

Guide to the Laws Governing the Practice Of Acupuncture In Massachusetts

Committee on Acupuncture

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The "Committee on Acupuncture Guide to the Laws Governing the Practice of Acupuncture in Massachusetts" is designed to be a reference source on the state laws that govern your practice of acupuncture and on additional requirements and guidelines of the Committee on Acupuncture adopted in accordance with state law. The Guide is necessarily selective and summary in form, and therefore should not be used in place of the laws themselves.

If you have any questions concerning the laws, regulations and guidelines that pertain to your practice of acupuncture, please go to the Board's website at www.massmedboard.org or contact the Board of Registration in Medicine at (781) 876-8210.

Do not discard this Guide. It has been designed to give you, in summary form, a great deal of information that will assist you in your daily practice of acupuncture.

Laws Governing the Practice of Acupuncture

Acupuncturists in Massachusetts are licensed under Massachusetts General Laws (M.G.L.) Chapter 112, sections 148-162. This law states general requirements for the practice of acupuncture. By the authority granted to it under this law, the Committee on Acupuncture (COA) of the Board of Registration in Medicine (Board) promulgated regulations governing acupuncture.

These regulations are contained in 243 CMR 4.00 ("Rules of Procedure Governing Disciplinary Actions for Acupuncturists"), and 243 CMR 5.00 ("The Practice of Acupuncture"). 243 CMR 4.00 and 5.00 are referred to together as "the acupuncture regulations." References below are to various sections of the acupuncture regulations.

A licensed acupuncturist practicing in Massachusetts is presumed to know the laws and regulations governing the practice of acupuncture. Failure to follow a law or regulation may be a ground for disciplinary action against a licensee.

License Renewal

243 CMR 5.07

Renewal Date

A full licensee is required to renew his or her acupuncture license every two years. The renewal date is the licensee's birthday. Renewal applications will be sent approximately sixty days prior to the renewal date and you will have approximately sixty days to return the completed renewal application and renewal fee.

Consequences of Failure to Renew

If a licensee fails to renew his or her license by the renewal date, the license is automatically lapsed.

Submission of an incomplete renewal application or failure to remit the required renewal fee are two ways in which a licensee could fail to renew his or her license.

A licensee who fails to renew his or her license must cease practice as of the renewal date. However, a licensee who believes in good faith that he or she submitted a completed application form and the proper fee may continue practicing until the Committee on Acupuncture (COA) informs him or her that the renewal application does not conform to the COA's requirements.

A licensee who moves out of state is encouraged to maintain a current Massachusetts license if the licensee intends at any time to return to Massachusetts. A licensee who allows his/her license to lapse for a period of more than two years must submit a lapsed license application for reactivation of his/her license. In the case of a lapsed license, the COA may require that the licensee complete all or part of any accrued continuing education requirements.

Requirements for Inactive Status

A full licensee may request inactive status at any time. The request must be in writing and must certify that the licensee will not practice acupuncture in Massachusetts.

An inactive licensee may request in writing at any time that the COA permit him or her to return to active status. The COA will grant the request provided that the licensee: (1) renews his or her license if it has lapsed, and (2) satisfies any continuing acupuncture education requirements that the COA deems appropriate.

Committee Review of CAE Courses

243 CMR 5.10

Continuing Education Requirement (CAE) 243 CMR 5.10

As a condition of renewal, a full licensee is required to complete 30 hours of continuing acupuncture education in a Committee on Acupuncture (COA) approved acupuncture program or course or other COA approved activity (this may include courses in western medicine or other healing arts) during each 2 year period. The 2-year period begins on the date that his or her license is issued or renewed by the COA and ends on the following renewal date. A minimum of 15 hours must be spent in COA approved courses **directly related** to acupuncture. The remaining credits must be **indirectly related** to acupuncture, except for acupuncturists using herbs as part of their practice. Acupuncturists using herbs as part of their practice must have 15 hours directly related to acupuncture, 10 hours directly related to herbs, and 5 hours that may be indirectly related to either acupuncture or herbology.

If you are interested in taking a course that has not been reviewed by the COA and that you would like to count towards your CAE requirement, you or the sponsor of the course should go to the Acupuncture link at the Board of Registration in Medicine's website at www.massmedboard.org and review the Committee's requirements for the approval of CAE courses.

In accordance with Board of Registration in Medicine regulation 243 CMR 5.10, the Committee on Acupuncture (COA) approves courses and other educational activities that acupuncture licensees take in fulfillment of their Continuing Acupuncture Education (CAE) requirement. The regulation lists the following criteria for a course to be approved:

- 1) The content of the course is related to the practice of acupuncture. Courses involving healing arts other than acupuncture may be acceptable to the Committee, provided that the skills taught can enhance an acupuncturist's practice. The course should be open to all acupuncturists licensed to practice in Massachusetts, subject to fees charged and the availability of space.
- 2) The course has clearly stated educational or professional objectives that can be realistically accomplished. The content and format of the course must be appropriate for the specified objectives, and there must be adequate facilities and equipment to run the course effectively. Program publicity should describe the contents and objectives of the course, and should be directed to all potential participants.
- 3) All instructors have adequate credentials to teach the course.
- 4) If a course instructor demonstrates acupuncture techniques on patients, the instructor is required to have a full or temporary license to practice acupuncture in Massachusetts. Application forms for a full or temporary license are available from the Acupuncture Division.

In order for the COA to evaluate a CAE course, the COA requires that the sponsor of the course submit the following materials:

- a) One copy of an updated and complete resume for each course instructor, including an instructor's teaching experience and the titles of any articles or other publications written by an instructor, and
- b) One copy of an outline of the course, including a course schedule showing an hourly breakdown of activities (if two or more instructors are teaching the course, the course schedule should indicate which instructor is teaching which portion of the course), and
- c) One copy of the course objective(s), and
- d) One copy of the certificate of attendance, and
- e) One copy of the promotional material or other descriptive material about the course and/or the instructor that the course sponsor thinks will help the COA evaluate the course.

If the COA feels that it has sufficient information to evaluate a course, it will review the course at the next regularly scheduled COA meeting; otherwise, the COA will request additional information. If a course is approved, the COA will decide, based upon a review of the hourly schedule of the course activities, the number of hours that a participant in the course will receive towards his or her

CAE requirement and whether the course is directly or indirectly related to acupuncture.

Please note that a licensee who teaches a COA approved CAE course can earn up to 12 credits per renewal period (up to 6 per year) for teaching this COA approved CAE course as long as it is teaching that is outside his/her normal work environment. The credits will be granted only for the actual instruction time, and not for preparation time.

CAE courses (other than home study courses) sponsored by the following organizations are automatically approved by the Committee on Acupuncture in either the “directly related to” or the “indirectly related to” acupuncture category.

1. COA approved acupuncture schools
2. The Acupuncture Practitioners Association of Massachusetts (APA)
3. The Acupuncture Society of Massachusetts (ASM)
4. The American Assoc. of Acupuncture and Oriental Medicine (AAAOM)
5. The American Medical Association (AMA)
6. The American Red Cross, the American Heart Assoc., etc.
7. The Massachusetts Assoc. of Acupuncture and Oriental Medicine (MAAOM)
8. The Massachusetts Medical Society (MMS)
9. The National Acupuncture & Oriental Medicine Alliance (NAOMA)
10. The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)
11. The Oriental Traditional Medical Association (OTMA)
12. The MA Chinese Society of Traditional Chinese Medicine

CAE courses (other than home study courses) approved by other state acupuncture licensing boards for Continuing Acupuncture and/or Medical Education are automatically approved by the COA in either the “directly related to” or the “indirectly related to” acupuncture category.

Extension of CAE Requirement

If you do not have the required 30 hours of COA approved CAE credit, you must request an Application for Extension of the CAE Requirement from the Acupuncture Division at least 30 days prior to the renewal date.

The COA takes seriously the requirement that all full licensees complete 30 hours of COA approved Continuing Acupuncture Education (CAE) during each licensee renewal period. A licensee must state the reason for requesting an extension or waiver before the COA will consider granting an extension of the CAE requirement. The only reasons permitted for requesting an extension are prolonged illness or inaccessibility or unavailability of CAE activities. A request for an extension (waiver) of the CAE requirement should be made at least thirty days prior to the renewal date on a Continuing Education Waiver (Extension) form. Please contact the Acupuncture Division for a form.

Licensees are not required to submit proof of the CAE hours when they renew. Instead, each licensee will be required to keep his or her own records of COA approved CAE credits earned for one full license renewal cycle after the CAE credits were earned. The Committee on Acupuncture

expects licensees to be able to document CAE credits and audits of the CAE documents may be performed randomly.

NOTE: If a licensee requests an extension of the Continuing Acupuncture Education (CAE) requirement and/or allows his or her license to lapse, then such licensee is required to submit proof of 30 hours of COA approved CAE at the time they submit their renewal.

Safe Practice Requirements

243 CMR 5.08

This section of the Guide states the safe practice requirements contained in the acupuncture regulations and additional guidelines and suggestions of the Committee on Acupuncture (COA) adopted in accordance with the regulations.

Practices at variance with these regulations and guidelines do not conform to the COA's standard for safe and acceptable practice in Massachusetts, and may be the basis for disciplinary action against a licensee.

The COA strongly recommends that you become thoroughly familiar with the “Clean Needle Technique for Acupuncturists Manual” published by the CCAOM (Council of Colleges of Acupuncture and Oriental Medicine), and that you follow scrupulous hygiene and sterilization methods at all times. The manual can be purchased through the CCAOM (301-476-7790), or at the New England School of Acupuncture bookstore (617-558-1788).

Sterilization of Equipment

All non-disposable needles, acupuncture equipment that comes into contact with the patient's blood or body fluids, or penetrates the skin, and equipment used to handle or store needles or other acupuncture equipment that comes into contact with the patient's blood or body fluids, or penetrates the skin, must be sterilized after each use.

All equipment to be sterilized must be thoroughly cleaned with a disinfectant and/or cleansing solution before sterilization.

Sterilization equipment must be used and maintained strictly in accordance with the guidelines of the manufacturer of the equipment. Use of one of the following methods of sterilization is required:

- autoclaving with pressurized steam
- dry heat sterilization
- ethylene oxide gas sterilization

The following methods of sterilization are unacceptable:

- boiling acupuncture equipment
- soaking acupuncture equipment in alcohol or other antiseptic solution, or
- using a glass bead sterilizer

Sterilization equipment must be monitored regularly in accordance with the manufacturer's guidelines to determine whether the equipment is functioning properly. Sterilized acupuncture equipment must be clearly marked to distinguish it from unsterilized equipment. Sealed packages containing sterilized equipment must be marked with an expiration date. Any equipment that is not used on the day the equipment was removed from a sterilization package must be re-sterilized before use.

Disposal of Equipment

All non-disposable needles must be sterilized before disposal. After sterilization the needles must be placed in a rigid, puncture-proof sealed container for disposal. Disposal containers must be labeled as such, and must carry the warning "CONTAMINATED CONTENTS/USE PRECAUTIONS."

Disposal containers must be wiped with a suitable disinfectant if blood or other bodily fluids are spilled on the outside. Disposal containers must be discarded appropriately.

Handling of Needles

The parts of a patient's body to be treated must be swabbed with alcohol or an antiseptic agent prior to needle insertion or any procedure that breaks the skin.

Use of Disposable Needles

Before beginning the first treatment on a new patient, a licensee who normally uses non-disposable needles must inform the patient that the patient has the right, if he or she so chooses and at his or her expense, to have acupuncture performed with disposable acupuncture needles

If, in the course of treatment of a patient, a licensee learns that the patient has AIDS, hepatitis, or another blood-borne highly infectious disease, or has tested positive for the HTLV-III virus, the licensee must use disposable needles in treating the patient.

Use of Electrical Stimulation

Electrical stimulation must not be applied across the mid-line of the trunk of the body. Electrical stimulation must not be used on patients with pacemakers, on patients with a medical history of heart trouble, or in a way that otherwise violates good and acceptable practice.

Additional Guidelines

An acupuncture office must be maintained in a clean and sanitary condition. The office must have a sink for hand washing in close proximity to the office and a readily accessible bathroom facility, both of which must be maintained in a clean and sanitary condition.

A treatment table must be covered. Any material that is used as a covering on a treatment table, or

that comes in contact with the patient, must be clean. Disposable materials must be disposed of after use by one patient.

Treatment table tops, shelves, and other working surfaces must have a smooth, impervious surface, be in good repair, and be cleaned daily with a suitable hospital disinfectant. If blood or other bodily fluids are spilled on a surface, the surface must be cleaned with a suitable hospital disinfectant before treatment of the next patient. Used disinfectants must be carefully poured down the sink and flushed with running water.

Immediately before and after acupuncture treatment, an acupuncturist's hands must be thoroughly washed with soap from a dispenser, and dried with a clean towel. If during treatment an acupuncturist's hands come in contact with contaminated material, the hands must be re-washed or swabbed with alcohol.

A licensee whose hands have open sores, wounds or lesions must wash his or her hands before treating each patient, and must have adequate bandaging covering the area. It is suggested that acupuncturists use rubber gloves when handling used needles or when needling near a lesion on a patient's body. Acupuncturists should also use extra precautions when removing needles and wiping away blood, such as using gloves or large, sterile, cotton balls.

If a needle breaks below the surface of the skin and gentle pressing of the surrounding area does not cause the needle fragment to emerge sufficiently for it to be withdrawn, emergency medical treatment must be obtained for the patient.

An autoclave should be monitored with indicator tape each time it is used.

Herbal Education Requirements

243 CMR 5.03(2)

All applicants for licensure in Massachusetts must have completed at least 30 hours of herbal medicine training from a Committee approved school or program. However, additional herbal education is required for those licensees who wish to include herbs as part of their acupuncture practice.

There are three categories of acupuncturists using herbs in their acupuncture practice:

- 1) An acupuncturist licensed in Massachusetts prior to September 1, 1995, who also submitted evidence to the Committee that he/she completed 150 hours of herbal training prior to January 1, 1998, may continue to employ herbal therapy provided he/she meets the CAE herbal education requirements.
- 2) An acupuncturist licensed on or after Sept. 1, 1995 and prior to Jan. 1, 2009, who intends to use herbal therapy (patent and/or raw) in his or her Massachusetts acupuncture practice must first submit evidence of completion of one of the following programs to the COA: (1) Completion of an Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) accredited or candidate status oriental medicine program, or (2) Completion of an herbal medicine program

offered by an ACAOM accredited or candidate status acupuncture school that meets the curriculum requirements as described in the ACAOM Accreditation Handbook, or (3) Completion of an herbal medicine program, which the COA deems is substantially equivalent to or exceeds the ACAOM curriculum requirements regarding herbal medicine as described in the ACAOM Accreditation Handbook.

3) An acupuncturist licensed in Massachusetts on or after January 1, 2009, must (1) complete an ACAOM accredited or candidate status oriental medicine program with a minimum of 1,905 hours of clinical/didactic training, of which 660 hours were herbal training hours and at least 210 of those were clinical hours in acupuncture and herbs; and (2) certification by NCCAOM in Chinese Herbology.

A licensee must wait until he or she is notified in writing by the Acupuncture Division that he or she may begin to employ herbs in his or her Massachusetts acupuncture practice. Your acupuncture license will indicate that you may practice acupuncture and herbal therapy. You should display your acupuncture license prominently.

Sale of Herbs and Sales Tax

A licensed acupuncturist who prescribes or dispenses herbs in his or her practice (e.g. acupuncture, acupressure, homeopathy, nutrition guidance, etc.) in Massachusetts must meet the requirements of 243 CMR 5.03(2).

According to the Rulings and Regulations Bureau at the Massachusetts Department of Revenue, the sale and dispensing of Chinese herbs (including powders, capsules, tinctures, etc.) by licensed acupuncturists is subject to tax.

As a sales tax vendor, you must register with the Department of Revenue to collect and remit sales tax by filing Form TA-1. This form is available on-line at www.state.ma.us/dor or may be requested from the Customer Service Bureau by calling (617) 887-6367.

Acupuncture Assistants **243 CMR 5.09(5)**

If you employ or intend to employ an assistant or if you plan to use volunteer assistants, request that the Acupuncture Division sends you an “Acupuncture Assistant Registration Form.” The following are the requirements for the use of acupuncture assistants (who are not themselves licensed acupuncturists) by licensed acupuncturists:

- An acupuncturist must forward to the Committee on Acupuncture (COA) the names of assistants he or she employs.
- An acupuncturist is responsible for the performance of assistants.
- An acupuncturist may supervise no more than two assistants working in the office at any one time.
- An assistant may only do cupping, moxibustion, needle removal, gwua-sha, and the massaging of points.
- An assistant may not do diagnosis, point location, needle insertion, manipulation, electrical

stimulation, or render advice to patients or perform any other procedure requiring a similar degree of judgment or skill.

- An assistant must wear a tag identifying himself or herself to patients as an acupuncture assistant.
- An assistant must be eighteen years of age, and be proficient in English.
- An assistant must take a COA approved course or receive other training in sterilization procedures and techniques before beginning work as an assistant. Proof of the training must be forwarded to the Committee on Acupuncture.

If a licensee fails to follow these requirements, the COA may withdraw the licensee's permission to use assistants or the assistant's permission to work as an acupuncture assistant, and may subject the licensee to disciplinary action.

Advertising by a Licensee

243 CMR 5.09(1)

Definition of "Advertising"

The term "advertising" includes any materials visible to the public, distributed to the public, or broadcast to the public, or representations to the public, pertaining to the licensee's practice of acupuncture. A licensee may not represent his or her qualifications to a person writing about the licensee in a way that is forbidden by the regulations on advertising. If you have any questions about how the following regulations apply to your individual situation, please contact the Acupuncture Division.

The COA considers a licensee to be solely responsible for an advertisement regardless of who creates the advertisement. The fact that another individual prepared the advertisement does not release you from your responsibility for ensuring that the advertisement complies with the acupuncture regulations.

General Guidelines for Advertising

The regulations forbid advertising that falls into the following categories:

- false, deceptive or misleading advertising;
- advertising which has the effect of intimidating or exerting undue pressure;
- advertising which guarantees a cure; or
- advertising which makes a claim of professional superiority that cannot be substantiated.

A licensee is required to use the title "Licensed Acupuncturist" or "Lic.Ac." alongside his or her name in any advertising pertaining to the licensee's practice of acupuncture.

A licensee may advertise fixed prices, or a stated range of prices, for a specified routine professional service, provided such advertisement clearly states whether additional charges may be incurred for related services that may be required in individual cases.

A licensee may advertise in electronic media, including television, internet and radio, provided that he or she maintains a complete, accurate, and reproducible version of the audio and visual contents of that advertising for a period of three years. The licensee must furnish the complete copy of this

advertising to the Committee on Acupuncture (COA) upon request. The cost of maintaining and providing this advertising copy shall be borne by the licensee.

A Note on Advertising Courses

The COA has determined that advertising by licensees of titles or degrees such as "O.M.D.," "Doctor of Acupuncture," "M.A. Acupuncture," "Ph.D. Acupuncture," and "Doctor" is misleading to the public. The COA requests that sponsors of courses refrain from advertising the credentials of course instructors in a way that is contrary to Massachusetts's public policy.

Advertising the Possession of Advanced Degrees

An acupuncturist may not advertise that he or she holds an advanced degree in acupuncture or Oriental medicine (such as a Ph.D., O.M.D., or N.A. degree) from a U.S. school unless: (1) the school which awarded the degree was approved to do so by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or another federal accrediting agency, and (2) a state authority of higher education that the COA approves granted permission to the school to award the degree. Contact the Acupuncture Division if you have any questions about the status of your school or the COA's approval process.

An acupuncturist who has an advanced degree in acupuncture or Oriental medicine from a foreign school may not advertise possession of the degree unless: (1) the school which awarded the degree was approved to do so by the ministry of education of the country in which the school is located, and (2) the COA determines the degree to be equivalent to the same degree approved by ACAOM or an equivalent federal accrediting agency. The COA has not yet approved any foreign schools as meeting these criteria, and hence acupuncturists practicing in Massachusetts may not currently advertise that they possess such degrees from foreign schools. Contact the Acupuncture Division if you have any questions about the status of your school or the COA's approval process.

An acupuncturist who has a masters or Ph.D. degree in a field other than acupuncture or Oriental medicine may only advertise the degree if the advertisement states the field in which the advanced degree was obtained, without using an abbreviation (i.e., MA musicology).

A licensee may not advertise that he or she holds a degree from an acupuncture school other than that degree that appears on her application for licensure and has been verified in accordance with the COA's requirements, unless the additional degree also has been verified in accordance with the COA's requirements. A licensee may, at any time, submit for COA verification an original transcript showing that the licensee possesses a degree other than the degree that appears on the application.

Use of the Title "Master"

In its Policy Statement 2000-02, effective December 7, 2000, the Committee determined that a licensee may not include the title "Master" in any advertising that falls under the scope of practice for a licensed Massachusetts acupuncturist.

Use of the Title "Doctor"

As noted above, the COA has not yet recognized any doctoral programs in acupuncture or Oriental medicine as meeting the requirements of the COA. Until such time as doctoral programs meet these requirements, an acupuncturist may not in advertising or other materials visible to the public use the title "doctor."

A licensee who has obtained a medical degree but is not licensed as a licensed physician in Massachusetts should not, under any circumstances, use the title "Doctor" in any advertising or other materials visible to the public pertaining to the licensee's acupuncture practice.

Use of the title "OMD"

To date there are no Oriental Medical Doctor programs which meet these requirements. Therefore, please be advised that you cannot advertise that you hold an O.M.D. degree in your Massachusetts acupuncture practice.

A licensee may not represent that she holds a Ph.D., O.M.D., M.A. or other doctoral or masters degree in the field of acupuncture and/or oriental medicine unless the educational program which awarded the degree is:

- approved by the ACAOM or another Committee approved federal accrediting agency to grant doctoral or masters degrees, and is permitted to grant such a degree by a state board or other authority of higher education that the Committee deems appropriate to grant such permission, or
- approved by the ministry of education of a foreign country to grant doctoral or master's degrees, and the Committee determines the degree to be equivalent to the same degree approved by the ACAOM or another Committee approved federal accrediting agency.

Hiring and Use of Unlicensed Individuals to Perform Acupuncture

Please be advised that licensees may not hire individuals who do not have a current, full acupuncture license to perform activities requiring a license. 243 CMR 5.00 defines acupuncture as the practice of medicine based upon traditional oriental medical theories; primarily the insertion of metal needles through the skin at certain points on the body, with or without the use of herbs, with or without the application of electric current, and with or without the application of heat to the needle, skin or both, in an attempt to relieve pain or improve bodily function. Electroacupuncture, whether utilizing electrodes on the surface of the skin or current applied to inserted needles, and laser acupuncture are considered the practice of acupuncture.

Therefore, only a current, licensed acupuncturist can render the following acupuncture treatment in Massachusetts:

- The insertion of metal needles through the skin at certain points on the body, with or without the use of herbs,
- The insertion of metal needles through the skin at certain points on the body, with or without the

application of heat to the needle, skin or both,

- The insertion of metal needles through the skin at certain points on the body, with or without the application of electric current,
- Electroacupuncture, whether utilizing electrodes on the surface of the skin or current applied to inserted needles, and
- Laser acupuncture.

Temporary Licensee – Scope of Practice

Temporary licensees may only practice within the scope of practice for the temporary license. Pursuant to 243 CMR 5.02(10), a temporary license allows an individual to practice acupuncture on an individual or patient only in the course of:

- being an instructor in a Committee approved internship program offered by a Committee approved acupuncture school;
- being a student in a Committee approved post-graduate clinical program;
- being a participant in a Committee approved continuing acupuncture education course that includes the insertion of needles, in which case the temporary license shall be valid for three months; or
- being an instructor in a Committee approved educational seminar or program who demonstrates clinical techniques on patients.

A temporary licensee may not practice acupuncture apart from the activities for which the temporary license was granted. Hence, a temporary licensee may not have his or her own private practice. However, a temporary licensee may receive payment for work done in the clinic of the school or hospital that hired him or her, so long as the work is an integral part of the educational activities for which the temporary license was granted. For example, a clinical instructor in a Committee approved acupuncture school who has a temporary license may treat patients in the school clinic, so long as students observe or participate in the treatment.

Patient Records

243 CMR 5.09(2)

A licensee must keep a complete and accurate acupuncture record of each patient the licensee treats. The record must include:

- the name and address of the patient;
- the licensee's evaluation of the patient;
- the treatments given, including the points needled; and
- the fee charged for the treatments (fee information need not be recorded on the patient's chart).

A licensee must maintain a patient's acupuncture record for a minimum period of seven years from the date of the last acupuncture treatment.

At a patient's request, a licensee must provide the patient or another specifically authorized person with the following:

- a summary of the patient's record, including all data deemed necessary by the patient or the

specifically authorized person;

- a copy of the entire acupuncture record; and
- a copy of any previously completed report required for third party reimbursement.

A licensee may charge a reasonable fee to cover the expense of providing patient records; however, a licensee may not require payment for previously rendered acupuncture treatment as a condition for providing the records.

A licensee who moves away from Massachusetts or assumes inactive status must:

- maintain patient records for a period of seven years, and notify the Committee as to any change in address, or
- turn over to successor or business partner patient records, which the successor or business partner agrees to retain in accordance with regulation.

Except as otherwise provided by law, all patient records and communications are confidential.

Retirement from Practice

243 CMR 5.09(6)

A licensee must notify the COA of the date he plans to retire from the practice of acupuncture. Notification should be made on a “Retirement from Acupuncture Practice Form” supplied by the Acupuncture Division. If there are no outstanding complaints against the licensee, the licensee may retire on that date.

A retired licensee may still be disciplined under the acupuncture regulations after the date of his retirement.

A retired licensee, or his successor or his estate, must retain patient records for a minimum period of seven years, and must make them available to former patients and other individuals in accordance with the regulations.

Change of Address

Whenever you change your home, mailing or principal business address, you must notify the Committee of the change within thirty days.

Display of License

243 CMR 5.09(4)

A licensee is required to display conspicuously his or her license certificate in his or her office.

If a licensee needs a copy of the wall certificate for a second office, he or she can make a photocopy of the original wall certificate.

NCCAOM Certification Requirement

243 CMR 5.02(3)

Effective January 1, 2009, an applicant for an initial license must be nationally board certified in Acupuncture, Oriental Medicine or Chinese Herbology to be qualified for licensure in Massachusetts. The applicant must also be at least 18 years old, of good moral character, and demonstrate sufficient knowledge of the English language to be understood and to understand patients, physicians, and Committee staff.

Issues Related to AIDS

The COA urges acupuncturists to use the same strict sterile procedures and to take the same precautions when treating all patients, not just those suspected or known to have an infectious disease. Every patient potentially has an infectious disease.

A professional license carries with it a duty to provide needed services to the public. Licensed acupuncturists should accord persons with AIDS, ARC or HIV infection the same respect and quality of service delivered to non-infected individuals, and should not deny care or services based on the individuals known or suspected HIV status. If a licensee is not equipped to manage certain clinical manifestations of AIDS, non-specialized services should still be offered.

Exceptions to this obligation may occur in clearly defined, unusual circumstances. For example, some public health experts have questioned whether health care professionals who are pregnant should treat patients with opportunistic infections associated with AIDS, such as cytomegalovirus, that could infect the fetus. As a rule, however, all licensed professionals should be aware of their affirmative duty to treat, care for or deliver services to persons with AIDS, ARC or HIV infection.

Anti-Discrimination Standards

Civil rights laws protect persons who are known or suspected to have AIDS, ARC or HIV infection from discrimination. Discriminatory conduct on the part of a licensee towards a patient can subject the licensee to disciplinary and legal action.

Privacy and Confidentiality

Massachusetts law prohibits health care providers from testing for HIV infection without the test subject's written informed consent. Written informed consent is also required to disclose test results and the fact that an individual was tested to anyone other than the test subject. Each release of this information, including medical and acupuncture records that contain HIV test information, must be authorized by a separate written release, and must be distinguished from other general releases for medical or acupuncture information.

Licensees may, however, ask patients whether they have AIDS or ARC, but may not share information with co-workers regarding a patient's HIV status except in accordance with law. In order to guard against unauthorized disclosure of information that might harm a person with AIDS or ARC, it is recommended that only co-treating professionals with a need to know about a person's

AIDS or ARC diagnosis should be informed of the diagnosis. Unauthorized disclosure of a person's HIV status is punishable by fine.

Education

Licensees should educate themselves and their patients about the nature of AIDS, risk-prone behavior, and precautions against exposure. Licensees should also educate themselves about developments in the field of acupuncture for treating individuals with AIDS or ARC.

HIV-Infected Licensees

Licensees with HIV infection or any other infectious disease have an obligation to take preventative steps to protect the public from any risk of infection. Infection control precautions should be strictly observed by HIV-infected licensees.

HIV-infected licensees will not be prevented from practicing acupuncture so long as their practice does not pose a genuine risk of transmission of the disease.

Termination of Patient Care

Acupuncturists have an obligation to support continuity of care for their patients. While acupuncturists have the option of withdrawing from a case, they cannot do so without giving reasonable notice to the patient, the relatives, or responsible friends in order to permit patients to secure another acupuncturist.

Personal Relationship Once Treatment Has Ended

An acupuncturist has an ethical duty to terminate treatment and the acupuncturist/patient relationship before initiating a dating, romantic, or sexual relationship with a patient. The following factors should be taken into consideration when considering whether a relationship is appropriate: the nature of the patient's medical problem, the length of the professional relationship, the degree of the emotional dependence on the acupuncturist, and the importance of the clinical encounter to the patient.

Disciplinary Actions

243 CMR 4.00

Grounds for Disciplinary Actions against Licensees

Any person, organization, or member of the Board of Registration in Medicine (Board) or Committee on Acupuncture (COA) may make a complaint to the COA charging an acupuncturist with misconduct. A complaint may be filed in any form. The COA investigates all complaints from identified parties that come before it, and has the discretion to investigate anonymous complaints as well.

A complaint against an acupuncturist must allege that a licensee is practicing acupuncture in violation of law, regulations, or good and accepted acupuncture practice, and may be founded on any of the following:

- Fraudulent procurement of his or her license, or its renewal;
- Violation of any provision of the laws of the Commonwealth relating to the practice of medicine or acupuncture, or any rule or regulation adopted hereunder;
- Conduct which places into question the acupuncturist's competence to practice acupuncture including, but not limited to, gross misconduct in the practice of acupuncture, or practicing acupuncture fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions;
- Practicing acupuncture while the ability to practice is impaired by alcohol, drugs, chemicals, or any other type of substance, or by reason of illness, or as a result of any physical or mental condition;
- Engaging in the abuse or illegal use of alcohol, prescription drugs, or controlled substances;
- Knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license;
- Conviction of any crime;
- Continuing to practice while his or her license is lapsed, suspended, or revoked;
- Practicing acupuncture in a manner that is professionally unethical according to the ethical standards of the profession;
- Violation of any rule or regulation of the Board or COA;
- Having been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as the reasons listed here;
- Cheating on or attempting to compromise the integrity of any acupuncture licensing examination;
- Failure to report to the COA, as required by law or regulation, any disciplinary action taken against the licensee by another licensing jurisdiction (United States or foreign), by any health care institution, by any professional or acupuncture society or association, by any governmental agency, by any law enforcement agency, or by any court for acts or conduct substantially the same as acts or conduct which would constitute grounds for complaint as defined in 243 CMR 4.03;
- Failure to respond to a subpoena or to furnish the COA, its investigators or representatives, documents, information or testimony to which the COA is legally entitled
- Malpractice within the meaning of M.G.L. c. 112, s. 61; or
- Misconduct in the practice of acupuncture.

Nothing in 243 CMR 4.03(5) limits the Committee's authority to adopt policies and grounds for discipline through adjudication as well as through rule-making processes.

Conduct Towards Patients

The COA feels strongly that it is in the interest of acupuncturists and the acupuncture profession that acupuncturists anticipate and avoid those situations that may lead to complaints being filed and disciplinary action being taken against them. The COA has designed the following set of guidelines on conduct towards patients to help acupuncturists avoid patient complaints.

The COA recommends that acupuncturists consider offering a patient of the opposite sex the option of having a member of the patient's sex in the treatment room during treatment, especially if the

patient must be partially or fully undressed to receive treatment. A suitable clean covering should be offered to patients who must undress.

Patients must have a private area in which to dress and undress.

Physical contact unrelated to treatment is unacceptable. Even where an acupuncturist feels the physical contact is appropriate, it can be open to misinterpretation. For this reason, the COA urges acupuncturists to be extremely cautious in this area.

Explain your treatment procedures to your patients, especially if you treat points near a patient's breasts or genitals.

An acupuncturist may not employ diagnostic and treatment methods that pertain to Western medicine, chiropractic, or other licensed healing professions, unless the acupuncturist is licensed in the other professions. Use of healing methods that pertain to another licensed profession may subject an acupuncturist to criminal prosecution by the Commonwealth for practicing the other profession without a license, and may subject the acupuncturist to disciplinary action by the COA on Acupuncture for practicing beyond the scope of his or her license. If you have any question whether a particular practice falls outside the scope of acupuncture, contact the COA.

The COA recognizes that acupuncturists may choose to employ holistic or alternative healing methods that do not pertain to another regulated healing profession. The COA expects that such alternative methods will be used only if the acupuncturist is well trained and competent in using the methods. The COA may take disciplinary action against an acupuncturist who misuses alternative healing methods, employs such methods with insufficient training, employs methods which have not been proved effective, or offers to perform or performs using such methods in a manner which has the capacity to mislead a patient or prospective patient, on the basis that such actions constitute unethical professional conduct, violation of G.L. c. 93A (prohibiting deceptive acts and practices in the conduct of any trade or business), or other violation of law.

If you employ other healing techniques in addition to acupuncture, explain these techniques to your patients. Patients who consult acupuncturists expecting to receive only acupuncture treatment are sometimes distressed if they receive other types of treatment.

Explain your sterilization procedures and billing practices to your patients, and follow the safe practice regulations and guidelines.

Outline of Disciplinary Procedures

Below is an outline of the procedures of the COA for processing complaints raised against acupuncturists.

Typical Complaint Process

- The complaint is assigned to a Board of Registration in Medicine investigator who contacts the complainant, conducts an investigation, and compiles an investigatory file.

- The complaint is presented to the COA's Complaint Subcommittee, that could recommend dismissal, an informal conference, a formal hearing, or an Assurance of Discontinuance.
- If the COA agrees that a formal hearing is warranted, it votes to issue a Statement of Allegations that recites the violations of statute and regulation that are alleged against the acupuncturist.
- A Board prosecuting attorney is assigned to write the Statement of Allegations and the acupuncturist is asked to "show cause" why he or she should not be disciplined.
- A full adjudicatory hearing is conducted at the Division of Administrative Law Appeals (DALA) before a hearing officer. Evidence and testimony are presented and the acupuncturist may respond. A transcript of the proceedings is prepared.
- The hearing officer makes findings and recommends specific sanctions. The COA can accept, reject or modify the recommended decision.

The COA issues an order for:

- revocation or suspension of a license;
- reprimand or censure (a reprimand is a severe censure), or
- dismissal of the complaint.

An acupuncturist may appeal the COA's disciplinary decision to the Massachusetts courts.

Code of Ethical Behavior

The following is a list of suggested guidelines for appropriate behavior between practitioner and client so that a safe environment is created for both practitioner and client around the issue of sexual boundaries. This article was adapted and reorganized from a questionnaire developed by Estelle Disch, Ph.D. Estelle Disch is the Editor of *"Reconstructing Gender: A Multicultural Anthology, Fourth Edition"*¹ and practices as a clinical sociologist and psychotherapist. She teaches sociology at the University of Massachusetts Boston and has conducted workshops, training and supervision groups for many years. Estelle co-directed BASTA! - Boston Associates to Stop Therapy Abuse, where she has worked with survivors of sexual abuse by helping professionals. Her research focuses on sexual abuse by health and mental health professionals and clergy.

1. No sexual contact or intercourse between practitioner and patient before, during, or after a treatment session.
2. No sexual contact or dating between practitioner and patient during the course of treatment.
3. If the practitioner and patient want to have a romantic/sexual relationship, the professional relationship must be terminated first.
4. The practitioner is responsible for maintaining appropriate boundaries even if the patient is perceived as being seductive.
5. The patient undresses and dresses in private.

6. The patient has a clear choice as to whether he/she is nude, wears underwear or a smock during the treatment.
7. The practitioner never works on or in the genital area or the anus. The patient always gives permission for work to be done near these areas unless it is an emergency situation (e.g. CV 1 in a drowning situation).
8. The practitioner never works on the nipple of a patient.
9. The practitioner uses only the hands to palpate and only the hands and elbows to perform massage/acupressure on a patient.
10. The practitioner uses only the knee, the lateral aspect of the hip and the lower leg for bracing.
11. The practitioner does not use inappropriate parts of the body for bracing (i.e. front of the pelvis).
12. The patient will always be fully draped except for the part of the body being worked on. The genitals will never be undraped. The practitioner will obtain ***informed verbal consent**** before undraping the breasts, buttocks or abdomen. At any time during a session, the patient may decide not to permit these or any other parts of the body to be undraped.
13. The practitioner refrains from flirting with the patient verbally or otherwise creating a flirtatious atmosphere in the treatment context.
14. The practitioner uses appropriate clinical terminology when speaking about body parts to the patient.
15. The practitioner does not make remarks about the client's body which contain sexual innuendo.
16. The practitioner does not probe intrusively for explicit details about the patient's sexual history, or in any way imply that the patient must give such information.
17. If information about the client's sexual history or habits is communicated, the practitioner does not offer value judgments of the client's behavior.
18. In cases where the practitioner suspects a sexual abuse history but this is not perceived by the patient, the practitioner refrains from confronting the patient with his/her interpretation.
19. The practitioner must remain within his/her scope of practice and training when dealing with sexual issues. Suspected cases of abuse should be referred out for more specialized professional help, unless the practitioner has such training.
20. The practitioner seeks informed consent from the patient to work on certain parts of the body. The practitioner clearly conveys permission to the patient to accept or refuse aspects of the treatment at any time. For example -- groin area, on the chest around breast tissue, buttock, around the pubis near genital area, in the perineum and between the coccyx and the anus. Any lesion or

related problems should be referred to a specialist appropriately.

Components of Informed Verbal Consent*

1. The practitioner gives the patient information about the nature of the proposed treatment (body parts to be treated, type of treatment, possible sensations that might be felt, etc.) and duration of the treatment.
2. The practitioner gives the reasoning/rationale for the proposed treatment.
3. The practitioner and the patient create and understand a shared objective for the outcome of the treatment.
4. The patient feels a sense of free choice with respect to accepting or rejecting the proposed treatment or parts of it, before, during or after the treatment begins.