

**PROPOSED REGULATION OF
THE STATE BOARD OF ORIENTAL MEDICINE**

LCB File No. R072-14

June 16, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets ~~(omitted material)~~ is material to be omitted.

AUTHORITY: §1, NRS 634A.070 and 634A.250; §2, NRS 634A.070, 634A.080 and 634A.140; §§3 and 5-7, NRS 634A.070 and 634A.120; §§4 and 10, NRS 634A.070 and 634A.110; §8, NRS 634A.070; §9, NRS 634A.070 and 634A.167; §11, NRS 634A.070 and 634A.170.

A REGULATION relating to Oriental medicine; requiring each person who holds an active or inactive license to practice Oriental medicine to notify the State Board of Oriental Medicine of changes in certain contact information; revising the educational requirements for an applicant for a license to practice Oriental medicine; revising provisions relating to the examinations which must be passed by an applicant for a license to practice Oriental medicine; revising provisions governing the investigation of an applicant's background and training by the Board; establishing certain minimum scores for an applicant to pass the Test of English as a Foreign Language Internet-Based Test; revising provisions relating to the practical examination of an applicant for a license to practice Oriental medicine; requiring an applicant who failed one or more sections of the practical examination to retake the entire examination at the time of reexamination; reducing the fee for a licensee who wishes to practice under a fictitious name; establishing certain limits on the earning and application of credit for continuing education; revising certain fees; setting forth certain acts as unethical and unprofessional conduct warranting disciplinary action; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this regulation requires each person who holds an active or inactive license to practice Oriental medicine to notify the State Board of Oriental Medicine of changes to certain contact information within 30 days after such a change. **Section 1** also provides for administrative fines for failures to make such notifications.

Existing regulations establish the educational requirements for an applicant for a license to practice Oriental medicine. (NAC 634A.080) **Section 2** of this regulation requires the applicant to have attained certain education at a school that is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine.

Existing regulations require an applicant for licensure as a doctor of Oriental medicine to pass the examinations for acupuncture and Chinese herbology. (NAC 634A.085) **Section 3** of this regulation requires an applicant to pass the examination in Oriental medicine, or the examinations in acupuncture and Chinese herbology.

Existing regulations prohibit an applicant from taking the practical examination before the completion of the investigation of his or her background and training. (NAC 634A.090) **Section 4** of this regulation eliminates this prohibition.

Existing regulations establish the minimum score for an applicant to pass the written form of the Test of English as a Foreign Language. (NAC 634A.095) **Section 5** of this regulation establishes the minimum scores for an applicant to pass the Test of English as a Foreign Language Internet-Based Test.

Existing regulations require the Executive Director of the Board to provide an applicant with certain notifications regarding the practical examination. (NAC 634A.100) **Section 6** of this regulation eliminates that requirement. **Section 6** also revises the scope of the practical examination and the score which an applicant must receive to pass the examination.

Existing regulations provide that an applicant who has failed only one section of the practical examination will be reexamined only with respect to the failed section at the time of reexamination. (NAC 634A.110) **Section 7** of this regulation requires an applicant who failed any section of the practical examination to repeat the entire examination at the time of reexamination.

Section 8 of this regulation reduces the amount of the fee for an application to practice under a fictitious name from \$50 to \$30.

Existing regulations establish certain requirements and limitations relating to continuing education. (NAC 634A.135) **Section 9** of this regulation provides that a licensee may earn not more than 50 percent of his or her hours of credit for continuing education in any calendar year through distance education. **Section 9** also limits excess continuing education credits earned in a calendar year to being carried forward to only the next calendar year.

Section 10 of this regulation revises the amounts of certain fees.

Section 11 of this regulation revises provisions setting forth certain acts which the Board considers to be unethical and unprofessional conduct warranting disciplinary action.

Section 1. Chapter 634A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Each person who holds an active or inactive license to practice Oriental medicine shall notify the Board, in writing, of any change in his or her residential address, telephone

number, electronic mail address or other contact information within 30 days after such a change.

2. If the Board imposes an administrative fine on a person for a violation of subsection 1, the amount of the fine will be at least \$50 for a first violation and at least \$100 for a second or subsequent violation.

Sec. 2. NAC 634A.080 is hereby amended to read as follows:

634A.080 1. An applicant for a license to practice Oriental medicine must submit, together with his or her application, evidence that he or she has successfully completed ~~{an accredited}~~ a 4-year program of study, or its equivalent, in Oriental medicine at a school or college of Oriental medicine which is ~~{approved}~~ *accredited* by the ~~{Board}~~ *Accreditation Commission for Acupuncture and Oriental Medicine*.

2. If the application is submitted pursuant to subsection 1 of NRS 634A.140, the applicant must submit evidence showing that he or she has earned a bachelor's degree from ~~{an accredited}~~ a college or university in the United States ~~{}~~ *which is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine*.

3. If the application is submitted pursuant to subsection 2 of NRS 634A.140, the applicant must submit evidence that he or she has lawfully practiced Oriental medicine in another state or foreign country for at least 4 years.

4. ~~{For the purposes of subsection 1, the Board may approve an accredited 4-year program of study, or its equivalent, in Oriental medicine at a school or college of Oriental medicine if the Board finds that:~~

~~—(a) The program of study includes training or instruction in the subjects of acupuncture, moxibustion, herbology, Oriental physiology, Oriental pathology, Oriental diagnosis, tuina,~~

~~biology, physics, chemistry, biochemistry, anatomy, Western physiology, Western pathology, Western diagnosis, pharmacology, laboratory and radiology; and~~

~~—(b) The program of study:~~

~~——(1) Required the completion of at least 2,800 hours of instruction, including not less than 2,500 didactic hours, for a student to have graduated before November 25, 2002; or~~

~~——(2) Requires the completion of at least 3,000 hours of instruction, including not less than 2,500 didactic hours, for a student to graduate on or after November 25, 2002.~~

~~—5.†~~ For the purposes of subsections 2 and 3, evidence that the applicant is qualified for licensure as a doctor of Oriental medicine must include certified copies of any diplomas, transcripts, licenses and certificates issued to the applicant. If possible, all certified copies of official diplomas, transcripts, licenses or certificates must be forwarded directly to the Executive Director from the issuing entity rather than from the applicant.

Sec. 3. NAC 634A.085 is hereby amended to read as follows:

634A.085 To comply with the requirement of passing an examination in Oriental medicine that is administered by a national organization approved by the Board pursuant to NRS 634A.120, an applicant for licensure as a doctor of Oriental medicine must pass the *examination in Oriental medicine, or the* examinations for acupuncture and Chinese herbology , administered by a national organization approved by the Board.

Sec. 4. NAC 634A.090 is hereby amended to read as follows:

634A.090 ~~††~~ An investigation of an applicant’s background and training by the Board or any person acting on its behalf must include:

~~†(a)~~ **1.** Verification of a report from the Federal Bureau of Investigation showing no prior convictions;

~~[(b)]~~ 2. Verification of graduation from a school or college ~~[approved]~~ *accredited* by the ~~[Board;~~

~~—(e)]~~ *Accreditation Commission for Acupuncture and Oriental Medicine;*

3. Verification of licensure in another state or country, if applicable;

~~[(d)]~~ 4. Verification that questions on the application relating to the applicant's background have been answered correctly; and

~~[(e)]~~ 5. Further investigation of an applicant who attended a foreign school or college or practiced Oriental medicine in another state or country as the circumstances warrant.

~~[2.—An applicant may not take the practical examination for which he or she has applied before the investigation of his or her background and training has been completed.]~~

Sec. 5. NAC 634A.095 is hereby amended to read as follows:

634A.095 1. Except as otherwise provided in subsection 2, an applicant for a license to practice Oriental medicine must:

(a) Before taking the practical examination ~~[, pass]~~ :

(1) *Pass* the Test of English as a Foreign Language *Paper-Based Test* with a score of at least 550; *or*

(2) *Pass the Test of English as a Foreign Language Internet-Based Test with:*

(I) *A speaking score of at least 26;*

(II) *A listening score of at least 22; and*

(III) *A total score of at least 61; and*

(b) At the time of the practical examination, demonstrate a reasonable proficiency in the English language through an oral interview.

2. Subsection 1 does not apply to an applicant who graduated from a high school or college in the United States.

Sec. 6. NAC 634A.100 is hereby amended to read as follows:

634A.100 1. The practical examination will be given in June and December of each year. An applicant may not take the practical examination unless the applicant has first passed the examinations required pursuant to NAC 634A.085. ~~{The Executive Director shall notify an applicant of the time and place of the practical examination not later than 20 days before the date on which the practical examination is scheduled.}~~

2. During the practical examination, only the testing consultant and the applicants will be allowed in the examination rooms.

3. Various sections of the practical examination may be given in written, oral or demonstrative form.

4. As a part of any practical examination, the Board may examine an applicant as to his or her basic knowledge of the following subjects:

(a) ~~{Needling. The Board may require a demonstration of needling on a patient or on the applicant himself or herself.}~~

~~{(b)}~~ Skills pertaining to *the requirements for* sterilization.

~~{(e)}~~ (b) Skills pertaining to the use of herbs.

~~{(d)}~~ (c) Basic medical science concerning anatomy, physiology, pathology, biochemistry, bacteriology and communicable diseases.

~~{(e)}~~ (d) Applicable laws and regulations pertaining to health and safety.

~~{(f)}~~ (e) Use of the English language, as described in NAC 634A.095.

5. Each applicant shall take the practical examination in the English language.

6. An applicant must receive an overall score of 75 percent ~~{on the practical examination and 60 percent on all of its sections or subparts}~~ to pass the practical examination.

Sec. 7. NAC 634A.110 is hereby amended to read as follows:

634A.110 1. An applicant for a license to practice Oriental medicine who fails the practical examination may retake the examination on the next scheduled examination date. A person seeking reexamination must notify the Executive Director by completing a form prescribed by the Board and submitting the fee set forth in NAC 634A.165.

2. ~~{If an}~~ *An* applicant who has failed *any section of* the practical examination ~~{failed only one section of the practical examination, the applicant will be reexamined only with respect to the section that he or she failed. If the applicant failed two or more sections of the practical examination, he or she}~~ must repeat the entire practical examination at the time of reexamination.

Sec. 8. NAC 634A.121 is hereby amended to read as follows:

634A.121 1. A licensee shall not operate under a fictitious name unless the licensee complies with chapter 602 of NRS and files with the Board a certified copy of the certificates issued by the county clerk.

2. Any licensee who wishes to practice under a fictitious name must submit to the Board an application, on a form provided by the Board, accompanied by a fee of ~~{ $\$50$.}~~ $\$30$.

3. The Board will not issue more than one license or register more than one licensee under the same name.

Sec. 9. NAC 634A.135 is hereby amended to read as follows:

634A.135 1. Except as otherwise provided in this section, a licensee shall complete, during each calendar year, at least 10 hours of continuing education.

2. *A licensee may earn not more than 50 percent of his or her hours of credit for continuing education in any calendar year through distance education.*

3. A licensee may only receive credit for hours of continuing education in courses that have been approved by the Board pursuant to NAC 634A.137.

~~13.~~ 4. Beginning with the 2003 calendar year, a licensee who earns more than 10 hours of credit for continuing education in any calendar year may carry forward up to 10 hours of excess credit and apply such excess credit to the educational requirements for *only* the next calendar year if the licensee indicates in writing, at the time he or she submits the form for renewal of his or her license pursuant to NRS 634A.167, that the licensee intends to carry forward such excess credit.

~~14.~~ 5. A licensee who is not practicing in this State may request the Board to classify his or her license as inactive. A person who holds an inactive license is exempt from the requirements set forth in this section regarding continuing education.

~~15.~~ 6. A person who is requesting the Board to change the classification of his or her license from inactive to active must:

(a) Satisfy the requirements of continuing education for the year in which the person seeks to reclassify his or her license;

(b) Submit proof to the Board that the person has satisfied the applicable requirements; and

(c) Submit the fee set forth in NAC 634A.165.

7. *As used in this section, “distance education” means instruction that is delivered by video, computer, television, correspondence, the Internet or other electronic means of communication, or any combination thereof, in such a manner that the person supervising or*

providing the instruction and the student receiving the instruction are separated by distance or by time, or by both distance and time.

Sec. 10. NAC 634A.165 is hereby amended to read as follows:

634A.165 The Board will charge and collect the following fees:

Original application for licensure as a doctor of Oriental medicine	\$1,000.00
Renewal of active license before February 1	700.00
	500.00
Renewal of inactive license before February 1	500.00
	700.00
Penalty for late renewal of license within 90 days after February 1	100.00
	200.00
Penalty for late renewal of license more than 90 days after February 1	200.00
	300.00
Penalty for reinstatement of cancelled license	200.00
Original application for use of fictitious name.....	100.00
	30.00
Replacement of pocket license	100.00
	25.00
Replacement of license.....	200.00
	100.00
Original fee for practical examination	1,000.00
Reexamination fee for practical examination.....	500.00

Transfer of license from active status to inactive status.....	200.00
Transfer of license from inactive status to active status.....	500.00
Approval of course of continuing education.....	100.00
Temporary certificate for lecturing or training.....	100.00
Check returned for insufficient funds.....	25.00
For copies of this chapter and chapter 634A of NRS.....	10.00
For other copies, per page.....	0.25
For other copies, per compact disc or tape recording.....	20.00
Original application fee for a school or college of Oriental medicine.....	5,000.00
Annual fee for approval of curriculum before February 1.....	5,000.00

Sec. 11. NAC 634A.170 is hereby amended to read as follows:

634A.170 The Board considers the following acts to be unethical and unprofessional conduct warranting appropriate disciplinary action:

1. The division or “splitting” of fees with another licensee, unless the other licensee has actually rendered services, other than referral, to the first licensee in connection with one or more of his or her patients. A person licensed by this Board shall not:

(a) Employ another to solicit or obtain, or remunerate another for soliciting or obtaining, professional employment for the licensee.

(b) Directly or indirectly share with an unlicensed person any compensation arising out of or incidental to professional employment.

(c) Directly or indirectly aid or abet an unlicensed person to practice Oriental medicine, acupuncture or herbal medicine or to receive compensation therefrom.

2. The use of any *paid* testimonial ~~[, whether paid for or not,]~~ to solicit or encourage use of the licensee's services by members of the public.

3. The making or publishing, or causing to be made or published, any advertisement, offer, statement or other form of representation, oral or written, which directly or by implication is false, misleading or deceptive. It is sufficient in bringing any proceeding for violation of this subsection that any advertising of the type referred to has a tendency to deceive, mislead or be harmful to the public even though no member of the public is actually deceived, misled or harmed by the advertising. As used in this subsection, "advertisement" includes, without limitation:

(a) Any calling card, indoor or outdoor sign, stationery, or listing in a telephone directory or other directory;

(b) Any advertisement in a newspaper or magazine; and

(c) Any advertisement made through electronic means, including, without limitation, an advertisement placed on the Internet.

4. The use of any fictitious name that has not been approved by the Board.

5. The making of any statement, or providing any information, in connection with an application for licensure or a disciplinary investigation or proceeding, which is false, misleading or deceptive.

6. Violating any provision of this chapter or chapter 634A of NRS.

7. The misrepresentation of professional credentials, including, without limitation, credentials as they relate to education, training, experience, level of competence, skill and status of licensure.

8. Engaging in negligent billing or recordkeeping.

9. *Performing services without first obtaining written, informed consent from the patient, or, if the patient is a minor, from the parent or legal guardian of the patient.*

10. *Failing to maintain the confidentiality of a patient.*

11. *Failing to maintain professional boundaries in relationships with patients or in any way exploiting the trust of a patient.*

12. *Engaging in sexual contact with a current patient if the contact commences after the practitioner-patient relationship is established.*

13. *Engaging in sexual contact with a former patient unless a period of 6 months has elapsed since the date on which the professional relationship ended. The sexual relationship must not exploit the trust established during the professional relationship.*

14. *Violating prevailing standards of the licensed profession of Oriental medicine relating to safe, ethical and competent practice.*

15. *Being the subject of final disciplinary action by a medical board in any jurisdiction as that action relates to:*

(a) *Practice; or*

(b) *Fitness to practice.*

16. *Engaging in conduct that evinces a lack of knowledge of, lack of ability in, or failure to apply, the prevailing principles and skills of Oriental medicine.*