

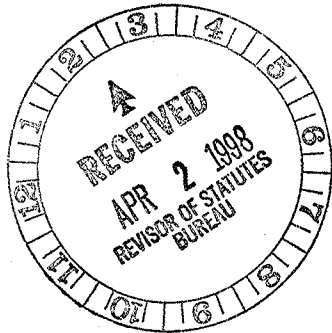
CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 31st day of March, 1998.

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



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 31st day of March, 1998.

Marlene A. Cummings

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

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	(CLEARINGHOUSE RULE 97-118)

ORDER

An order of the Department of Regulation and Licensing to repeal RL 70.02 (6), (7) and (14), 71.01 (2), 71.02, 71.03 (intro.), (1), (a), (b) and (c), 73.01 (10); to renumber RL 70.02 (1), (2), (3), (4) and (5), and 72.07 (3); to renumber and amend RL 71.03 (2) and 72.07 (2); to amend RL 70.02 (intro.), (8) and (12), 71.01 (intro.), (4), (5) and (6), 72.02 (1), 72.03 (1), 72.06 (3), 73.01 (title), (4), (6), (8) and (9); to repeal and recreate RL 73.01 (intro.); and to create RL 70.02 (1), 71.04, 72.07 (2), 73.02 and 73.03, relating to the certification and regulation of acupuncturists.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: s. 227.11 (2) and ch. 451, Stats.

Statutes interpreted: Ch. 451, Stats.

In this proposed rule-making order the Department of Regulation and Licensing amends, creates and repeals numerous provisions contained in chs. RL 70 to 73, relating to the certification and regulation of acupuncturists. Section RL 70.02 (8) is revised to clarify the definition of "herbal medicine." Section RL 71.01 is revised to delete information related to being certified in another state and removes the reference to s. RL 71.02, which is being repealed in this rule-making order as it applied to a grandfathering period which has since expired. Section RL 71.01 (intro.), (4) and (5) are revised to correctly identify the regulatory authority, to include the citation for prohibited bases for discrimination of persons with convictions and what constitutes a passing score for the NCCAOM examination. Section 71.03 (1) (intro.), (a), (b) and (c) are repealed and recreated to define "actively engaged in the certified practice of acupuncture," to itemize the requirements for being certified in Wisconsin, having used acupuncture based on using Oriental diagnostic and therapeutic techniques, performed general health care in at least 70% of all patient visits and practice clean needle technique.

Section RL 71.03 (2) is renumbered and amended to require that the candidate provide evidence satisfactory to the department that the requirements for certification for acupuncture in the state or United States territory of original credentialing are substantially equivalent to Wisconsin's requirements. Section RL 71.04 is created to provide guidelines for how a credential holder may renew his or her certificate after 5 years of nonrenewal. The credential holder will within one

year prior to renewal have successfully completed the NCCAOM examination on acupuncture or have been actively engaged in acupuncture practice during the 5 years immediately preceding application for renewal.

Section RL 72.02 (1) is amended to delete unnecessary words relating to the sterilization of acupuncture equipment coming in contact with the patient's blood or penetrating the skin. Section RL 72.03 (1) is amended to replace "choice" with "option" for clarity. Section RL 72.06 (3) is amended to accurately reference "HIV," by removing the term "virus."

Section RL 72.07 (2) is renumbered RL 72.07 (3). Section RL 72.07 (2) is created relating to an acupuncturist obtaining from each patient a medical history pertinent to the patient's chief complaints. Section RL 73.01 (title) and (intro.), (4), (6), (8) and (9) are amended to revise the title and to clarify grounds for denial of certification or discipline.

Sections RL 73.02 and 73.03 are created to outline use of titles and examples of false, deceptive or misleading advertising. The section contains examples of titles for advertising and the conditions under which an acupuncturist is prohibited from using the initials "M.D." or "medical doctor." Existing law prohibits acupuncturists from advertising in a manner that is false, deceptive or misleading. Currently no statute or administrative rule identifies specific professional titles that are prohibited or generally permitted to be used by certified acupuncturists in professional practice. Certificate holders have questioned whether all certified acupuncturists may use certain professional titles, such as D.O.M. (Doctor of Oriental Medicine) or C.A. (Certified Acupuncturist) and under which circumstances a certificate holder may use the title "Dr." or "Doctor." The use of a title, such as Ph.D., in professional practice is a form of advertising given limited constitutional protection as commercial speech. Formulation of rules must be consistent with constitutional protection from state regulation and also effectively enforce the requirement that advertising not be false, deceptive or misleading.

TEXT OF RULE

SECTION 1. RL 70.02 (intro.) is amended to read:

RL 70.02 DEFINITIONS. (intro.) As used in ch. 451, Stats., and chs. RL 70 to 73:

SECTION 2. RL 70.02 (1) to (5) are renumbered RL 70.02 (2) to (6).

SECTION 3. RL 70.02 (1) is created to read:

RL 70.02 (1) (a) "Actively engaged in the certified practice of acupuncture" means using acupuncture, under the authorization of a license, certification or registration to practice acupuncture, as the primary means of treatment of patients, not as an adjunctive therapy, and the treatment is dependent upon a thorough understanding and application of Oriental diagnostic theories and practices.

(b) The applicant provides evidence satisfactory to the department that he or she has been “actively engaged in the certified practice of acupuncture” during the 5 years immediately preceding the application in any other state or territory of the United States. Any applicant, whether or not licensed, registered or certified to practice another healing art, shall provide the department with satisfactory evidence that the applicant:

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

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

3. Practices consistent with the standards identified in a clean needle technique course acceptable to the department.

SECTION 4. RL 70.02 (6) and (7) are repealed.

SECTION 5. RL 70.02 (8) and (12) are amended to read:

RL 70.02 (8) “Herbal medicine” means the use of ~~herbs and plants~~ plant, animal and mineral substances to assist in attaining or maintaining a state of health or relief from symptoms of disease.

(12) ~~“NCCA”~~ “NCCAOM” means the national certification commission for ~~the certification of acupuncturists~~ acupuncture and Oriental medicine.

SECTION 6. RL 70.02 (14) is repealed.

SECTION 7. RL 71.01 (intro.) is amended to read:

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

SECTION 8. RL 71.01 (2) is repealed.

SECTION 9. RL 71.01 (4), (5) and (6) are amended to read:

RL 71.01 (4) Evidence that the applicant has never been the subject of any disciplinary action by any professional or licensing ~~board, or authority~~, and subject to ss. 111.321, 111.322

and 111.335, Stats., has not been convicted of any offense substantially related to the practice of acupuncture.

(5) Evidence of successful completion of the NCCA NCCAOM examination in acupuncture, with a passing score as determined by the NCCAOM.

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

SECTION 10. RL 71.02 is repealed.

SECTION 11. RL 71.03 (intro.), (1) and (1) (a) to (c) are repealed.

SECTION 12. RL 71.03 (2) is renumbered RL 71.03 and amended to read:

RL 71.03 (title) APPLICATION FOR RECIPROCAL CERTIFICATION. The applicant provides evidence satisfactory to the department that the requirements for certification in the other state or territory of the United States in which he or she is licensed, certified or registered to practice acupuncture are substantially equivalent to the requirements for initial certification as an acupuncturist in Wisconsin.

SECTION 13. RL 71.04 is created to read:

RL 71.04 RENEWAL OF CERTIFICATION AFTER 5 YEARS. An acupuncture certificate holder who fails to renew his or her credential within 5 years following the renewal date of the certificate shall take and pass the examination required under s. RL 71.01 (5) within one year prior to the date of application for renewal, unless the applicant provides evidence satisfactory to the department that he or she has actively engaged in the certified practice of acupuncture during the 5 years immediately preceding the application in any other state or territory of the United States.

SECTION 14. RL 72.02 (1) is amended to read:

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

SECTION 15. RL 72.03 (1) is amended to read:

RL 72.03 (1) Before any treatment commences, a patient shall be given the ~~choice~~ option, at the patient's own expense, to have treatment with disposable acupuncture needles,

which have been sterilized and wrapped in accordance with s. 451.12, Stats., and maintained in accordance with s. RL 72.02 (7).

SECTION 16. RL 72.06 (3) is amended to read:

RL 72.06 (3) If an acupuncturist learns that a patient has AIDS, hepatitis, or any other blood-borne infectious disease, or has tested positive for the HIV virus, then the acupuncturist shall use disposable needles in treating that patient.

SECTION 17. RL 72.07 (2) is renumbered RL 72.07 (3) and as renumbered RL 72.07 (3) (a) is amended to read:

RL 72.07 (3) (a) In a non-emergency situation, request a consultation or written diagnosis from a duly licensed physician prior to commencing acupuncture treatment or continuing treatment if the situation is discovered in the course of treatment.

SECTION 18. RL 72.07 (2) is created to read:

RL 72.07 (2) An acupuncturist shall obtain from each patient a medical history pertinent to the patient's chief complaints.

SECTION 19. RL 72.07 (3) is renumbered RL 72.07 (4).

SECTION 20. RL 73.01 (title) is amended to read:

RL 73.01 (title) GROUND FOR DENIAL OF CERTIFICATION OR DISCIPLINE.

SECTION 21. RL 73.01 (intro.) is repealed and recreated to read:

RL 73.01 (intro.) For purposes of s. 451.14 (2) (b), Stats., engaging in conduct while practicing acupuncture that evidences a lack of knowledge or ability to apply professional principles or skills includes, but is not limited to:

SECTION 22. RL 73.01 (4), (6), (8) and (9) are amended to read:

RL 73.01 (4) Having been disciplined in another jurisdiction in any way by a certifying, registering, or licensing authority for reasons substantially the same as those set forth in s. 451.14, Stats., or department regulations in chs. RL 70 to 73.

(6) Practicing acupuncture fraudulently, beyond its authorized scope, with gross incompetence or gross negligence, with incompetence on one or more occasion, ~~or~~ with negligence on more than one occasion, or practicing acupuncture or any secondary therapeutic technique beyond or inconsistent with training, education or experience.

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

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

SECTION 23. RL 73.01 (10) is repealed.

SECTION 24. RL 73.02 and 73.03 are created to read:

RL 73.02 USE OF TITLES. (1) Any person certified under ch. 451, Stats., to practice acupuncture shall include the title "acupuncturist," "Wisconsin certified acupuncturist," or a similar title in advertisements of acupuncture services.

(2) Any person certified under ch. 451, Stats., to practice acupuncture who has been conferred the degree of doctor of Oriental medicine may advertise his or her services as an acupuncturist to the public using the title "doctor of Oriental medicine" or "D.O.M.," if the title "acupuncturist," "Wisconsin certified acupuncturist," or a similar title is used in the same advertisement.

RL 73.03 EXAMPLES OF FALSE, DECEPTIVE OR MISLEADING ADVERTISING. For purposes of s. 451.14 (2) (d), Stats., false, deceptive or misleading advertising includes:

(1) Advertising acupuncture services using a title that includes the words "medical doctor" or the initials "M.D.," unless the acupuncturist meets the requirements of s. 448.03 (3) (a), Stats.

NOTE: Section 448.03 (3) USE OF TITLES. (a) No person may use or assume the title "doctor of medicine" or append to the person's name the letters "M.D." unless one of the following applies:

1. The person possesses the degree of doctor of medicine.
2. The person is licensed as a physician under this subchapter because the person satisfied the degree requirement of s. 448.05 (2) by possessing a medical degree that was conferred by a medical school recognized and listed as such by the World Health Organization of the United Nations.

(2) Advertising acupuncture services using the title "Doctor" or the abbreviation "Dr.," or "Ph.D." in connection with the practice of acupuncture unless the acupuncturist

possesses a license or certificate which authorizes such use or possesses an earned doctorate degree which is in acupuncture or Oriental medicine.

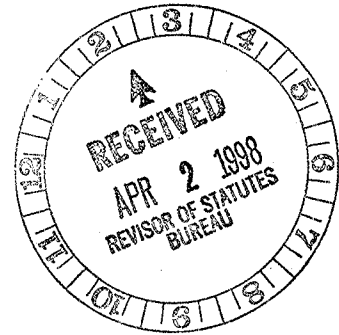
(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated 4-1-98

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

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3/30/98





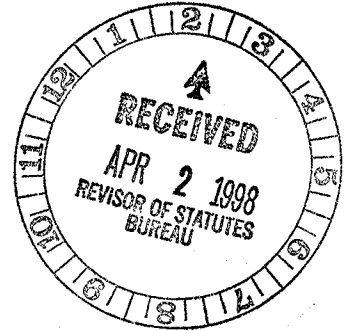
State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE/MEMORANDUM

DATE: April 2, 1998

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Administrative Rules Coordinator
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Order Adopting Rules



Agency: DEPARTMENT OF REGULATION AND LICENSING

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the register.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.