

VOLUME 46, ISSUE 8  
ISSUE DATE: **APRIL 21, 2014**  
**RULE ADOPTIONS**

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

**Adopted Amendments: N.J.A.C. 13:35-9.1, 9.2, 9.4, 9.5, 9.8 through 9.16, and 9.20**

**Adopted New Rule: N.J.A.C. 13:35-9.12A**

**Adopted Repeals: N.J.A.C. 13:35-9.6, 9.17, 9.18, and 9.19**

**Purpose and Scope; Definitions; Education Required for Licensure; New Jersey Acupuncture Safety and Jurisprudence Examination; Training Required of a Physician or Dentist; Fee Schedule; Biennial License Renewal; License Suspension; Reinstatement of Suspended License; Inactive Status; Return from Inactive Status; Display of License; Informed Consent; Medical Malpractice; Scope of Practice; Herbology; Guest Acupuncturist; Unlicensed Practice of Acupuncture; Precautionary and Sterilization Procedures; Preparation of Patient Records; Computerized Records; Access to or Release of Information; Confidentiality, Transfer or Disposal of Records; Tutorial Applications and Design of Tutorial Program; Responsibilities of Supervising Acupuncturist; Responsibilities of the Acupuncture Apprentice; Continuing Professional Education Requirements**

Proposed: April 1, 2013, at 45 N.J.R. 729(a) (see also 45 N.J.R. 1589(a)).

Adopted: September 18, 2013, by the Acupuncture Examining Board, Shoshanna Katzman, President, with approval of the State Board of Medical Examiners.

Filed: March 17, 2014, as R.2014 d.066, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:2C-3 and P.L. 2009, c. 56.

Effective Date: April 21, 2014.

Expiration Date: May 3, 2018.

**Summary** of Public Comments and Agency Responses follows:

The official comment period ended July 31, 2013. The Board received comments from the following 23 individuals:

1. Candace Sarges, Mac, L.Ac., Dipl. O.M., President NJAOM
2. James McCracken
3. Kathleen K. Mairella, PT, DPT, MA

4. Arthur Veilleux
5. Bernice Small
6. Walter Zaulyczny, APTA and APTA-NJ member
7. Dan Steinhauser, APTA member
8. Sigmund Miler, DC, FICC, Executive Director, Association of New Jersey Chiropractors
9. Leslie Soulen, PT, DPT
10. Melinda Martinson, Esq., General Counsel, Medical Society of New Jersey
- [page=696] 11. Scott Woska, M.D., President, New Jersey Society of Interventional Pain Physicians
12. Todd Stitik, M.D., President, New Jersey Society of Physical Medicine and Rehabilitation
13. Salvator Bernardo, M.D., President, New Jersey Academy of Family Physicians
14. Zahra Beheshti
15. Alan Flores
16. Michael Maggio
17. Lisa Silverstein
18. Aviva Gans
19. Sondra Lampl
20. Michael Mirabueno
21. Upasna Patel
22. Lisa Tadeo, Executive Director, New Jersey State Board of Chiropractic Examiners and New Jersey State Board of Physical Therapy Examiners
23. Vincent N. Buttaci, Buttaci & Leardi, LLC

1. COMMENT: A commenter supports the amendments to N.J.A.C. 13:35-9.

RESPONSE: The Board thanks the commenter for her support.

2. COMMENT: Two commenters contend that the amendments to N.J.A.C. 13:35-9 go beyond the legislative intent of P.L. 2009, c. 56.

RESPONSE: The Board disagrees with the commenters. The statutory amendments in P.L. 2009, c. 56 authorize all the amendments to N.J.A.C. 13:35-9.

3. COMMENT: A commenter contends that the inclusion of the term "certain" before

"diseases or dysfunctions of the body" in the definition of "acupuncture" in N.J.S.A. 45:2C-2 means that the Legislature believes that there are some diseases and dysfunctions for which acupuncture is an appropriate treatment.

RESPONSE: The term "certain" was removed from the definition of "acupuncture" in N.J.S.A. 45:2C-2. The term "certain" was not removed from the definition of "acupuncture" at N.J.A.C. 13:35-9.2. The Board will change the definition of "acupuncture" upon adoption to remove "certain," so that the regulatory definition matches the statutory definition.

4. COMMENT: One commenter contends that the use of adjunctive therapies by licensed acupuncturists is not supported by accreditation standards of the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) approved continuing education courses. The commenter contends that this means that it is not appropriate to allow every licensed acupuncturist to provide the following therapies listed in N.J.S.A. 45:2C-6: laser stimulation, thermal methods, percutaneous and transcutaneous electrical nerve stimulation, and shiatsu.

RESPONSE: As N.J.S.A. 45:2C-6 includes laser stimulation, thermal methods, percutaneous and transcutaneous electrical nerve stimulation, and shiatsu within the scope of practice of acupuncture, the Board does not believe it is appropriate to prohibit licensed acupuncturists from providing these therapies. The Board disagrees that standards of ACAOM and NCCAOM do not support the use of these therapies by licensed acupuncturists.

5. COMMENT: Several commenters contend that N.J.S.A. 45:2C-6 dictates that tuina, shiatsu, other forms of Oriental massage, surface stimulation of points on the body, breathing techniques, and exercise to promote health may be used only in connection with acupuncture. The commenters contend that these therapies may not be provided by licensed acupuncturists as stand-alone treatments.

RESPONSE: P.L. 2009, c. 56 amended the definition of "acupuncture." The new definition recognizes that the term "acupuncture" encompasses the practice of Oriental medicine. The provision of any of the therapies listed in N.J.S.A. 45:2C-6 is the practice of Oriental medicine and therefore the practice of "acupuncture." The provision of any of these therapies does not require a concomitant insertion of needles as the commenter seems to imply.

6. COMMENT: A commenter contends that statutory changes are necessary before regulations can be changed to permit licensed acupuncturists to offer herbal remedies other than herbal dressing or to sell products and goods.

RESPONSE: P.L. 2009, c. 56, provides statutory authority for licensed acupuncturists who hold NCCAOM certification in herbology to provide herbology as part of their practice. The NCCAOM certification program focuses on herbs that are ingested by patients and the authority to practice herbology goes beyond herbal dressing. There is no statutory prohibition on licensed acupuncturists selling products and goods and there is nothing that prohibits the Board from authorizing such practices.

7. COMMENT: One commenter cites to a statement in the Summary of the notice of proposal, which states that N.J.A.C. 13:35-9.2 is being amended to provide a new definition for the term "ACOAM." The commenter contends that there is no ACOAM.

RESPONSE: The reference to the "ACOAM" in the Summary was a typographical error. This

term should have been "ACAOM," which is the term that is defined in N.J.A.C. 13:35-9.2.

8. COMMENT: A commenter is concerned that there is no regulation in N.J.A.C. 13:35-9 that clarifies that a licensed acupuncturist cannot perform medicine and surgery. The commenter is concerned that, absent such language, a licensed acupuncturist could perform surgical procedures, endoscopic procedures, or gynecological procedures.

RESPONSE: N.J.S.A. 45:9-6 prohibits the performance of medicine and surgery by anyone who is not licensed as a physician by the Board of Medical Examiners. It is not necessary for the Board to adopt a rule to recognize this statutory provision.

9. COMMENT: One commenter points out that the Board has discussed dry needling in the past. The commenter contends that dry needling is acupuncture and that Board regulations should be amended to recognize this.

RESPONSE: The Board has addressed the practice of dry needling in the past and its position is that dry needling is the practice of acupuncture and there is no need to amend this subchapter to recognize this fact.

10. COMMENT: A commenter is concerned that Eastern and Western terminology is commingled in N.J.A.C. 13:35-9. The commenter believes this will confuse consumers who are more familiar with Western medicine and will cause consumers to assume that licensed acupuncturists can practice Western medical techniques.

RESPONSE: Modern practice requires the use of both Eastern and Western terminology. There are no Eastern terms for certain procedures, such as lasers and electrical nerve stimulation. The Board has used the terms it believes best describe the services that licensed acupuncturists may provide and it does not believe that these terms will confuse consumers as to those services.

11. COMMENT: One commenter is concerned that the Board has amended definitions that have been standard for a long period of time. The commenter is concerned that this could be confusing for healthcare practitioners and the public.

RESPONSE: P.L. 2009, c. 56 amended N.J.S.A. 45:2C-1 et seq.; these amendments necessitated the revision of existing definitions and the introduction of new definitions in the rules. In addition, the Board has amended definitions in order to accurately identify the practices of licensed acupuncturists. The Board does not believe that these amendments will be confusing for practitioners or consumers.

12. COMMENT: Several commenters contend that P.L. 2009, c. 56 requires the Board to specifically recognize practices that constitute "adjunctive therapies." They contend that the definition of "adjunctive therapies" in N.J.A.C. 13:35-9.2 goes beyond the legislative intent of P.L. 2009, c. 56 in that it expands the definition to include anything recognized by ACAOM-approved schools. The commenters recommend that the definition of "adjunctive therapies" be amended to read: "'Adjunctive therapies' means those practices taught in ACAOM-approved schools that have been approved by the Board."

RESPONSE: The definition of "adjunctive therapies" in N.J.A.C. 13:35-9.2 is a general definition that provides the overall concept of what these therapies are. The Board has identified the specific practices that constitute adjunctive therapies that licensed acupuncturists may provide in N.J.A.C. 13:35-9.12. As N.J.A.C. 13:35-9.12 recognizes the practices approved by the Board as adjunctive therapies, it is unnecessary to amend the

definition of "adjunctive therapies" as the commenters recommend.

13. COMMENT: A commenter contends that N.J.S.A. 45:2C-6 requires that adjunctive therapies be specifically approved by the Board, even if an adjunctive therapy is recognized by N.J.S.A. 45:2C-1 et seq. [page=697] The commenter cites to language in N.J.S.A. 45:2C-6, which states that "any adjunctive therapies utilized by the holder of a license shall be approved by the Board."

RESPONSE: Board-approved adjunctive therapies are those listed in N.J.A.C. 13:35-9.12 as being part of the scope of practice of licensed acupuncturists.

14. COMMENT: Several commenters are concerned with references to the ACAOM and the NCCAOM in the definition of "adjunctive therapies." One of these commenters believes that these references are a delegation of the Board's responsibility to determine the scope of practice for licensed acupuncturists to private entities. This commenter contends that such entities could accredit programs or procedures that are not permitted by the statutory scope of practice for licensed acupuncturists. Another commenter contends that the ACAOM does not require adjunctive therapies to be taught in all programs, so some licensed acupuncturists could have graduated from programs that did not cover practices that are taught in other ACAOM-approved schools. One commenter contends that ACAOM standards do not engender the level of critical clinical decision-making necessary to permit the use of adjunctive therapies.

RESPONSE: The references to ACAOM and NCCAOM in the definition of "adjunctive therapies" in N.J.A.C. 13:35-9.2 is a recognition of the expertise of these entities in the field of acupuncture. It is not a delegation of the Board's responsibilities because the specific adjunctive therapies that are part of the scope of practice of acupuncture are set forth in N.J.A.C. 13:35-9.12. The Board expects that a licensed acupuncturist will act professionally and perform any procedure set forth in N.J.A.C. 13:35-9.12 only with the appropriate educational background. The Board disagrees that the ACAOM and NCCAOM standards do not engender critical clinical decision-making. These standards ensure that students receive the appropriate education to provide acupuncture in a safe and effective manner.

15. COMMENT: A commenter contends that the definition of "adjunctive therapy" in N.J.A.C. 13:35-9.2 ignores limiting statutory language and outsources the Board's oversight to non-governmental entities. The commenter contends that N.J.S.A. 45:2C-6 requires the Board to approve any adjunctive therapies and that the definition in N.J.A.C. 13:35-9.2 improperly authorizes the ACAOM or NCCAOM to provide such approvals. The commenter contends that the definition also eliminates the statutory requirement that any adjunctive therapy be approved on a case-by-case basis and approves a possibly limitless number of therapies. The commenter points out that the regulations do not establish training for an acupuncturist to perform specific adjunctive therapies. The commenter contends that it will be impossible for consumers to identify the adjunctive therapies that licensed acupuncturists are permitted to perform.

RESPONSE: The Board has approved the adjunctive therapies that are within the scope of practice of acupuncture by setting forth those therapies in N.J.A.C. 13:35-9.12. The therapies included in N.J.A.C. 13:35-9.12 may be performed by any licensed acupuncturist with the appropriate educational background.

16. COMMENT: One commenter contends that the regulations should state that all adjunctive therapies are based on traditional Oriental medical theories.

RESPONSE: As the practice of acupuncture is defined in N.J.S.A. 45:2C-2 as "the practice of Oriental medicine," the Board believes it is clear that any therapy provided by a licensed acupuncturist is based on Oriental medical theories and that it is not necessary to change the rules as the commenter suggests.

17. COMMENT: A commenter contends that the definition of "adjunctive therapies" in N.J.A.C. 13:35-9.2 covers a wide range of services that may not be appropriate for licensed acupuncturists given their education. The commenter recommends that the term "adjunctive therapies" be replaced with a term that will be less confusing for the public. The commenter suggests "acupuncture therapeutics," "auxiliary acupuncture treatments," "oriental adjunctive therapy," or "acupuncture modalities" as replacement terms. The commenter believes that the use of one of the recommended terms will indicate that the services provided by licensed acupuncturists differ significantly from Western adjunctive therapies.

RESPONSE: The term "adjunctive therapies" is the one used in P.L. 2009, c. 56 and the Board does not believe it is appropriate to use a different term in N.J.A.C. 13:35-9.

18. COMMENT: A commenter opposes the addition of the terms "glandulars," "herbology," and "oriental dietary therapy" to the terms defined in N.J.A.C. 13:35-9.2. The commenter contends that there is no statutory authority to add these terms and that, simply because something is taught in an NCCAOM-approved continuing education course, does not mean that the Board is authorized to include it within the scope of practice for licensed acupuncturists. The commenter contends that these therapies are distinct from acupuncture, even though the statute now includes reference to "Oriental medicine." The commenter contends that the ACAOM either recognizes Oriental medicine as a separate degree program from acupuncture or combines the two in one master's degree program.

RESPONSE: The use of herbology by licensed acupuncturists who are certified in herbology by NCCAOM is authorized by P.L. 2009, c. 56. The provision of "oriental dietary therapy" by licensed acupuncturists is also authorized by P.L. 2009, c. 56. The provision of glandulars is a part of Oriental dietary therapy. As such, licensed acupuncturists have the statutory authority to provide these therapies and it is appropriate to define these terms in N.J.A.C. 13:35-9.2.

19. COMMENT: A commenter contends that the definition of "Oriental medicine" exceeds the generally accepted definition and expands the scope of practice of acupuncture by regulation as opposed to statute. The commenter contends that the definition is overly broad. The commenter cites to definitions for "Oriental medicine" from the NCCAOM and the Council of Colleges of Acupuncture and Oriental Medicine, which differ from the definition provided in N.J.A.C. 13:35-9.2. The commenter contends that the overly broad definition could result in confusion for consumers.

RESPONSE: The Board disagrees that the definition of "Oriental medicine" goes beyond generally accepted definitions or that it is overly broad. The definition for "Oriental medicine" provided by the NCCAOM is substantively similar to the Board's definition in N.J.A.C. 13:35-9.2.

20. COMMENT: Several commenters are concerned with the definition of "tuina" in N.J.A.C. 13:35-9.2, specifically the inclusion of "traction" and "joint mobilization" in the definition. The commenters contend that such practices are historically within the scope of practice of physicians, physical therapists, and chiropractors. The commenters question whether the Legislature would support this amended definition and contend that traditional definitions of

tuina and acupuncture literature do not reference traction or joint mobilization. One of the commenters recommends that references to joint mobilization for therapeutic purposes be deleted from the definition of "tuina" as licensed acupuncturists do not have the education to perform joint mobilization.

RESPONSE: The Board points out that acupuncture textbooks refer to traction and joint mobilization as part of tuina practice. The Board believes that this indicates that the commenters are incorrect in their assertions that traction and joint mobilization are not accepted as part of tuina and that the Legislature did not intend for tuina to include joint mobilization and/or traction.

21. COMMENT: One commenter contends that the phrase "means a form of massage therapy" in the definition of "tuina" in N.J.A.C. 13:35-9.2 should be changed to "means of form of bodywork therapy." The commenter contends that tuina includes joint mobilization and traction, which is not part of massage therapy.

RESPONSE: N.J.S.A. 45:2C-6 uses the term "massage" and the Board believes it is appropriate to use the same term in its definition of "tuina."

22. COMMENT: A commenter cites to an article in Acupuncture Today, which provides a definition for "tuina" and does not discuss the use of traction or joint mobilization. The commenter contends that traction and joint mobilization is physical therapy pursuant to N.J.S.A. 45:9-37.13 and that the use of such practices by licensed acupuncturists would be the unlicensed practice of physical therapy.

RESPONSE: The Board points out that Acupuncture Today is not a peer-reviewed professional journal. The Board does not recognize Acupuncture Today as an authoritative source for definitions of acupuncture terms. As stated in the Response to Comment 20, the Board believes that tuina does include the use of traction and joint mobilization. [page=698] As tuina is included in acupuncture scope of practice pursuant to N.J.S.A. 45:2C-6, the use of traction and joint mobilization is not solely the practice of physical therapy.

23. COMMENT: A commenter is concerned with the definition of "tuina" in N.J.A.C. 13:35-9.2. The commenter contends that acupuncture schools classify tuina as a hands-on technique. The commenter recommends that the term "manual" should qualify the term "traction" because there are many forms of traction. The commenter also recommends that the word "Asian" be used to qualify "massage" and that the phrase "manipulation of acupuncture points" should be described as mobilization of tissue. The commenter contends that manipulation requires years of study, that there is no examination for testing knowledge of this technique, and that acupuncture education does not include osteopathic manipulation or chiropractic adjustment/manipulation. The commenter recommends that the definition of "tuina" be amended to clarify that it does not include chiropractic adjustments or osteopathic manipulation. The commenter contends that tuina has been defined as the range of motion of joints as opposed to mobilization. The commenter recommends that licensed acupuncturists should be required to complete training prior to performing mobilization and that the term "manipulation" should not be used as it will be confusing for consumers.

RESPONSE: The Board agrees that the use of tuina by licensed acupuncturists is mainly a hands-on, manual technique; however, the Board does not wish to prohibit the use of tuina that could legitimately go beyond such manual techniques and will therefore not change the definition as the commenter recommends. The Board does not believe it is necessary to

qualify the term "massage" as the commenter recommends as it is clear from the context of the rules and N.J.S.A. 45:2C-1 et seq. that the practice of acupuncture is Oriental medicine. The use of the term "manipulation of acupuncture points" is more accurate than "mobilization of tissue" and the Board will not change the definition to remove "manipulation." The Board believes that acupuncture education includes the use of tuina and that it is clear that licensed acupuncturists are not providing osteopathic manipulation.

24. COMMENT: A commenter contends that it is inappropriate to allow licensed acupuncturists to provide qigong and tuina as those terms are defined in N.J.A.C. 13:35-9.2. The commenter reviewed the curriculum of the only ACAOM-accredited acupuncture program in New Jersey and claims that the curriculum does not cover intervention techniques for therapeutic purposes. Qigong and tai chi courses teach breathing techniques and exercise, but these are based on Oriental medicine, which, the commenter contends, should be differentiated from breathing techniques and exercises related to cardiopulmonary pathology.

RESPONSE: Qigong and tuina are practices that are taught in ACAOM-accredited schools and they are practices that are used for therapeutic purposes. Acupuncture schools provide the education to provide such therapies in a safe and effective manner.

25. COMMENT: Two commenters are concerned because the Board has amended N.J.A.C. 13:35-9.4 to prohibit licensed physicians and dentists from performing acupuncture. The commenters contend that the Board does not have the statutory authority to do this.

RESPONSE: The amendments to N.J.A.C. 13:35-9.4 do not prohibit licensed physicians and dentists from performing acupuncture. These amendments recognize that P.L. 2009, c. 56 amends N.J.S.A. 45:2C-9 to remove a provision that permitted licensed physicians or dentists to obtain a license as acupuncturists based on their licensure from the Board of Medical Examiners or Board of Dentistry.

26. COMMENT: Several commenters are concerned with the repeal of N.J.A.C. 13:35-9.6. The commenters recognize that the Board of Medical Examiners and Board of Dentistry have authority over physicians and dentists who use acupuncture as part of their practice, but recommend that the Board adopt a new rule that tracks the language in N.J.S.A. 45:2C-8 until such time as the Board of Medical Examiners and Board of Dentistry adopt rules regarding the use of acupuncture.

RESPONSE: P.L. 2009, c. 56 amended N.J.S.A. 45:2C-8 to state that a physician or dentist who qualifies to perform acupuncture pursuant to N.J.S.A. 45:2C-8 is not subject to oversight by the Board. As such, the Board has no authority for a rule establishing training for a physician or dentist and has repealed N.J.A.C. 13:35-9.6.

27. COMMENT: Several commenters point out that the phrase "individuals permitted to practice pursuant to N.J.S.A. 45:2C-8 and N.J.A.C. 13:35-9.6" is used throughout the regulations and that the Board has deleted N.J.A.C. 13:35-9.6.

RESPONSE: The Board has changed N.J.A.C. 13:35-9 upon adoption to remove references to N.J.A.C. 13:35-9.6, which is repealed as part of this rulemaking. The Board notes that in some instances, N.J.A.C. 13:35-9.6 is mistakenly referred to as N.J.A.C. 13:35-9.7, which mistake is clear from the context of the other uses throughout the chapter and because N.J.A.C. 13:35-9.7 is about using inappropriate titles, and is not a licensure rule. Since N.J.A.C. 13:35-9.6 has been repealed, cross-references to N.J.A.C. 13:35-9.6 at N.J.A.C. 13:35-9.12 have been deleted, along with references to N.J.A.C. 13:35-9.7 at N.J.A.C.

13:35-9.13(a) and 9.14(a)2.

28. COMMENT: Several commenters support the amendment to N.J.A.C. 13:35-9.11, which requires licensed acupuncturists to maintain medical liability insurance.

RESPONSE: The Board thanks the commenters for their support.

29. COMMENT: Several commenters recommend that N.J.A.C. 13:35-9.11(b) be amended to require licensed acupuncturists to recommend that a patient inform his or her physician that he or she is being treated by a licensed acupuncturist.

RESPONSE: N.J.S.A. 45:2C-5 requires a licensed acupuncturist to advise patients of the importance of consulting a physician. The statute does not require that this advice include a suggestion that, during such consultation, the patient inform the physician that he or she is receiving treatments from a licensed acupuncturist. The Board does not believe it is necessary to go beyond the statutory requirements as the commenters recommend.

30. COMMENT: Several commenters point out that N.J.S.A. 45:2C-5.a(4) requires that a licensed acupuncturist keep a form indicating that a patient was advised of the importance of consulting with a physician, that a copy of this form be provided to the patient, and that the licensed acupuncturist and patient sign and date the form. The commenters point out that N.J.A.C. 13:35-9.11 does not require licensed acupuncturists to give a copy of this form to patients.

RESPONSE: The Board has changed N.J.A.C. 13:35-9.11 upon adoption to require licensed acupuncturists to provide patients with a copy of the form that indicates that the licensed acupuncturists have advised patients as to the importance of consulting with physicians. This change reflects the requirements of N.J.S.A. 45:2C-5.a(4).

31. COMMENT: A commenter contends that expanding the scope of practice for licensed acupuncturists will harm consumers by wasting their money and diverting them from legitimate forms of healthcare.

RESPONSE: P.L. 2009, c. 56 expanded the scope of practice for licensed acupuncturists. The Board does not believe that this statutory expansion of the scope of practice will endanger consumers as the commenter contends.

32. COMMENT: Several commenters contend that the scope of practice for licensed acupuncturists should not be expanded to include adjunctive therapies as licensed acupuncturists do not have the credentials or education to provide such care. One of the commenters contends that the theories that licensed acupuncturists follow do not conform to the evidence-based practice of physical therapists.

RESPONSE: P.L. 2009, c. 56 authorized licensed acupuncturists to provide adjunctive therapies. The Board believes that licensed acupuncturists receive the education to provide the adjunctive therapies included in N.J.A.C. 13:35-9.12 in a safe and effective manner and that licensed acupuncturists engage in evidence-based practice as appropriate to the provision of acupuncture.

33. COMMENT: A commenter contends that therapies added to the scope of practice for licensed acupuncturists should be qualified by either "Asian" or "Oriental" to differentiate them from therapies provided by other health care professionals.

RESPONSE: The Board does not believe that qualifying the therapies listed in N.J.A.C. 13:35-9.12 would provide clarification for licensed acupuncturists or consumers and will not change the scope of practice rule as the commenters recommend.

34. COMMENT: A commenter opposes the deletion of the phrase "methods to effect the stimulation of acupuncture points and channels" [page=699] from N.J.A.C. 13:35-9.12(b). The commenter contends that this deletion implies that anything listed in N.J.A.C. 13:35-9.12(b) can be performed as stand-alone therapies as opposed to therapies that must be performed in connection with acupuncture as required by N.J.S.A. 45:2C-6.

RESPONSE: As discussed in response to prior comments, P.L. 2009, c. 56 amended the definition of "acupuncture" so that it refers to Oriental medicine and is not limited to the insertion of needles. The therapies listed in N.J.A.C. 13:35-9.12(b) constitute adjunctive therapies that can be provided by licensed acupuncturists. These therapies do not have to be provided in connection with the insertion of needles as the commenter seems to contend.

35. COMMENT: A commenter contends that tuina involves the manipulation of the spine and/or extremities and that licensed acupuncturists have no training in joint mobilization or manipulation. The commenter contends that mobilization and manipulation takes thousands of hours of training to perform. The commenter recommends that N.J.A.C. 13:35-9.12 be amended, so that licensed acupuncturists could perform tuina only after completing at least 400 hours of supervised clinical practice.

RESPONSE: The provision of tuina is part of the scope of practice of acupuncture pursuant to N.J.S.A. 45:2C-6. Pursuant to that statute, any licensed acupuncturist can perform tuina and it would not be appropriate to impose the barriers to providing this therapy that the commenter recommends.

36. COMMENT: Several commenters contend that the Board should not adopt amendments that permit licensed acupuncturists to provide traction, manipulation, or joint mobilization, which are included in the definition of "tuina," as licensed acupuncturists do not have the education or training to provide this treatment. One of the commenters contends that acupuncture schools do not include physics or kinesiology to support arthrokinematics for manipulation and joint mobilization.

RESPONSE: As discussed in the Response to Comment 35, tuina is part of the statutory scope of practice of acupuncture and the Board does not believe it is appropriate to prohibit licensed acupuncturists from providing this therapy.

37. COMMENT: A commenter contends that joint mobilization for therapeutic purposes is not related to Oriental theory and is not taught in acupuncture schools.

RESPONSE: The Board disagrees with the commenter. Tuina, which includes joint mobilization, is taught at acupuncture schools.

38. COMMENT: Several commenters believe that the Board should not adopt amendments to N.J.A.C. 13:35-9.12 that expand acupuncturist scope of practice to include therapeutic exercise, biofeedback, and percutaneous electrical nerve stimulation. The commenters contend that licensed acupuncturists do not have the education or training to perform these treatments. One commenter contends that a practitioner needs years of education in anatomy, physiology, and kinesiology before providing these therapies. Another commenter recognizes that acupuncture education may include Chinese exercise programs, but contends that such programs do not qualify an individual to provide therapeutic exercise.

RESPONSE: Percutaneous electrical nerve stimulation is recognized as the practice of acupuncture by N.J.S.A. 45:2C-6. That statute also recognizes that exercises that promote health are part of the practice of acupuncture. The inclusion of the term "therapeutic exercises and techniques" in N.J.A.C. 13:35-9.12 is based on this statutory recognition. The Board believes that biofeedback is an adjunctive therapy that is recognized as within the acupuncture scope of practice pursuant to N.J.S.A. 45:2C-6. The Board believes that acupuncture programs provide adequate education for licensed acupuncturists to provide these therapies in a safe and effective manner.

39. COMMENT: Two commenters claim to have reviewed the curriculum of a New Jersey school that is accredited by the ACAOM. The commenters contend that this curriculum does not include any coursework in exercise physiology or exercise science and questions why N.J.A.C. 13:35-9.12(b)14 permits acupuncturists to provide therapeutic exercise and breathing techniques. The commenters point out that therapeutic exercise and breathing techniques are not part of N.J.S.A. 45:2C-1 et seq. They contend that the expanded scope of practice in N.J.A.C. 13:35-9.12 is not supported and could pose a danger to consumers.

RESPONSE: N.J.S.A. 45:2C-6 recognizes that breathing techniques and exercise to promote health are part of acupuncture scope of practice. This recognition is the basis for the inclusion of therapeutic exercise techniques in N.J.A.C. 13:35-9.12(b). The Board believes that acupuncture programs provide adequate education for licensed acupuncturists to provide these therapies in a safe and effective manner.

40. COMMENT: A commenter contends that thermal methods, percutaneous and transcutaneous electrical nerve stimulation, breathing techniques, and exercises require evaluative skills to determine if they should be used. These techniques are based on physiological, biological, and chemical principles, which are not part of prerequisites required by the ACAOM. Another commenter contends that the only acupuncture school in New Jersey does not require students to complete chemistry or physics, which are necessary to understand the science behind thermal methods and percutaneous and transcutaneous electrical nerve stimulation.

RESPONSE: The therapies referred to by the commenter are included in acupuncture scope of practice pursuant to N.J.S.A. 45:2C-6. The Board believes that acupuncture programs provide the education to provide these therapies in a safe and effective manner.

41. COMMENT: A commenter is concerned that the inclusion of therapeutic exercise in N.J.A.C. 13:35-9.12 does not provide limitations as to which areas of the body may be worked on. The commenter contends that more education should be required to be an exercise specialist.

RESPONSE: There is no limitation in N.J.S.A. 45:2C-6 as to the areas of the body for which exercises that promote health may be performed and it is inappropriate to impose such limitations by rule.

42. COMMENT: A commenter contends that, since acupuncture is a form of Chinese medicine, licensed acupuncturists should not be able to provide exercises outside of qigong, yoga, or tai chi. The commenter is concerned that allowing licensed acupuncturists to provide exercises may keep consumers from seeking help from qualified licensed practitioners.

RESPONSE: N.J.S.A. 45:2C-6 does not limit the type of exercises that a licensed

acupuncturist may provide and it would be inappropriate to do so by rule.

43. COMMENT: A commenter is concerned with the addition of the following procedures to N.J.A.C. 13:35-9.12: lifestyle and behavioral education, biofeedback, Qigong, diagnostic and assessment techniques, and percutaneous electrical nerve stimulation not associated with acupuncture points. The commenter contends that these are not part of acupuncture practice as set forth by statute and are not part of the education a licensed acupuncturist completes for licensure.

RESPONSE: Lifestyle and behavioral education and percutaneous electrical nerve stimulation are explicitly recognized in N.J.S.A. 45:2C-6 as therapies that are part of acupuncture scope of practice. Biofeedback, Qigong, and diagnostic and assessment techniques are adjunctive therapies that were recognized by the Board as part of acupuncture practice pursuant to N.J.S.A. 45:2C-6. The Board believes that licensed acupuncturists receive the education to provide these therapies in a safe and effective manner.

44. COMMENT: Several commenters contend that the Board should not permit licensed acupuncturists to perform physical therapy interventions, such as electrical stimulation and therapeutic exercise. This infringes on the profession of physical therapy and puts the health and welfare of consumers at risk. Licensed acupuncturists do not have the expertise to expand their scope to include these practices. One of the commenters suggests that, if licensed acupuncturists wish to expand their scope of practice, they should obtain licenses as physical therapists.

RESPONSE: The Board points out that electrical stimulation and exercise are part of acupuncture practice pursuant to N.J.S.A. 45:2C-6. These therapies are not solely within the purview of physical therapists. The Board believes that licensed acupuncturists have the education necessary to provide these therapies in a safe and effective manner.

45. COMMENT: A commenter opposes the inclusion of "therapeutic exercises and techniques" in N.J.A.C. 13:35-9.12(b). The commenter recognizes that N.J.S.A. 45:2C-6 includes exercises to improve health, but contends that therapeutic exercises are different than exercise to improve health. The commenter contends that therapeutic exercise is within the scope of physical therapy pursuant to N.J.S.A. 45:9-37.13 and [page=700] that licensed acupuncturists who provide therapeutic exercises are engaged in the unlicensed practice of physical therapy.

RESPONSE: The Board does not recognize a difference between therapeutic exercises and exercises that promote health. As exercise is included in N.J.S.A. 45:2C-6, it is part of acupuncture scope of practice and is not solely within the purview of physical therapy.

46. COMMENT: A commenter contends that there are no courses offered in New Jersey acupuncture schools in lifestyle and behavioral education or diagnostic and assessment techniques. The commenter contends that it is dangerous for the public to permit licensed acupuncturists to perform modalities that are not included in the core curriculum of acupuncture schools.

RESPONSE: Lifestyle and behavioral education is part of acupuncture practice pursuant to N.J.S.A. 45:2C-6. Diagnostic and assessment techniques are included in acupuncture scope of practice and are part of the education acupuncturists receive in schools.

47. COMMENT: One commenter is concerned with the inclusion of biofeedback and other devices that utilize color, light, sound, and electromagnetic energy for therapeutic purposes

in N.J.A.C. 13:35-9.12(b). The commenter recognizes that N.J.S.A. 45:2C-1 et seq., includes electroacupuncture and mechanical stimulation, but points out that biofeedback and related devices are not in the statute. The commenter asks how biofeedback and related devices are within the statutory definition of "acupuncture."

RESPONSE: The use of biofeedback and related devices are adjunctive therapies that are part of the statutory definition of "acupuncture" from N.J.S.A. 45:2C-2.

48. COMMENT: A commenter contends that N.J.A.C. 13:35-9.12(b)20 is so broad that it would allow acupuncturists to perform any diagnostic and assessment techniques taught in approved education programs and continuing education courses without any evidence that an individual licensee is competent to perform such techniques.

RESPONSE: As stated in response to prior comments, the Board believes that diagnostic and assessment techniques are within acupuncture scope of practice. Acupuncture education programs prepare licensed acupuncturists to perform these techniques in a safe and effective manner.

49. COMMENT: One commenter is concerned with the inclusion of "energetic therapy" in N.J.A.C. 13:35-9.12(b). The commenter points out that this term is not defined and asks what it means. The commenter contends that including such therapies is an attempt to broaden the scope of practice of acupuncture by regulation as opposed to statute.

RESPONSE: Energetic therapy is a form of Oriental massage included in acupuncture scope of practice pursuant to N.J.S.A. 45:2C-6.

50. COMMENT: A commenter is concerned that the amendments to N.J.A.C. 13:35-9.12 include the use of non-insertive pressure needles within the scope of practice of licensed acupuncturists. The commenter contends that no New Jersey acupuncture school has a course on the use of these needles. The commenter also contends that physical therapists and chiropractors are permitted to perform dry needling. According to the commenter, dry needling uses a solid filament needle similar to those used by acupuncturists. The practice is based on Western anatomical and neurophysiological principles and not the traditional Oriental Medicine rationale for stimulating acupuncture points. The commenter contends that the amendments to N.J.A.C. 13:35-9.12 should not preclude chiropractors, physical therapists, or physicians from using dry needling.

RESPONSE: The Board disagrees with the commenter; acupuncture schools do include training in the use of non-insertive needles in the curriculum. As to the commenter's suggestion that N.J.A.C. 13:35-9.12 be amended to affirmatively allow certain practitioners, beyond those recognized at N.J.S.A. 45:2C-8 (physicians and dentists), to utilize non-insertive needles, the Board declines to make such a change, as an expansion would not be consistent with the referenced statute, and is, in any event, beyond the scope of that which could be accomplished upon adoption without making a substantive change requiring further public notice.

51. COMMENT: Two commenters point out that the amendments to N.J.A.C. 13:35-9.12 permit licensed acupuncturists to offer goods and devices to patients. The commenters are concerned that the rule does not delineate which goods and devices may be offered and those that would be prohibited. The commenters contend that this could endanger public health as licensed acupuncturists could offer devices that are contraindicated.

RESPONSE: The Board expects that licensed acupuncturists will act in a professional manner

when selling goods and devices. A licensed acupuncturist that provides a good or device that is contraindicated or otherwise endangers a patient's health, safety, or welfare would be subject to disciplinary review.

52. COMMENT: Several commenters object to N.J.A.C. 13:35-9.12(g), which permits licensed acupuncturists to sell goods and devices at fair market value. The commenters point out that there is no requirement that the goods and devices be associated with the practice of acupuncture. They are also concerned because there is no definition for "fair market value." The commenters request that the Board not adopt the rule or revise it to limit the types of goods and devices that may be sold and to provide a definition for "fair market value."

RESPONSE: The Board does not believe it is necessary to limit the types of goods and devices a licensed acupuncturist may sell. The Board's concern was that acupuncturists not sell goods or devices for artificially high prices. The Board believes that the term "fair market value" is easily understood and that it need not define this term.

53. COMMENT: A commenter contends that the phrase "one continuing education hour per credit hour" in N.J.A.C. 13:35-9.20(d)3 should be changed to "one continuing education hour per clock hour." The commenter contends that acupuncture schools do not give credit for continuing education by credit hour.

RESPONSE: N.J.A.C. 13:35-9.20(d)3 refers to graduate course work and not to continuing education courses. As such, it is appropriate to use the phrase "credit hour" as opposed to "clock hour."

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments, repeals, and new rule do not involve any Federal standards or requirements.

**Full text** of the adopted amendments and new rule follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### SUBCHAPTER 9. ACUPUNCTURE

##### 13:35-9.1 Purpose and scope

(a) (No change.)

(b) The rules of this subchapter shall apply to all persons licensed as acupuncturists by the State of New Jersey, applicants for such licensure, guest acupuncturists granted temporary permission by the Board to perform acupuncture pursuant to N.J.A.C. 13:35-9.13, students participating in an approved course of study or school in acupuncture, and persons licensed in New Jersey as physicians 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:

"ACAOM" means the Accreditation Commission for Acupuncture and Oriental Medicine.

"Acupuncture" means the practice of Oriental medicine based on traditional Oriental medical theories, including stimulation of a certain point or points on or near the surface of the body by the insertion of special needles to prevent or modify the perception of pain or to normalize physiological functions including pain control and for the treatment of \*[certain]\* diseases or dysfunctions of the body. "Acupuncture" includes the techniques electroacupuncture, mechanical stimulation, adjunctive therapies, and moxibustion.

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

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

[page=701] "Adjunctive therapies" means those practices taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses that are complementary to the performance of acupuncture.

...

"Glandulars" means non-prescriptive supplements that are derived from glands.

"Gua sha" means scraping applied to the surface of the skin with a round edged tool for therapeutic purposes.

...

"Herbology" means the administration or recommendation of botanical, mineral, or animal substances, and includes prepared and raw forms of single herbs or formulas, and dietary supplements that incorporate herbs as ingredients. "Herbology" does not include the injection of herbs.

...

"Oriental dietary therapy" means dietary and nutritional counseling and the recommendation of foods for therapeutic purposes.

"Oriental medicine" means a whole medical system originating in East Asia that aims to treat disease and support the body's ability to heal itself with a diverse range of traditional and modern therapeutic interventions.

"Qigong" means breathing techniques and exercises that promote health.

...

"Tuina" means a form of massage therapy based on traditional Oriental medical theories using or incorporating traction, manipulation of acupressure points, acupoint stimulation, and joint mobilization for therapeutic purposes.

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

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

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

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

i. (No change.)

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

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

(e) An acupuncture program that is required for licensure 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)-(g) (No change.)

13:35-9.5 New Jersey acupuncture safety and jurisprudence examination

(a)-(b) (No change.)

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

13:35-9.6 (Reserved)

13:35-9.8 Fee schedule

(a) The Board shall charge the following fees:

1.-3. (No change.)

4. Duplicate or replacement of biennial registration

license \$ 25.00

5. Late Fee (biennial license) \$ 50.00

6. Inactive License Fee

(to be determined by  
Director by regulation)

7. (No change.)

Recodify existing 9. and 10. as 8. and 9. (No change in text.)

(b) (No change in text.)

13:35-9.9 Biennial license renewal; license suspension; reinstatement of suspended license; inactive status; return from inactive status

(a) All licenses to practice acupuncture issued by the Board shall be issued for a two-year biennial licensure period. A licensee who seeks renewal of the license shall submit a renewal application and the renewal fee set forth in N.J.A.C. 13:35-9.8 prior to the expiration date of the license.

(b) (No change.)

(c) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee, and a late fee, as set forth in N.J.A.C. 13:35-9.8. During this 30-day period, the license shall be valid, and the licensee shall not be deemed to be engaged in unauthorized practice.

(d) A license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unauthorized practice.

(e) A licensee whose license has been automatically suspended for five years or less for failure to renew pursuant to (d) above may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:35-9.8;
2. Completion of the continuing education units required for each biennial registration period for which the license was suspended; and
3. Submission of an affidavit of employment listing each job held during the period of the suspended license, which includes the name, address, and telephone number of each employer.

(f) In addition to the fulfilling the requirements set forth in (e) above, a licensee whose license has been automatically suspended for more than five years who wishes to have his or her license reinstated shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while suspended may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

(g) Renewal applications shall provide the licensee with the option of either active or inactive status. A licensee electing inactive status shall pay the inactive license fee set forth in N.J.A.C. 13:35-9.8 and shall not engage in the practice of acupuncture.

(h) A licensee who elected inactive status and has been on inactive status for five years or less may be reinstated by the Board upon completion of the following:

1. (No change.)
2. The completion of the continuing education units required for each biennial registration period for which the licensee was on inactive status; and
3. Submission of an affidavit of employment listing each job held during the period the licensee was on inactive status, which includes the name, address, and telephone number of each employer.

(i) In addition to the fulfilling the requirements set forth in (h) above, a licensee who has been on inactive status for more than five years who wishes to return to practice shall reapply for licensure and shall demonstrate that he or she has maintained proficiency. An applicant who fails to demonstrate to the satisfaction of the Board that he or she has maintained proficiency while on inactive status may be subject to an examination or other requirements as determined by the Board prior to reinstatement of his or her license.

#### 13:35-9.10 Display of license

A licensed acupuncturist shall post his or her license in a conspicuous location in his or her office. If a licensed acupuncturist has more than one office, he or she shall obtain from the Board a duplicate license for each location.

#### [page=702] 13:35-9.11 Informed consent; medical malpractice

(a) The acupuncturist shall fully 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, and maintain as part of his or her patient records, informed written consent from the patient before beginning acupuncture treatment.

(b) A licensed acupuncturist shall advise every patient as to the importance of consulting with a licensed physician regarding the patient's condition.

(c) A licensed acupuncturist shall maintain as part of his or her patient records a form, with the date and the signatures of the patient and the licensed acupuncturist, indicating that the licensed acupuncturist has advised the patient as required under (b) above **\*and shall provide a copy of this form to the patient\***.

(d) Licensed acupuncturists shall maintain medical malpractice insurance in the sum of \$ 1 million per occurrence and \$ 3 million per policy year.

#### 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 licensed acupuncturists and shall be performed only by acupuncturists licensed 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), or guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to N.J.A.C. 13:35-9.13:

1.-4. (No change.)

(b) Licensed 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), or guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to N.J.A.C. 13:35-9.13 may, in addition to the methods listed in (a) above, use any of the following as part of his or her professional practice:

1.-5. (No change.)

6. Gua sha scraping techniques;

7. (No change.)

8. Tuina;

9.-11. (No change.)

12. (No change in text.)

13. Breathing techniques;

14. Therapeutic exercise and techniques;

15. Oriental dietary therapy;

16. Lifestyle and behavioral education;

17. Percutaneous and transcutaneous electrical nerve stimulation;

18. Qigong;

19. Biofeedback and other devices that utilize color, light, sound, and electromagnetic energy for therapeutic purposes;

20. Diagnostic and assessment techniques that are taught in ACAOM-approved schools and through NCCAOM-approved continuing education courses and which assist in acupuncture and Oriental medicine diagnosis, corroboration, and monitoring of a treatment plan or in making a determination to refer a patient to another healthcare provider;

21. Taiji; and

22. Energetic therapy.

(c) Licensed 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), or guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to N.J.A.C. 13:35-9.13 may recommend to patients the use of:

1. Meditation; and

2. Products that facilitate health, such as:

- i. Homeopathic medicine that is recognized in the official Homeopathic Pharmacopoeia of the United States;
- ii. Vitamins;
- iii. Minerals;
- iv. Enzymes;
- v. Glandulars;
- vi. Amino acids;
- vii. Nonprescription substances; and
- viii. Nutritional or dietary supplements that meet Food and Drug Administration labeling requirements, [21 CFR 101.36](#), unless otherwise prohibited by State or Federal law.

(d) Licensed 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), or guest acupuncturists permitted to perform acupuncture in New Jersey pursuant to N.J.A.C. 13:35-9.13 may use the following when providing acupuncture:

1.-4. (No change.)

5. Prismatic needles;

6. Lancets; and

7. Non-insertive pressure needles.

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

1.-3. (No change.)

(f) The only licensed acupuncturists who may practice herbology are those qualified to do so under N.J.A.C. 13:35-9.12A.

(g) Licensed acupuncturists may offer and provide to a patient, at fair market value, goods and devices.

#### 13:35-9.12A Herbology

(a) Except as set forth in (b) and (c) below, a licensed acupuncturist shall practice herbology only if he or she submits proof to the Board of current certification in Chinese Herbology or Oriental Medicine from the NCCAOM and has a letter from the Board recognizing that the licensed acupuncturist has submitted this information.

(b) Prior to \*[six months after the effective date of this rule]\* **\*October 21, 2014\***, a licensed acupuncturist who obtained his or her license on or before November 2, 2009\*,\*

may obtain a letter from the Board recognizing that he or she may practice herbology if he or she:

1. Successfully completed an herbology program from a school accredited by the ACAOM;
2. Passed the NCCAOM herbology examination;
3. Was ever certified in Chinese Herbology or Oriental Medicine by NCCAOM; or
4. Passed the NCCAOM herbology examination module.

(c) Prior to \*[(six months after the effective date of this rule)]\* **\*October 21, 2014\***, a licensed acupuncturist who was enrolled in a school accredited by the ACAOM on or before November 2, 2009\*,\* may obtain a letter from the Board recognizing that he or she may practice herbology if:

1. He or she graduated from the ACAOM accredited school in which he or she was enrolled in on or before November 2, 2009; and
2. The school had a program in Chinese herbal medicine.

(d) A licensed acupuncturist who is permitted to practice herbology pursuant to (a), (b), or (c) above shall complete at least 10 hours of continuing education related to the practice of herbology as part of the 30 hours of continuing education he or she is required to complete pursuant to N.J.A.C. 13:35-9.20.

#### 13:35-9.13 Guest acupuncturist

(a) An individual who is not a licensed 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]\*, or a student in an acupuncture program that meets the requirements of N.J.A.C. 13:35-9.4(e) may perform acupuncture services as a guest acupuncturist if:

1.-3. (No change.)

(c)-(d) (No change.)

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

(a) An individual is engaging in **\*the\*** unlicensed 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. Licensed 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]\*;

[page=703] 3. A guest acupuncturist permitted to perform acupuncture services pursuant to N.J.A.C. 13:35-9.13; or

4. A student participating in an acupuncture program pursuant to N.J.A.C. 13:35-9.4(e).

#### 13:35-9.15 Precautionary and sterilization procedures

(a)-(e) (No change.)

(f) If a licensee learns that a patient has a blood-borne infectious disease, the licensee shall use only disposable needles in treating the patient.

(g) (No change.)

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

(a) (No change.)

(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.-vi. (No change.)

vii. Findings from examinations;

viii. If a physician has referred a patient for acupuncture, an indication that a referral or diagnosis was made by a physician, including the name of the physician; and

ix. Documentation of any recommendations made to a patient for the use of meditation or products that facilitate health.

2. Corrections and/or additions may be made to an existing record, provided that each change is clearly identified as such, dated and initialed by the licensee;

3. (No change.)

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

1.-4. (No change.)

5. The acupuncturist shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

(d)-(e) (No change.)

(f) If an acupuncturist ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the acupuncturist or designee shall:

1. Establish a procedure by which patients can obtain a copy of the treatment records or acquiesce in the transfer of those records to another licensee who is assuming responsibilities of the practice. However, an acupuncturist shall not charge a patient,

pursuant to (c)3 above, for a copy of the records, when the records will be used for purposes of continuing treatment or care.

2.-3. (No change.)

13: 35-9.17, 9.18, and 9.19 (Reserved)

13: 35-9.20 Continuing professional education requirements

(a) (No change.)

(b) The provisions of this section shall apply to all acupuncturists applying for biennial license renewal except those seeking renewal for the first time.

(c) No license renewal shall be issued by the Board unless the acupuncturist confirms on the renewal application that he or she completed at least 30 hours of continuing education.

(d) Credit for continuing professional education shall be granted as follows for each biennial period:

1.-2. (No change.)

3. Successfully completing graduate course work related to the practice of acupuncture taken beyond that required for a professional license in a college or university that is regionally accredited or accredited by the ACAOM: one continuing education hour per credit hour;

4.-9. (No change.)

(e)-(g) (No change.)

(h) Credits taken in excess of the 30 required for biennial license renewal shall not be carried over for use in subsequent renewal periods.

(i) The Board may 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 apply to the Board in writing at least 90 days prior to license 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) that 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)-(k) (No change.)