the Applicant has complied with all the terms, conditions, and requirements set forth in the Act and these rules and regulations, and that the Applicant is capable of safely and ethically engaging in the practice of acupuncture and related techniques.

(h) When an Applicant has been denied a license, he or she may not reapply for a license until one of the following has taken place: (1) one full year has passed since the date the license was denied; or (2) there has been a significant change in circumstances or facts with respect to the applicant's credentials and/or qualifications.

B.1 COMPLAINT AND DISCIPLINARY PROCEDURES

(a) A complaint may be initiated by any person by a telephone call, a written complaint, or a walk-in complaint presented to any Board Member or the Board's representative. The Board shall prepare

a complaint form. This form shall be available at the office of the Board or from the Secretary of the Board. A written complaint form shall be submitted to the Board to initiate the review process. If a complaint is made by telephone, a complaint form shall be mailed to the complainant.

(b) The Secretary of the Board shall maintain a written log of all complaints received which records the date of the complaint, the name, address and telephone number of the Complainant, the name of the subject of the complaint (Respondent), the method by which the complaint was made (e.g., telephone, letter, sworn written complaint, etc.), and other pertinent data as the Board may direct.

(c) Acupuncturists shall have every patient sign a form that contains the following information: "All licensed acupuncturists are governed by Arkansas statutes A.C.A. §17-102-101 et seq, and the Rules and Regulations of the Arkansas State Board of Acupuncture and Related Techniques (ASBART). Patients may contact ASBART for information or complaints."

B.2 PROCEDURES FOR RECEIPT OF A COMPLAINT

(a) Upon receipt of a written, signed complaint, or upon the Board's own action as initiated by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, and as then reduced to a written complaint, if the Board has reasonable cause to believe that the Act or the Rules promulgated pursuant thereto have been or are being violated, the Board Secretary shall:

1. Log in the date of receipt of any complaint initiated by the Board or any other party.
2. Determine whether the Respondent is licensed by the Board to practice acupuncture and related techniques in the State of Arkansas, or is an Applicant for licensure.
3. Assign a complaint number and create an individual file. Complaint numbering shall begin with the last two digits of the year in which the complaint is filed and shall then continue sequentially (e.g. 11-001).
4. Within seven (7) working days of the date of receipt of the complaint, send written acknowledgment of receipt of the complaint to the Complainant.

(b) Furnish the Respondent with a copy of the complaint and all documents filed in relation to the complaint by certified mail within seven (7) working days of the receipt of the complaint by the Board. The Respondent shall also be informed in writing at this time that the Board has initiated an investigation into the complaint, and that the Respondent may furnish the Board documents relevant to the complaint.

(c) Both parties shall refrain from contacting any member of the Board while the complaint is under investigation, and until the matter has been resolved.

B.3 REVIEW OF THE COMPLAINT

(a) The Board will review all written, signed complaints filed against a Licensee or Applicant.

(b) The Respondent shall be provided at least twenty (20) calendar days in which to file a written response to the complaint, and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position.

(c) If the Board determines that further information is needed, it may issue subpoenas, or employ an investigator, or experts, or other persons whose services are determined to be necessary, in order to assist in the processing and investigation of the complaint.

(d) Upon completion of the investigation, the Board will prepare a written summary of its initial findings. The summary shall not identify any of the parties by name, but by case number only until the issue has been set for a hearing. The Board shall provide a copy of its findings to the Complainant and Respondent prior to the matter being set for a hearing.

(e) If the Board determines that it does not have jurisdiction, or if it does have jurisdiction but finds that no violation exists, both the Complainant and Respondent will be notified in writing. The letter will explain why the case cannot be accepted for investigation and/or action (e.g. due to the statute of limitations, or the nature of the complaint being a fee dispute, or there being no violation of the Act or the Rules), or it may note that the complaint can be referred to another agency. A letter from the Board will be sent within thirty (30) days of the date of the Board's decision to both the Complainant and Respondent. The letter will state the Board's action and the reasons for its decision. The letter will be signed by the President.

B.4 HEARING BY THE BOARD

(a) Unless the Board dismisses the complaint pursuant to Title V. B.3(e), above, the complaint shall be set for a hearing before the full Board. The matter shall be referred to only by the assigned case number, and shall be brought pursuant to the provisions of the Arkansas Administrative Procedure Act.

(b) The Respondent shall be notified of the hearing at least thirty (30) days in advance of the date set for the hearing. The Complainant shall also receive a copy of the notice of hearing. The notice of hearing shall set forth the charges and allegations against Respondent in sufficient detail so as to provide full disclosure and notice of all violations of the Act and regulations.

(c) The Respondent may file a response to the notice of hearing, but is not required to do so. Any written response to the charges must be filed with the Board ten (10) days in advance of the date set for the hearing on the complaint.

(d) The Respondent may waive a hearing on the notice and complaint. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Board.

(e) At any time the Board may enter into a settlement agreement with the Licensee as a means of resolving a complaint. Any proposed settlement agreement must be approved by the Board upon a majority vote of those qualified to vote, and must be approved further by the Licensee or Applicant, upon a knowing and intentional waiver by the Licensee or Applicant of his or her right to a hearing.

(f) The Board is empowered to issue subpoenas pursuant to the Ark. Code Ann. § 17-102-206(c) and Ark. Code Ann. § 17-80-102.

(g) The Board may appoint an impartial hearing officer to preside at or assist the Board in any hearing.

B.5 DISCIPLINARY PROCEEDINGS

(a) The parties shall disclose to each other no later than ten (10) days before the hearing on the merits the names, addresses and telephone numbers of all persons who they intend to call as witnesses at the hearing, and shall provide a list of exhibits which each intends to offer for introduction into evidence. If the opposing party is not in possession of a copy of any of the listed exhibits, the party which intends to offer the exhibits shall provide copies of all such exhibits at the time the written exhibit list is provided.

(b) The Respondent shall not engage in communications with any member of the Board on any matter after a notice of hearing has been issued by the Board, nor shall the Board members engage in ex-parte communications in violation of the Arkansas Administrative Procedures Act or the Arkansas Freedom of Information Act.

(c) At the hearing, each party shall be provided the opportunity to present evidence, by testimony or by documents, cross examine witnesses and call witnesses.

(d) Hearings before the Board are governed by the Arkansas Administrative Procedures Act and shall not be bound by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure in its proceedings. However, the Rules may serve as a guide to the presiding officer for the conduct of the hearing. The President of the Board or its duly appointed hearing officer shall rule on all motions as well as all evidentiary and procedural matters that arise during the hearing.

(e) When a Licensee is found guilty of any of the acts set forth in the Act or a violation of any Order of the Board, or of a violation of these rules and regulations, the Board may impose the following sanctions:

1. Refuse to issue a license to the Applicant;
2. Revoke or suspend the license of the Licensee;
3. Restrict the practice of the Licensee;
4. Impose an administrative fine not to exceed five thousand dollars ($5,000.00) for each count or separate offense of which the Licensee is found guilty;
5. Reprimand the Licensee; or
6. Place the Licensee on probation for such period of time as the Board deems is appropriate and impose such conditions as the Board may specify for the conduct of the Licensee's practice.

In the event that the Board revokes or suspends the license of an acupuncturist, the license shall not be reinstated until such time as the Board is satisfied that the Licensee has complied with all the terms and conditions set forth in the final disciplinary order of the Board, and that the Licensee is capable of safely and ethically engaging in the practice of acupuncture and related techniques. Upon written request by the Licensee for reinstatement, the Board shall review the case to determine whether a license should be reissued.

TITLE VI

A. **PROHIBITED ACTS AND CONDUCT OF LICENSED PROFESSIONALS:** Any Applicant for license renewal who provides the Board with false information or makes a false statement to the Board with regard to any action or proceeding comprehended by the Act or these rules and regulations may be subject to disciplinary action, including denial, suspension or revocation of licensure. Prior to the entry of a final order to suspend or revoke a license, or to impose other sanctions upon a licensee, the Board will serve the licensee a complaint and notice hearing in writing. The licensee shall be afforded the opportunity for a hearing and the Board has the burden of proving the alleged facts and violations of law stated in the complaint.

The following acts or omissions may be considered as grounds for disciplinary action by the Board, following notice and hearing, or for the denial of application for licensure:

(1) **PROFESSIONAL INCOMPETENCE:** Failure to possess or apply the knowledge, or to use the skill and care ordinarily used by reasonably well-qualified acupuncturists practicing under similar circumstances, giving due consideration to the locality involved.

(2) **FAILURE TO FOLLOW PROPER INSTRUMENT STERILIZATION PROCEDURE:** Failure to use sterile instruments or failure to follow proper instrument sterilization procedures including the use of biological monitors and the keeping of accurate records of sterilization cycles and equipment service maintenance as described in the manufacturer's instruction manual, and the current edition of "Clean Needle Technique For Acupuncturists--A Manual" published by the National Commission For The Certification Of Acupuncturists. This provision shall not apply to needles, which may not be re-used or sterilized for a subsequent use on more than one patient under any circumstances.

(3) **FAILURE TO FOLLOW CLEAN NEEDLE TECHNIQUE:** Failure to follow clean needle technique as defined in the current edition of "Clean Needle Technique For Acupuncturist--A Manual" published by the National Commission For The Certification Of Acupuncturists.

(4) **FALSE REPORTING:** Willfully making or filing false reports or records in his or her practice as an acupuncturist, or filing false statements for collection of fees for services that were not rendered.

(5) **OUT OF STATE DISCIPLINARY ACTION:** Committing any act or omission which has resulted in disciplinary action against the acupuncturist or applicant by the acupuncture licensing or disciplinary authority or court in another state, territory, or country.

(6) **PROCURING LICENSE BY BRIBERY, FRAUD, OR DECEIT:** Committing fraud or deceit in procuring or attempting to procure or renew a license or a provisional license to practice in the profession of acupuncture and related techniques by making false statements, or providing false information the application for licensure. An acupuncturist or an applicant shall be guilty of bribery if he or she attempts to pay money or provide anything of value to a member of the licensing Board in return for having a license issued.

(7) **MISREPRESENTATION:** Advertising, practicing, or attempting to practice under a name other than one's own.

(8) **FALSE ADVERTISING:** Soliciting or advertising for patronage by any means which is misleading, fraudulent, deceptive, or dishonest. It also constitutes false advertising for an acupuncturist to identify himself or herself as a doctor or physician.

(9) **EDUCATIONAL FRAUD:** Practicing fraud, deceit, gross negligence, or misconduct in the operation of an educational program in acupuncture and related techniques.

(10) **FAILURE TO KEEP RECORDS:** Failure to keep written records reflecting the course of treatment of the patient. Records shall be kept for a period of no less than five (5) years, and shall be subject to review by the Board.

(11) **FAILURE TO PROVIDE RECORDS TO PATIENT:** Failure to make available to a patient or client, upon request, copies of documents in the possession or under the control of the Licensee that have been prepared for and paid for by the patient or client.

(12) **BREACH OF CONFIDENTIALITY:** Revealing personally identifiable facts, data or information obtained in a professional capacity, without the prior consent of the patient or client, except as authorized or required by law.

(13) **DELEGATING RESPONSIBILITIES TO UNQUALIFIED PERSONS:**

a. Delegating professional responsibilities to a person when the acupuncturist delegating such responsibilities knows or has reason to know that the person is not qualified by education, by experience or by licensure or certification to perform the responsibilities; or

b. Failure to exercise appropriate supervision over Provisional Licensees or students who are authorized to practice only under the supervision of the acupuncturist.

(14) **EXERCISING INFLUENCE WITHIN A PATIENT-DOCTOR RELATIONSHIP FOR PURPOSES OF ENGAGING A PATIENT IN SEXUAL ACTIVITY:** Exercising influence within a patient-doctor relationship for the purpose of engaging in sexual activity with a patient.

(15) **LACK OF FITNESS TO PRACTICE:** Continuing to practice and provide treatment for patients when the Licensee:

a. Has become mentally incompetent or unfit, or has become incompetent by reason of negligence, habits, or other related causes; or

b. Has become habitually intemperate or addicted to the use of habit-forming drugs, illegal drugs, and/or alcohol.

(16) **INSURANCE FRAUD:** Knowingly committing fraud or deceit in the filing of insurance forms, documents, or information pertaining to the health or welfare of a patient, or knowingly allows an employee to file insurance forms, documents, or information pertaining to health or welfare benefits which are false.

(17) **WILLFUL VIOLATIONS:** Willfully or repeatedly violating any of the provisions of the Act or any of the provisions of these rules and regulations, or any lawful order of the Board.

(18) **POSTING OF LICENSE:** An acupuncturist who has been licensed by this Board shall post his or her license in a conspicuous location at his or her office or place of practice; failure to post the license may be considered unprofessional conduct.

(19) **PUBLIC HEALTH AND SANITATION:**

a. Failure to use only pre-sterilized, disposable needles in the administration of acupuncture;

b. Using staples in the practice of acupuncture;

c. Failing to wash hands with soap and water or other disinfectants before handling needles and between treatments of different patients;

d. Re-using the same needles on more than one patient in the administration of acupuncture.

(20) **CRIMES RELATING TO ACUPUNCTURE:** Having pled guilty or nolo contendere to, or having been found guilty of, a crime in any jurisdiction which directly relates to the practice of acupuncture and related techniques or to the ability to practice same.

(21) **INCOMPETENCE AND UNPROFESSIONAL CONDUCT:** The foregoing specifications of unprofessional conduct shall not be exclusive of the types of acts and omissions that may be found by the Board to constitute incompetence or unprofessional conduct.

B. **EMERGENCY ACTION**

(1) If the Board finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the Board can summarily suspend, limit, or restrict a license. The notice requirement in Title V. B.4 does not apply and must not be construed to prevent a hearing at the earliest time practicable.

(2) Emergency Order:
An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively require emergency action to be taken by the Board. The written order must include notification of the date on which Board proceedings are scheduled for completion.

Written Notice:
The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order. One or more of the following procedures will be used:

a. Personal delivery;
b. Certified mail, return receipt requested, to the last address on file with the Board;
c. First class mail to the last address on file with the Board

d. Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that Board orders be sent by fax and has provided a fax number for that purpose

e. Oral Notice. Unless the written emergency order is served by personal delivery on the same day that the order issues, the Board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

f. Electronic mail (email) to the last known email address, with a request for an immediate acknowledgement of receipt by the persons.

(3) Unless otherwise provided by law, within 10 days after emergency action taken pursuant to paragraph B.(1) of this rule, the Board must initiate a formal suspension or revocation proceeding.

C. **VOLUNTARY SURRENDER OF LICENSE**

The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the Board's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

D. **REINSTATEMENT AFTER SUSPENSION**

(1) An order suspending a license may provide that a person desiring reinstatement may file with the Board a verified petition requesting reinstatement.

(2) The petition for reinstatement must set out the following:

a. That the individual has fully and promptly complied with the requirements of Title V.B.5(e) of these rules pertaining to the duty of a sanctioned professional;

b. That the individual has refrained from practicing in this profession during the period of suspension;

c. That the individual's license fee is current or has been tendered to the Board; and

d. That the individual has fully complied with the requirements imposed as conditions for reinstatement.

(3) Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.

(4) Failure to comply with the provisions of these Rules precludes consideration for reinstatement.

(5) No individual will be reinstated unless the Arkansas State Board of Acupuncture and Related Techniques approves reinstatement by majority vote.

E. **RE-LICENSURE FOR REVOKED OR SURRENDERED LICENSE**

(1) No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the Board. The petition for re-licensure is not allowed until at least two years after the revocation or surrender of license took effect.

(2) The applicant bears the burden of proof that he or she is rehabilitated following the revocation or surrender of his or her license, that he or she can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he or she is otherwise qualified for the license pursuant to §17-102-101 et seq.

(3) The Board may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

(4) The Board may require that the person seeking re-licensure take the licensing examination.