



1 of 1 DOCUMENT

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VOLUME 41, ISSUE 13

ISSUE DATE: JULY 6, 2009

**RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE ACUPUNCTURE EXAMINING BOARD**

*41 N.J.R. 2617(a)*

**Proposed Amendments: N.J.A.C. 13:35-9**

**Proposed New Rules: N.J.A.C. 13:35-9.4, 9.6, 9.7, 9.10, 9.13 and 9.14**

**Proposed Repeals: N.J.A.C. 13:35-9.5, 9.9 and 9.16**

**Proposed Repeal and New Rule: N.J.A.C. 13:35-9.12**

[Click here to view Interested Persons Statement](#)

**Rules of the State Acupuncture Examining Board**

Authorized By: State Acupuncture Examining Board, Renee Clark, Executive Director; and State Board of Medical Examiners, William Roeder, Executive Director.

Authority: *N.J.S.A. 45:2C-3*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-206.

Submit comments by September 4, 2009 to:

Renee Clark, Executive Director  
State Acupuncture Examining Board  
Division of Consumer Affairs  
124 Halsey Street  
PO Box 45002  
Newark, New Jersey 07101

The agency proposal follows:

**Summary**

The State Acupuncture Examining Board (the Board) recently underwent a review of all of its rules at N.J.A.C. 13:35-9. As a result of this review, the Board is proposing amendments, new rules and repeals for N.J.A.C. 13:35-9.

*N.J.A.C. 13:35-9.1* sets forth the purpose and scope of Subchapter 9. The Board proposes to amend this rule to clarify language and correct citations. The rule is proposed for amendment to clarify that physicians and dentists must be licensed in New Jersey if they seek to perform acupuncture in New Jersey.

*N.J.A.C. 13:35-9.2* sets forth definitions for terms used in Subchapter 9. The Board proposes to amend this section by deleting the term "experienced," which is no longer used in Subchapter 9 and to add new definitions for "acupuncture program," "acupuncturist," "baccalaureate degree" and "NCCAOM." The Board proposes to amend the definition of "'certified,' 'certification' and 'certificate'" to clarify language and to remove reference to licensure. The Board also proposes to amend the definition of "guest acupuncturist" to clarify that such an individual must be legally authorized to practice in another state or country and to include reference to *N.J.A.C. 13:35-9.14*, which imposes standards for guest acupuncturists.

*N.J.A.C. 13:35-9.3* imposes requirements for applicants for certification. The Board proposes to amend this rule to clarify language and to require applicants to pass specific modules of the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination prior to applying for certification. Applicants who did not complete some part of their education exclusively in English will be required to submit proof that they have passed the Test of English as a Foreign Language. An applicant who passed the NCCAOM examination prior to January 1, 2003 will have to submit proof that he or she has taken and passed the NCCAOM biomedicine module.

*N.J.A.C. 13:35-9.4* is a proposed new rule, which sets forth the education requirements that applicants for certification must complete. An applicant is required either to complete a baccalaureate degree and an acupuncture program in the United States, complete a degree equivalent to a baccalaureate degree in another country and an acupuncture program, hold an unnumbered license in New Jersey as a physician or as a dentist or complete an acupuncture tutorial program. The proposed new rule also sets forth the education documents that applicants must submit to the Board. The proposed new rule requires that, four years from the effective date of the rule, all acupuncture programs consist of at least 2,500 hours of instruction. The Board is allowing a four-year period until this requirement becomes effective, so that individuals enrolled in acupuncture programs that do not meet the 2,500 hour requirement when this rule becomes effective will have adequate time to complete the program and obtain certification.

Existing *N.J.A.C. 13:35-9.4* sets forth examination requirements for certification. The Board proposes to recodify this rule as *N.J.A.C. 13:35-9.5*. The Board will no longer require applicants to successfully pass a Board administered practical examination. The Board believes that the NCCAOM examination sufficiently tests an applicant's ability to practice acupuncture. The rule is also proposed for amendment to require applicants for certification to complete the Board administered acupuncture safety and jurisprudence examination after completing the requirements of *N.J.A.C. 13:35-9.3*.

*N.J.S.A. 45:2C-8* permits physicians and dentists to perform acupuncture if they have received training in acupuncture. Existing *N.J.A.C. 13:35-9.16* sets forth the standards for this training. The Board proposes to repeal this rule and proposes new rule *N.J.A.C. 13:35-9.6* to clearly set forth the training physicians and dentists must complete.

Existing *N.J.A.C. 13:35-9.5* prohibits the practice of acupuncture by individuals who are not authorized to do so by *N.J.S.A. 45:2C-1* et seq. The rule also sets forth the titles that individuals authorized to perform acupuncture are prohibited from using. The Board proposes to incorporate provisions regarding prohibited titles into *N.J.A.C. 13:35-9.6* and *9.14*. The Board proposes to repeal *N.J.A.C. 13:35-9.5* and proposes new *N.J.A.C. 13:35-9.7*, which sets forth when an acupuncturist may use the title "doctor" or "Dr." The proposed new rule also sets forth when an acupuncturist may indicate in advertising that he or she holds a masters or doctoral degree.

Existing *N.J.A.C. 13:35-9.6* sets forth Board fees. The Board proposes to recodify this rule as *N.J.A.C. 13:35-9.8*. As the Board is no longer administering a practical examination, the Board proposes to delete the examination fees from recodified *N.J.A.C. 13:35-9.8(a)2* and 3. In order to cover the cost of the safety and jurisprudence examination that will be administered by the Board, the Board is proposing to raise the application fee from \$ 50.00 to \$ 100.00. The Board proposes to introduce a new fee of \$ 100.00 for continuing education sponsors.

The Board proposes to recodify *N.J.A.C. 13:35-9.7* as 9.9. The Board proposes to relocate subsection (j) from this rule as proposed new rule *N.J.A.C. 13:35-9.10*, which requires certified acupuncturists to display certificates.

Existing *N.J.A.C. 13:35-9.8* sets forth requirements for referrals and informed consent. The Board proposes to recodify this rule as *N.J.A.C. 13:35-9.11*. The Board proposes to amend this rule, so that the informed consent requirements conform to other informed consent requirements found throughout *N.J.A.C. 13:35*. Certified acupuncturist will be required to disclose to patients information that will enable patients to make an evaluation of treatment, any risks and any alternative options.

Existing *N.J.A.C. 13:35-9.9* deals with the equipment a certified acupuncturist may use while providing acupuncture services. The Board proposes to repeal this rule and replace it with a rule that sets forth the scope of practice of acupuncture at *N.J.A.C. 13:35-9.12*. The existing rule states that certified acupuncturists may use specific methods to stimulate acupuncture points and channels. The existing rule also sets forth the needles that certified acupuncturists may use and items that certified acupuncturists are prohibited from using. The Board proposes to repeal these provisions and propose a new rule that set forth those methods of stimulating acupuncture points and channels, which may be used and further establish that these techniques may be used only by an individual authorized to perform acupuncture pursuant to *N.J.S.A. 45:2C-1* et seq. The proposed new rule also delineates methods that are not reserved solely to individuals authorized to perform acupuncture.

The proposed new rule identifies needles that certified acupuncturists may use and items that certified acupuncturists may not use. Certified acupuncturists are currently prohibited from using intradermal/press needles. The Board intended to prohibit the use of permanently implanted needles and understood that intradermal/press needles were all permanently implanted. The Board has learned that intradermal/press needles are not permanently implanted and now proposes to allow individuals authorized to perform acupuncture pursuant to N.J.S.A. [page=2618] 45:2C-1 et seq., to use these needles. The Board proposes to prohibit individuals authorized to perform acupuncture pursuant to *N.J.S.A. 45:2C-1* et seq., from using subcutaneous permanently implanted needles or sutures to ensure that certified acupuncturists do not use permanently implanted needles.

Existing *N.J.A.C. 13:35-9.12* sets forth standards for permitting an acupuncturist from another state or country to perform acupuncture in New Jersey as a guest acupuncturist. The Board proposes to repeal this rule and proposes new *N.J.A.C. 13:35-9.13* to govern guest acupuncturists. The new rule more accurately reflects the legal status of guest acupuncturists. An individual who wishes to perform acupuncture as a guest acupuncturist must receive permission from the Board to do so. A guest acupuncturist is limited to performing acupuncture services as part of an educational program and cannot open an office or see patients in New Jersey. A guest acupuncturist may only perform acupuncture services for 30 days in a calendar year.

*N.J.A.C. 13:35-9.14* is a proposed new rule, which deals with the uncertified practice of acupuncture. This rule incorporates provisions that are proposed for repeal at existing *N.J.A.C. 13:35-9.5*.

Existing *N.J.A.C. 13:35-9.10* is proposed for recodification as *N.J.A.C. 13:35-9.15*. This rule is proposed for amendment to clarify language and to require that disposed needles be labeled as bio-hazardous material. The rule is also proposed for amendment to delete language that the Board will maintain a list of individuals who have been approved by the Department of Environmental Protection to dispose of medical waste. Such individuals are approved by the Department of Environmental Protection and certified acupuncturists should contact that agency to find out which agents are approved.

Existing *N.J.A.C. 13:35-9.11* is proposed for recodification as *N.J.A.C. 13:35-9.16*. This rule sets forth standards for patient records and is proposed for amendment to clarify language. The Board proposes to introduce new requirements for patient records to ensure that records document that a certified acupuncturist has followed the requirements of *N.J.S.A. 45:2C-5*. Records will have to include documentation on informed consent given to a patient, findings from examinations and referrals from physicians. The rule is proposed for amendment so that standards for responding to patient request for records conform to rules applicable to other individuals licensed or certified by the Board of Medical Examiners, specifically allowing a certified acupuncturist to charge up to \$ 10.00 for a record that is less than 10 pages. The existing rule sets forth standards for certified acupuncturists who maintain patient records on computer. It provides for interim standards when certified acupuncturists update computer systems to comply with Board requirements. The rule states that these interim standards will be effective until October 18, 2000. Since this date has passed, the Board proposes to delete this provision.

Existing *N.J.A.C. 13:35-9.13*, *9.14* and *9.15* deal with the tutorial route to certification. The Board proposes to recodify these rules as *N.J.A.C. 13:35-9.17*, *9.18* and *9.19*, respectively.

Existing *N.J.A.C. 13:35-9.17* is proposed for recodification as *N.J.A.C. 13:35-9.20*. This rule deals with continuing education requirements and it is proposed for amendment to clarify language. The rule is also proposed for amendment to define "contact hour" and increase the number of hours of continuing education a certified acupuncturist is required to complete in a biennial period from 20 to 30. The Board is proposing to increase the amount of required continuing education hours to conform to the NCCAOM requirements for continuing education. The existing rule defines the term "documented," which indicates how a certified acupuncturist shall document completion of continuing education hours and requires certified acupuncturists to maintain this documentation for three years. The Board proposes to delete these provisions and introduces a new provision, which clearly sets forth the specific documents that a certified acupuncturist must maintain for each type of continuing education he or she completes.

The Board proposes to clarify the existing methods for obtaining continuing education hours and to increase the number of methods by which certified acupuncturists may obtain continuing education. Certified acupuncturists will be able to obtain continuing education hours for acting as a clinical supervisor and for completing a continuing education or distance course approved by NCCAOM. The Board also proposes to permit certified acupuncturist to obtain continuing education hours for courses approved by the Board. The Board proposes to set forth procedures by which continuing education sponsors may obtain such approval. Certified acupuncturists will be permitted to obtain continuing education hours for courses that do not otherwise qualify under the rule, if they apply to the Board for approval. Provisions for waiver of continuing education requirements have been amended to clearly identify how a certified acupuncturist may obtain a waiver. New provisions are proposed to allow the Board to direct certified acupuncturists to complete additional continuing education as a disciplinary or remedial measure or when a certified acupuncturist has not complied with continuing education requirements.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

### **Social Impact**

The Board believes that, by clarifying the requirements of *N.J.A.C. 13:35-9*, the rules will benefit individuals who apply for certification, certified acupuncturists and those who are otherwise authorized to provide acupuncture services in New Jersey. The amendments, repeal and new rules clearly set forth the process by which applicants may be certified and the practice requirements for certified acupuncturists. Individuals who are authorized to provide acupuncture services will benefit as the amendments, repeals and new rules clearly delineate how these individuals may be authorized to perform acupuncture services without obtaining certification.

The Board believes that revisions to the examination requirements, deleting the New Jersey practical examination and clearly demarcating the modules on the NCCAOM examination that applicants are required to pass, simplify the application process while ensuring that applicants are sufficiently prepared to provide acupuncture services in a safe and effective manner. By articulating the scope of practice of acupuncture, the Board is clearly indicating those tasks that may be performed only by an individual authorized by *N.J.S.A. 45:2C-1* et seq., to provide acupuncture services. This ensures that the public and the Board can easily identify those who are engaged lawfully in the practice of acupuncture. Amendments to continuing education requirements provide new routes for obtaining continuing education hours, which will make it easier for certified acupuncturists to complete the continuing education requirement and which should result in certified acupuncturists who have a more varied educational experience and a corresponding increased competence. Increasing the required number of continuing education hours also provides for this greater knowledge base.

### **Economic Impact**

The proposed increase in the application fee will impose costs on individuals who apply for certification. This increase in costs will be offset by the deletion of fees for examinations. Proposed amendments to *N.J.A.C. 13:35-9.8* will impose costs on sponsors who seek approval for a continuing education courses. Proposed new *N.J.A.C. 13:35-9.16* requires information to be included in patient records. Certified acupuncturists will bear the negligible financial burden of including this information in patient records. The Board proposes to increase the number of continuing education hours required during a biennial renewal period from 20 to 30. The cost of completing these additional 10 hours of continuing education will be borne by certified acupuncturists.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments, repeals and new rules involve no Federal standards or requirements.

### **Jobs Impact**

The proposed increase in required continuing education hours may increase the number of continuing education instructor jobs in New Jersey. The Board does not believe that the proposed amendments, repeals or new rules will have any other impact on jobs in New Jersey.

### [page=2619] **Agriculture Industry Impact**

The Board does not believe that the proposed repeals, new rules and amendments will have any impact on the agriculture industry of this State.

### **Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (the Act), *N.J.S.A. 52:14B-16* et seq., requires the Board to give a description of the types and an estimate of the number of small businesses to which the proposed amendments, repeals and new rules will apply. If certified acupuncturists are considered "small businesses" for the purposes of the Act, then the following analysis applies.

The costs imposed on small businesses are the same as those imposed on all businesses as set forth in the Summary and Economic Impact statement. The Board does not believe that licensees will need to employ any professional services to comply with the proposed amendments, repeals or new rules. The proposed amendments, repeals and new rules impose compliance, recordkeeping and reporting requirements as set forth in the Summary above.

As the proposed amendments, repeals and new rules provide for the safe and effective provision of acupuncture services, the Board believes that the changes must be applied uniformly to all certified acupuncturists regardless of the size of the business.

### **Smart Growth Impact**

The Board does not anticipate that the proposed amendments, repeals and new rules will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

### **Housing Affordability Impact**

The proposed amendments, repeals and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments, repeals and new rules concern the certification and regulation of acupuncturists.

### **Smart Growth Development Impact**

The proposed amendments, repeals and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments, repeals and new rules concern the certification and regulation of acupuncturists.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at *N.J.A.C. 13:35-9.5, 9.9, 9.12* and *9.16*.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 9. ACUPUNCTURE

### 13:35-9.1 Purpose and scope

(a) (No change.)

(b) These rules shall apply to all persons certified as acupuncturists by the State of New Jersey, applicants for such certification, guest acupuncturists granted temporary permission by the Board to perform acupuncture pursuant to *N.J.A.C. 13:35-[9.12]9.13*, students participating in an approved course of study, school or tutorial program in acupuncture and persons licensed **in New Jersey** as physicians [and surgeons] or dentists who practice acupuncture, provided that their courses of training have included acupuncture.

#### 13:35-9.2 Definitions

For purposes of this subchapter, the following terms shall have the following meanings:

...

**"Acupuncture program"** means a course of study in acupuncture that is at least two years long and which is in addition to and separate from a baccalaureate degree program.

...

**"Acupuncturist"** means an individual certified by the Board to perform acupuncture services.

...

**"Baccalaureate Degree"** means a bachelor degree granted upon the conclusion of a program that consists of at least 120 credits by a college or university that is accredited by a regional accreditation agency recognized by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education.

...

"Certified," "certification[,]" and "certificate" mean Board-issued authorization that an individual possesses the qualifications to [engage in the profession of] **perform acupuncture services**. [Such terms are synonymous with licensure.]

...

["Experience" means proof that an applicant has accrued full-time independent acupuncture practice experience consisting of at least 750 patient treatment sessions annually for any three-year period prior to January 18, 1986.]

"Guest acupuncturist" means an [acupuncturist from] **individual legally authorized to perform acupuncture services in another state or in another country**, who is not a certified acupuncturist in this State and [is the invited guest of a professional acupuncture association, scientific acupuncture foundation, or an acupuncture training program approved by the Board] **who is permitted to perform acupuncture services pursuant to *N.J.A.C. 13:35-9.14***.

...

**"NCCAOM"** means the National Certification Commission for Acupuncture and Oriental Medicine.

...

#### 13:35-9.3 Credentials required for certification

(a) At the time of application, an applicant shall [provide the following credentials] **submit to the Board:**

**1. A completed application form;**

[1.] **2. [Proof] Legal proof** of having attained the age of 21, [in the form of a certified copy of birth record] **evidenced by a document issued by a governmental agency;**

[2. Affidavits from two persons, unrelated to the applicant, attesting to the applicant's moral character. The signatures on any affidavits emanating from foreign jurisdictions shall be authenticated as required by (a)5i(2) below;

3. Proof of possession of a baccalaureate degree as established by (a)3i and ii below;

i. If the candidate has been awarded a baccalaureate degree from a college or university within the United States, a certified transcript shall be forwarded directly to the Board from the educational institution, which shall have been accredited by a regional accreditation agency recognized by the Commission on Recognition of Post-Secondary Accreditation or the United States Department of Education;

ii. If the candidate has been awarded a baccalaureate degree from a school located outside the United States, which is recognized by the World Health Organization or any similar credentialing organization, the applicant shall submit to the Board an original of the applicant's transcript showing that a degree was awarded, and an evaluation of credits earned as determined by a Board-approved credential evaluation service. A list of such credential evaluation services shall be provided by the Board to an applicant upon request;

4. Applicants presenting a baccalaureate degree shall also provide evidence of graduation from a course of study or program at a school of acupuncture accredited by the Accreditation Commission for Acupuncture and Oriental Medicine or by the Commission on Recognition of Post-Secondary Accreditation or the United States Department of Education. Evidence shall consist of a certified transcript from that school confirming that a diploma was awarded to the applicant. A list of approved acupuncture schools shall be maintained by the Board and provided to an applicant upon request.

5. As an alternative to (a)3 and 4 above, an applicant shall provide evidence of either successful completion of a tutorial program in acupuncture which meets the requirements set forth in *N.J.A.C. 13:35- [page=2620] 9.13* or experience as defined in *N.J.A.C. 13:35-9.2* acquired prior to January 18, 1986.

i. Acceptable proof of experience shall include letters from past or present employers written to the Board on professional letterhead, which must be sent directly to the Board from the employer or the appropriate official at that office or institution. Such letters must clearly establish that the business existed and was offering acupuncture service during the period of time in question.

(1) When a letter from an employer, office or institution does not clearly and credibly indicate the required experience, the Board may at its discretion require that the applicant submit patient records of 750 treatment sessions or such other proof as the Board deems necessary.

(2) The signature(s) on letters of documentation emanating from foreign jurisdictions must be properly notarized and authenticated by an appropriate governmental official.

ii. If the applicant was self-employed, original patient records which clearly indicate the required 750 patient treatment sessions shall be submitted to the Board; such records shall be legible and well-organized. The Board may require records to be translated into English at the expense of the applicant; and

6. If the applicant is a physician or surgeon, the applicant shall submit, in addition to the documentation required by (a)1 and 2 above, proof that the applicant holds a current plenary license and registration to practice medicine or surgery.]

**3. Proof that the person has passed the English version of each of the following modules of the NCCAOM examination:**

**i. Foundations of Oriental Medicine;**

**ii. Acupuncture;**

iii. Point Location; and

iv. Biomedicine;

4. If an applicant's entire education (high school, college or university and acupuncture program) was conducted in a language other than English, proof that the applicant has achieved a passing score on the Test of English as a Foreign Language (TOEFL) examination; and

5. Proof that the applicant has completed the education requirements of *N.J.A.C. 13:37-9.4*.

(b) An applicant who passed the NCCAOM examination prior to January 1, 2003 shall submit proof that he or she has passed the NCCAOM biomedicine module.

[(b)] (c) Any credentials required to be submitted pursuant to (a) above, which are written in a language other than English shall be accompanied by an English translation prepared [by a Board-approved translation service] at the applicant's expense. A list of [such] translation services shall be provided by the Board to an applicant upon request. [Translations by any other services or persons shall not be accepted.]

#### 13:35-9.4 Education required for certification

(a) In order to qualify for certification, an applicant shall meet one of the following education requirements:

1. Obtain a baccalaureate degree, which meets the requirements of (b) below, from a school within the United States and graduate from an acupuncture program, which meets the requirements of (e) below;

2. Obtain the equivalent of a baccalaureate degree from a school in another country and complete either:

i. An acupuncture program, which meets the requirements of (e) below in the United States; or

ii. An acupuncture program that is part of the baccalaureate degree program or its equivalent in another country;

3. Hold an unencumbered license as a physician in New Jersey or a license as a dentist in New Jersey. An applicant who qualifies for certification by this method shall submit to the Board proof that he or she holds a license to practice medicine and surgery in New Jersey or a license to practice dentistry in New Jersey; or

4. Successfully complete a tutorial program in acupuncture, which meets the requirements set forth in *N.J.A.C. 13:35-9.17*.

(b) An individual who obtains his or her education in the United States shall submit proof that he or she has obtained a baccalaureate degree. An applicant shall arrange for the college or university to submit a certified transcript directly to the Board.

(c) An individual who obtains his or her education in another country shall arrange for a transcript evaluating company recognized by NCCAOM to submit a credential evaluation directly to the Board.

(d) The credential evaluation required by (c) above shall demonstrate that the applicant obtained a degree:

1. That is equivalent to a combined baccalaureate degree and an acupuncture program from a college or university in another country that is accredited in that country;

2. That is equivalent to a masters degree or doctoral degree for which a baccalaureate degree or its equivalent was a prerequisite, and an acupuncture program from a college in another country that is accredited in that country;

**3. From a college or university in another country that is equivalent to a baccalaureate degree. The college or university shall be accredited in the other country. An applicant who qualifies for certification by this method shall submit proof that he or she completed an acupuncture program in the United States that complies with (e) below; or**

**4. From a college in another country that is equivalent to a masters degree or doctoral degree for which a baccalaureate degree or its equivalent was a prerequisite. The college or university shall be accredited in the other country. An applicant who qualifies for certification by this method shall submit proof that he or she completed an acupuncture program in the United States that complies with (e) below.**

**(e) An acupuncture program that is required for certification shall be given by a school accredited by the Accreditation Commission for Acupuncture and Oriental Medicine, the Commission on Recognition of Post-Secondary Accreditation or the United States Department of Education. A list of accredited acupuncture schools shall be maintained by the Board and provided to an applicant upon request. An applicant shall arrange for the school of acupuncture to submit a certified transcript confirming that a diploma was awarded to the applicant directly to the Board.**

**(f) Commencing (four years from the effective date of this rule), the acupuncture program required by (e) above shall consist of at least 2,500 hours of instruction.**

**(g) Any credentials required to be submitted pursuant to (a), (b) or (d) above, which are written in a language other than English shall be accompanied by an English translation prepared at the applicant's expense. A list of translation services shall be provided by the Board to an applicant upon request.**

13:35-[9.4]9.5 [Examination requirements] **New Jersey acupuncture safety and jurisprudence examination**

[(a) An applicant shall pass the comprehensive written examination (CWE) and the clean needle technique (CNT) examination, written in English, developed by the National Certification Commission for Acupuncture and Oriental Medicine ("NCCAOM").]

[(b)] **(a)** An applicant shall pass [a practical] **the acupuncture safety and jurisprudence examination in English** administered by the Board.

[(c) All applicants who have received their acupuncture education at a school taught in a language other than English shall pass a test of spoken English (TSE) examination administered by the Education Testing Service (ETS). The applicant shall attain a score of 50.]

**(b) An applicant shall complete all of the requirements set forth in *N.J.A.C. 13:35-9.3* before he or she may take the Board administered acupuncture safety and jurisprudence examination.**

**(c) An applicant who has passed the acupuncture safety and jurisprudence examination shall become certified within six months of passing the examination. If an applicant fails to become certified within the six months, he or she shall be required to retake the examination before being issued a certificate.**

**13:35-9.6 Training required of a physician or dentist**

**(a) A physician licensed by the New Jersey Board of Medical Examiners, or dentist licensed by the New Jersey Board of Dentistry, may practice acupuncture without being certified if he or she has:**

**1. Graduated from an acupuncture program given by a school accredited by the Accreditation Commission for Acupuncture and [page=2621] Oriental Medicine, the Commission on Recognition of Post-Secondary Accreditation or the United States Department of Education; or**

**2. Has completed a 300-hour comprehensive acupuncture coursework or training, which qualifies for continuing medical education credits pursuant to *N.J.A.C. 13:35-6.15* and which includes at least 150 hours of clinical train-**

ing, taught by an instructor or instructors who are certified as acupuncturists in New Jersey, are legally authorized to perform acupuncture services in another state, are licensed physicians in New Jersey who have met the requirements of this section or are licensed dentists in New Jersey who have met the requirements of this section. The course shall include:

- i. Traditional Oriental medicine, which includes the theory and practice of traditional diagnostic and therapeutic procedures;
- ii. Acupuncture anatomy and physiology, which includes fundamentals of acupuncture, including point location, the meridian system, special and extra loci and auriculotherapy; and
- iii. Acupuncture techniques, such as instruction in the use of needling techniques, moxibustion and electroacupuncture, including precautions, such as sterilization of needles, contraindications and complications.

(b) Coursework or training that meets the requirements of (a)2 above shall consist of at least 150 hours of didactic and clinical instruction, which the dentist, physician or surgeon is physically attending.

(c) An individual who is qualified to practice acupuncture pursuant to (a) above and who wishes to obtain documentation from the Board indicating that he or she has met the qualifications of (a) above shall submit a written request to the Board for documentation acknowledging that he or she has met the educational requirements of (a)1 or 2 above.

(d) Pursuant to *N.J.S.A. 45:2C-7*, an individual who is qualified to practice acupuncture pursuant to (a) above shall not use a title "acupuncturist," "certified acupuncturist" or "CA."

#### 13:35-9.7 Prohibited titles

(a) An acupuncturist shall not represent that he or she has a doctoral degree in the field of acupuncture and/or oriental medicine, or use the title "doctor" or "Dr.," unless the educational program that awarded his or her degree is:

- 1. Approved by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) or is a college or university that is accredited by an regional accrediting agency recognized by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education; or
- 2. Approved by the ministry of education of a foreign country to grant doctoral degrees.

(b) An acupuncturist who uses the title "doctor" or "Dr." pursuant to (a) above shall indicate that the doctoral degree is in acupuncture and/or oriental medicine.

(c) An acupuncturist shall not represent that he or she has a masters degree in the field of acupuncture and/or oriental medicine unless the educational program that awarded his or her degree is:

- 1. Approved by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) or is a college or university that is accredited by an regional accrediting agency recognized by the Council for Higher Education Accreditation (CHEA) or the United States Department of Education; or
- 2. Approved by the ministry of education of a foreign country to grant masters degrees.

(d) An acupuncturist who has a doctoral or masters degree in a field other than acupuncture and/or oriental medicine may, in advertising or other materials visible to the public pertaining to the acupuncturist's practice, include this degree provided that the field in which the degree was awarded is specified without using an abbreviation and the doctoral or masters degree was obtained from an educational program, which meets the requirements of (a) or (c) above.

(e) An acupuncturist who has a doctorate in a field other than acupuncture or oriental medicine shall not use the title "doctor" in advertising or other materials visible to the public pertaining to the acupuncturist's acupuncture practice.

13:35-[9.6]9.8 Fee schedule; refunds

(a) The Board shall charge the following fees:

1. Application Fee	[50.00] <b>\$100.00</b>
[2. Examination, Oral/Practical	\$225.00
3. Examination, Written	\$350.00]

Recodify existing 4.-11. as 2.-9. (No change in text.)

**10. Continuing education sponsor fee** **\$100.00**

(b)-(d) (No change.)

13:35-[9.7]9.9 Biennial certificate renewal; certificate suspension; reinstatement of suspended certificate; inactive status; return from inactive status[; display of certificate]

(a)-(i) (No change.)

**13:35-9.10 Display of certificate**

[ (j) The certificate] **A certified acupuncturist** shall[be posted] **post his or her certificate** in a conspicuous location in [the] **his or her** office[of the acupuncturist]. If [the] **a certified** acupuncturist has more than one office, he or she shall obtain from the Board **a duplicate certificate[s]** for each location.

13:35-[9.8]9.11 Referral; informed consent

(a) (No change.)

(b) The acupuncturist shall fully [explain to the patient the acupuncture procedures to be performed and inform the patient of the possible complications that may result from acupuncture treatment.] **disclose to the patient such information as will enable the patient to make an evaluation of the nature of the treatment and of any attendant risks, as well as of available alternative options and the risks and likely outcomes of those alternatives.** The acupuncturist shall obtain informed written consent from the patient before beginning acupuncture treatment.

**13:35-9.12 Scope of practice**

(a) **The use of any of the following to effect the stimulation of acupuncture points and channels is within the scope of practice of certified acupuncturists and shall be performed only by acupuncturists certified by the Board, individuals permitted to practice pursuant to *N.J.S.A. 45:2C-8* and *N.J.A.C. 13:35-9.6*, students in acupuncture programs that meet the requirements of *N.J.A.C. 13:35-9.4(e)*, guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to *N.J.A.C. 13:35-9.13* or apprentices in acupuncture tutorial programs that meet the requirements of *N.J.A.C. 13:35-9.17*:**

1. Needles;
2. Moxibustion;
3. Teishin (pressure needles); and
4. Electroacupuncture (utilizing electrodes on the surface of the skin or current applied to inserted needles).

(b) Certified acupuncturists, individuals permitted to practice pursuant to *N.J.S.A. 45:2C-8* and *N.J.A.C. 13:35-9.6*, students in acupuncture programs that meet the requirements of *N.J.A.C. 13:35-9.4(e)*, guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to *N.J.A.C. 13:35-9.13* or apprentices in acupuncture tutorial programs that meet the requirements of *N.J.A.C. 13:35-9.17* may, in addition to the methods listed in (a) above, use any of the following methods to effect the stimulation of acupuncture points and channels as part of his or her professional practice:

1. Acupatches;
2. Acuform;
3. Manual acutotement (stimulation by an instrument that does not pierce the skin);
4. Acupressure;
5. Cupping;
6. Gwa-sha scraping techniques;
7. Cold laser used for needle-less acupuncture;
- [page=2622] 8. Tui-na;
9. Massage, bodywork and somatic therapy;
10. Ultrasonic;
11. Thermal methods;
12. Herbal applications;
13. Magnetic stimulation;
14. Breathing techniques; and
15. Exercise to promote health and energetic balance.

(c) Certified acupuncturists, individuals permitted to practice pursuant to *N.J.S.A. 45:2C-8* and *N.J.A.C. 13:35-9.6*, students in acupuncture programs that meet the requirements of *N.J.A.C. 13:35-9.4(e)*, guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to *N.J.A.C. 13:35-9.13* or apprentices in acupuncture tutorial programs that meet the requirements of *N.J.A.C. 13:35-9.17* may use the following when providing acupuncture:

1. Solid filiform needles;
2. Dermal needles;

3. Plum blossom needles;
4. Intradermal/press needles;
5. Prismatic needles; and
6. Disposable lancets.

(d) Certified acupuncturists, students in acupuncture programs that meet the requirements of *N.J.A.C. 13:35-9.4(e)*, guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to *N.J.A.C. 13:35-9.13* or apprentices in acupuncture tutorial programs that meet the requirements of *N.J.A.C. 13:35-9.17* shall not use the following when providing acupuncture:

1. Staples;
2. Hypodermic needles; and
3. Subcutaneous permanently implanted needles or sutures.

#### 13:35-9.13 Guest acupuncturist

(a) An individual who is not a certified acupuncturist, an individual who is permitted to practice pursuant to *N.J.S.A. 45:2C-8* and *N.J.A.C. 13:35-9.7*, a student in an acupuncture program that meets the requirements of *N.J.A.C. 13:35-9.4(e)* or an apprentice in an acupuncture tutorial program, which meets the requirements of *N.J.A.C. 13:35-9.17*, may perform acupuncture services as a guest acupuncturist if:

1. The individual receives permission from the Board to act as a guest acupuncturist pursuant to (c) below;
2. The individual performs acupuncture services as an instructor in a baccalaureate degree program, an acupuncture program that meets the requirements of *N.J.A.C. 13:35-9.4(e)* or a continuing education course that meets the requirements of *N.J.A.C. 13:35-9.20(d)*; and
3. The individual is legally authorized to perform acupuncture services in another state or in another country.

(c) An individual seeking permission to act as a guest acupuncturist shall arrange for an individual in charge of the baccalaureate degree program, acupuncture program or continuing education course in which he or she will act as an instructor to submit a request for permission to the Board, in writing, no later than 60 days prior to the guest acupuncturist's initial educational presentation in New Jersey. A resume or summary of the guest acupuncturist's credentials, written in English, shall accompany the request for approval.

(d) An individual performing acupuncture services pursuant to this section shall not:

1. Perform acupuncture services in New Jersey for more than 30 days within a calendar year; or
2. Open an office or appoint a place to meet patients or receive calls from patients in New Jersey.

#### 13:35-9.14 Uncertified practice of acupuncture

(a) An individual is engaging in uncertified practice of acupuncture if the individual engages in any of the practices outlined in *N.J.A.C. 13:35-9.12(a)* and is not:

1. Certified by the Board as an acupuncturist;
2. A physician or dentist whose course of training has included acupuncture pursuant to *N.J.S.A. 45:2C-8* and *N.J.A.C. 13:35-9.7*;

3. A guest acupuncturist permitted to perform acupuncture services pursuant to *N.J.A.C. 13:35-9.13*;
4. A student participating in an acupuncture program pursuant to *N.J.A.C. 13:35-9.4(e)*; or
5. An apprentice in an acupuncture tutorial program that meets the requirements of *N.J.A.C. 13:35-9.17*.

13:35-[9.10]**9.15** Precautionary and sterilization procedures

(a)-(d) (No change.)

(e) [Acupuncture] **Disposable acupuncture** needles shall be placed in a rigid, puncture-proof, [sealed] **sealable** container. The container shall be **sealed and** labeled as a disposal container and shall [contain the following warning: "CONTAMINATED CONTENTS--USE PRECAUTIONS."] **be labeled as bio-hazardous material**. The disposal container shall be wiped with a disinfectant if blood or other bodily fluids are spilled on the outside of the container. The acupuncturist shall dispose of the container pursuant to the requirements of the Department of Environmental Protection implementing the Comprehensive Regulated Medical Waste Management Act, *N.J.S.A. 13:1E-48.1* et seq., and *N.J.A.C. 7:26-3A*. The acupuncturist may delegate the responsibility to dispose the container to an agent approved by the Department of Environmental Protection. [A list of such approved agents shall be supplied, upon request, by the Board.]

(f)-(g) (No change.)

13:35-[9.11]**9.16** Preparation of patient records; computerized records; access to or release of information; confidentiality, transfer or disposal of records

(a) The following words and terms, as used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1. (No change.)

2. "Patient" means any person who is the recipient of [a professional service rendered by a certificate holder for purposes of treatment] **acupuncture**.

(b) Acupuncturists shall prepare contemporaneous, permanent professional treatment records. Acupuncturists shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry.

1. To the extent applicable, professional treatment records shall reflect:

i.-iii. (No change.)

iv. Progress notes; [and]

v. Any orders for tests or consultations and the results thereof[.];

**vi. Documentation indicating that informed consent was given by the patient;**

**vii. Findings from examinations; and**

**viii. Indication that a referral or diagnosis was made by a physician, including the name of the physician.**

2. (No change.)

3. A patient record [which] **that** is prepared and maintained on a personal or other computer shall be prepared and maintained as follows:

i.-v. (No change.)

vi. Where more than one acupuncturist is authorized to make entries into the computer file of any professional treatment record, the acupuncturist responsible for the acupuncture practice shall assure that each such person obtains a CPC and uses the file program in the same manner; **and**

vii. A copy of each day's entry, identified as preliminary or final as applicable, shall be made available to a physician responsible for the patient's care, to a representative of the Board [of Acupuncture Examiners], the Attorney General or the Division of Consumer Affairs no later than 10 days after [notice] **a request for the record**, or to a patient within 30 days of the request[,] or promptly in the event of emergency.

[viii. An acupuncturist wishing to continue a system of computerized patient records, which system does not meet the requirements of (b)3i through vii above, shall promptly initiate arrangements for modification of the system which shall be completed by October 18, 2000. In the interim, the acupuncturist shall assure that, on the date of the first [page=2623] treatment of each patient treated subsequent to October 18, 1999, the computer entry for that first visit shall be accompanied by a hard copy printout of the entire computer-recorded treatment record. The printout shall be dated and initialed by the attending acupuncturist. Thereafter, a hard copy shall be prepared for each subsequent visit, continuing to the date of the changeover of computer program, with each page initialed by the treating acupuncturist. The initial printout and the subsequent hard copies shall be retained as a permanent part of the patient record.]

(c) Acupuncturists shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. (No change.)

2. Unless otherwise required by law, an acupuncturist may [elect to], **if a patient requests**, provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. An acupuncturist may charge a reasonable fee for the preparation of a summary, which has been provided in lieu of the actual record, which shall not exceed the cost allowed by (c)3 below for that specific record.

3. Acupuncturists may require that a record request be in writing and may charge a fee for the reproduction of records, which shall be no greater than \$ 1.00 per page or \$ 100.00 for the entire record, whichever is less. **If the record requested is less than 10 pages, the acupuncturist may charge up to \$ 10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.** If the [certificate holder elects to] **acupuncturist** provides a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.

4.-5. (No change.)

(d) Acupuncturists shall maintain the confidentiality of professional treatment records, except that:

1. The acupuncturist shall release patient records as directed by a subpoena issued by the Board [of Acupuncture Examiners] or the Office of the Attorney General, or by a demand for statement in writing under oath **from the Board or the Office of the Attorney General**, pursuant to *N.J.S.A. 45:1-18*. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the acupuncturist, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the acupuncturist shall also provide a translation.

2.-3. (No change.)

(e)-(f) (No change.)

Recodify existing 13:35-9.13, 9.14 and 9.15 as **9.17, 9.18 and 9.19**

(No change in text.)

13:35-[9.17]**9.20** Continuing professional education requirements

**(a) For purposes of this section, "contact hour" means at least 50 minutes of instruction.**

[(a)] **(b)** (No change in text.)

[(b)] **(c)** No certificate renewal shall be issued by the Board unless the acupuncturist confirms on [his or her] **the** renewal application that [during the biennial period preceding application for renewal the acupuncturist participated in courses or activities of continuing education of the type and number of credits specified in this section. Evidence of 20] **he or she completed at least 30** [documented] hours of continuing education [is a mandatory requirement for certificate renewal, except for initial renewal].

[1. "Documented" means that the applicant obtains:

i. A certificate of participation;

ii. A signed document by the instructor indicating attendance; or

iii. An official transcript from an accredited local, state or national organization or learning institution, as set forth in (d) below.

2. A licensee holder shall obtain and maintain, for a period of three years, documentation on his or her completion of the required continuing education courses. Such documentation shall be submitted to the Board upon request, and will be surveyed from time to time.]

[(c)] **(d)** Credit for continuing professional education shall be granted as follows for each [two-year] **biennial** period:

1. [Publication] **Publishing** in a national professional journal, [of] an article [on] **related to the practice of** acupuncture: three **continuing education** hours per article, **up** to [a maximum of six] **15** hours;

2. [Attendance at] **Attending** seminars and conferences **related to the practice of acupuncture**: one **continuing education** hour per contact hour;

3. [Successful completion of] **Successfully completing** graduate course work **related to the practice of acupuncture** taken beyond that required for professional certificate[;] **in a college or university that is regionally accredited or accredited by the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM)**: one **continuing education** hour per credit hour; [and]

4. Teaching **new** courses or seminars related to the practice of acupuncture. "**New**" means **that the acupuncturist has never taught or developed curriculum for that seminar or lecture in any educational setting**: one **continuing education** hour per contact hour, **up** to [a maximum of six] **15** hours[.];

5. **Acting as a clinical supervisor in an acupuncture program that meets the requirements of N.J.A.C. 13:35-9.4(e)**: one **continuing education** hour per each **15** hours of supervision, **up to 10** hours;

6. **Successfully completing a continuing education course that has been approved by NCCAOM or by boards or committees regulating acupuncture in other states**: one **continuing education** hour for each contact hour;

7. **Successfully completing a distance learning course approved by NCCAOM**: one **continuing education** hour for each contact hour, **up to 15** hours;

**8. Successfully completing continuing education courses or programs that are pre-approved by the Board pursuant to (e) below: one continuing education hour for each contact hour; and**

**9. Successfully completing a course that an acupuncturist submits for approval to the Board pursuant to (f) below, one continuing education hour for each contact hour.**

[(d) Acceptable continuing professional education courses or activities shall be in any subject area which will update and refresh the clinical skills or knowledge of an acupuncturist. However, courses must be accredited by ACAOM, the New Jersey Department of Higher Education, a regional accreditation agency recognized by the Commission on Recognition of Post-Secondary Accreditation, or the United States Department of Education. Seminars and conferences must be accredited or sponsored by a local, State, or national professional organization; a local, State or Federal education or health agency; or a local, State or national medical, psychological, dental or similar professional organization.]

**(e) Sponsors of continuing education programs or courses seeking Board approval shall obtain Board approval every biennial period prior to representing that any course, program or seminar fulfills the requirements of (c) above and shall:**

**1. At least 90 days prior to the commencement of the course, submit the following for each course, program or seminar offered for evaluation by the Board:**

**i. A detailed descriptive outline of course content and estimated hours of instruction; and**

**ii. The curriculum vitae of each lecturer, including specific background information, which qualifies the individual as a lecturer in the area of instruction;**

**2. Monitor the attendance at each approved course, program or seminar and furnish to each enrollee a written verification of attendance, which shall include at least the following information:**

**i. The title, date and location of the course, program or seminar offering;**

**ii. The name and license number of the attendee;**

**iii. The hours of instruction provided; and**

**iv. The name and signature of the sponsor and the seal of the organization;**

**3. Evaluate course offerings. Evaluations shall be solicited from both the attendees and the instructors; and**

**4. Submit a fee pursuant to *N.J.A.C. 13:35-9.8(a)11* for each submission of new courses, programs or seminars reviewed by the Board during the biennial licensing period.**

[page=2624] **(f) An acupuncturist may apply to the Board for approval of a course that does not meet the requirements of (d)2, 3, 6, 7 or 8 above. The acupuncturist shall submit to the Board the title, date and location of the course, program or seminar for which approval is being sought and the information required of a continuing professional education provider pursuant to (e)1 above.**

**(g) The Board may perform audits on randomly selected acupuncturists to determine compliance with continuing education requirements. An acupuncturist shall maintain the following documentation for a period of four years after completion of the hours and shall submit such documentation to the Board upon request:**

**1. For publication of an article: the published item, including the date of publication;**

**2. For attendance at seminars and conferences or completion of continuing education courses: a certificate of completion from the provider;**

- 3. For completion of graduate course work: an official transcript;**
- 4. For teaching a course or seminar: documentation, including a copy of the curriculum, location, date and time of course or seminar, duration of course or seminar by hour and letter from provider confirming that the acupuncturist taught the course or seminar; and**
- 5. For clinical supervision: documentation signed by the director of the acupuncture program indicating the number of hours of clinical supervision the acupuncturist provided.**

[(e)] **(h)** (No change in text.)

[(f)] **(i)** The Board may[, at its discretion,] waive continuing education requirements on an individual basis for reasons of hardship, such as illness, disability, active service in the military[, or other good cause. An acupuncturist who seeks a waiver of the continuing education requirements shall [provide] **apply** to the Board[, in writing[, the specific reasons for requesting the waiver and such additional information as the Board may request in support of the waiver.] **at least 90 days prior to certificate renewal and set forth in specific detail the reasons for requesting the waiver. The acupuncturist shall provide the Board with such supplemental materials as will support the request for waiver. A waiver of continuing education requirements granted pursuant to this subsection shall be effective only for the biennial period in which such waiver is granted. If the condition(s), which necessitated the waiver continue into the next biennial period, an acupuncturist shall apply to the Board for the renewal of such waiver for the new biennial period.**

**(j) The Board may direct or order an acupuncturist to successfully complete continuing education credits:**

- 1. As part of a disciplinary or remedial measure in addition to the required credits of continuing education; or**
- 2. To correct a deficiency in the acupuncturist's continuing education requirements.**

**(k) Any continuing education credits completed by the acupuncturist in compliance with an order or directive from the Board as set forth in (i) above shall not be used to satisfy the minimum continuing education requirements as set forth in this section.**