

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

LCB File No. R072-18

August 14, 2018

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

AUTHORITY: §2, NRS 634A.050, 634A.060 and 634A.070; §§3 and 6, NRS 634A.070, 634A.080 and 634A.140; §4, NRS 634A.070, 634A.110, 634A.160 and 634A.167; §5, NRS 634A.070 and 634A.110; §§7-9, NRS 634A.070 and 634A.120; §10, NRS 634A.070 and 634A.225; §§11 and 12, NRS 634A.070 and 634A.160; §13, NRS 634A.070, 634A.110 and 634A.160; §14, NRS 634A.070 and 634A.170.

A REGULATION relating to Oriental medicine; establishing restrictions on certain salaries to which certain officers of the State Board of Oriental Medicine may be entitled; providing for Board approval of schools and colleges of Oriental medicine under certain circumstances; requiring certain licensees to maintain, and provide proof to the Board of, certain certification; revising the deadline by which an applicant for a license to practice Oriental medicine must submit an application, fees and other documents to the Board; revising requirements for proof of qualification for licensure; requiring an applicant for licensure to pass certain examinations; establishing a minimum score for an applicant to pass the Test of English as a Foreign Language Internet-Based Test; revising provisions relating to the practical examination of an applicant for a license to practice Oriental medicine; revising provisions governing the approval of certain courses of continuing education; providing for the proration of the annual fee for the first renewal of certain licenses to practice Oriental medicine; revising requirements for the reinstatement of a cancelled license; revising certain fees; revising certain acts which constitute unethical and unprofessional conduct; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that each member of the State Board of Oriental Medicine is entitled to receive a salary. (NRS 634A.050) Existing law requires the Board to annually elect from its members a President, Vice President and Secretary-Treasurer and authorizes the Board to fix and pay a salary to the Secretary-Treasurer. (NRS 634A.060) **Section 2** of this regulation provides that the President, Vice President and Secretary-Treasurer of the Board are not entitled to receive a salary other than, or in addition to, that which is authorized for every other member of the Board.

Existing law allows the establishment and maintenance of a school or college of Oriental medicine in this State only if: (1) its establishment is approved by the Board; and (2) its curriculum is approved annually by the Board. (NRS 634A.090) **Section 3** of this regulation provides that the Board will approve the curriculum if the school or college of Oriental medicine submits to the Board proof of payment of annual sustaining accreditation or pre-accreditation dues for the program of study to the Accreditation Commission for Acupuncture and Oriental Medicine.

Section 4 of this regulation requires each holder of a new license that is first issued after December 31, 2018, to maintain Oriental Medicine Certification by the National Certification Commission for Acupuncture and Oriental Medicine and provide to the Board proof of the certification.

Existing regulations require a person who desires to be licensed by the Board as a doctor of Oriental medicine to file an application with, and pay a fee to, the Executive Director of the Board at least 6 months before the date of the practical examination in which the applicant wishes to participate. (NAC 634A.071) **Section 5** of this regulation requires the applicant to file his or her application, pay his or her fee and submit any other documentation or proof required by the Board at least 3 months before the date of the examination.

Existing regulations: (1) require an applicant for a license to practice Oriental medicine to submit to the Board evidence of his or her education and experience qualifications; and (2) set forth certain requirements for programs of study that the Board will approve. (NAC 634A.080) **Section 6** of this regulation: (1) requires an applicant for licensure by endorsement to also submit evidence that he or she holds Oriental Medicine Certification by the National Certification Commission for Acupuncture and Oriental Medicine or its successor organization; and (2) revises the requirements for programs of study that the Board will approve or deem to be equivalent.

Existing regulations require an applicant for licensure as a doctor of Oriental medicine to pass an examination in Oriental medicine that is administered by a national organization approved by the Board. (NAC 634A.085) **Section 7** of this regulation requires the applicant to pass the examinations for Oriental Medicine Certification administered by the National Certification Commission for Acupuncture and Oriental Medicine or to be certified by that organization, which entails passage of the same examinations.

Existing regulations establish the minimum score for an applicant to pass the written form of the Test of English as a Foreign Language. (NAC 634A.095) **Section 8** of this regulation establishes the minimum score for an applicant to pass the Test of English as a Foreign Language Internet-Based Test.

Existing regulations set forth a schedule for the administration of a practical examination to applicants, a list of the subjects that may be included in the examination and the scores which must be achieved to pass the examination. (NAC 634A.100) **Section 9** of this regulation: (1) sets forth provisions governing the administration of the examination online; (2) revises the list of subjects that may be included in the examination; (3) provides that the examination be given in written form; (4) and revises the scores that must be achieved to pass the examination.

Existing regulations prohibit a person or entity from offering a course of continuing education for licensees in this State unless prior approval has been obtained from the Board. (NAC 634A.137) **Section 10** of this regulation authorizes certain courses which are approved for recertification by the National Certification Commission for Acupuncture and Oriental Medicine to be offered as courses of continuing education for licensees in this State without prior approval by the Board and are exempt from the imposition of fees for the approval of courses of continuing education. **Section 10** also provides that Board approval of other courses of continuing education expires 4 years after such approval.

Section 11 of this regulation provides that the Board will prorate by the month the annual fee for the first renewal of an active or inactive license to practice Oriental medicine.

Existing regulations set forth the requirements for the reinstatement of the license that has been cancelled. (NAC 634A.150) **Section 12** of this regulation requires the person whose license has been cancelled to comply with the requirements within 1 year after cancellation or reapply for a new license.

Section 13 of this regulation reduces the original application fee for a school or college of Oriental medicine and the annual fee for approval of curriculum.

Existing regulations provide that the Board considers the use of testimonial, whether paid for or not, to solicit or encourage use of a licensee's services by members of the public to be unethical and unprofessional conduct warranting disciplinary action. (NAC 634A.170) **Section 14** of this regulation provides that the Board will consider only paid testimonials to be unethical and unprofessional conduct.

Section 1. Chapter 634A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *The President, Vice President and Secretary-Treasurer of the Board are not entitled to receive a salary other than, or in addition to, that which is authorized and fixed by the Board for each member thereof pursuant to NRS 634A.050. The Board will not pay any salary pursuant to NRS 634A.060.*

Sec. 3. *For the purposes of paragraph (b) of subsection 1 of NRS 634A.090, the Board will approve the curriculum of a program of study of a school or college of Oriental medicine if the school or college submits to the Board proof of payment of annual sustaining accreditation or pre-accreditation dues for that program of study to the Accreditation*

Commission for Acupuncture and Oriental Medicine or its successor organization. No other review of the curriculum by the Board will be deemed necessary.

Sec. 4. *Each holder of a new license that is first issued after December 31, 2018, including, without limitation, a holder of a license by endorsement issued pursuant to subsection 2 of NRS 634A.140, shall:*

1. Maintain Oriental Medicine Certification by the National Certification Commission for Acupuncture and Oriental Medicine or its successor organization; and

2. Provide proof of that certification to the Executive Director upon:

(a) Certification;

(b) Recertification; and

(c) The change of classification of his or her license from inactive status to active status.

Sec. 5. NAC 634A.071 is hereby amended to read as follows:

634A.071 1. A person who desires to be licensed by the Board as a doctor of Oriental medicine must ~~H~~, *at least 3 months before the date of the practical examination in which the person wishes to participate:*

(a) File an application with the Executive Director ; ~~at least 6 months before the date of the practical examination in which the applicant wishes to participate;~~

(b) Pay to the Board at the time of filing his or her application any applicable fees set forth in NAC 634A.165; and

(c) Submit any other documentation or proof that the Board may require.

2. The application must be:

(a) Made on the form provided by the Board; and

(b) Typed or written in English.

3. The application must include:
 - (a) The social security number of the applicant;
 - (b) A set of the fingerprints of the applicant, together with written consent for the Board to submit the fingerprints to any law enforcement agency in connection with his or her application;
 - (c) Written consent of the applicant to an investigation of his or her personal background, professional training and experience by the Board or any person acting on its behalf; and
 - (d) Evidence that the applicant possesses the qualifications required pursuant to this chapter and chapter 634A of NRS for licensure as a doctor of Oriental medicine.

Sec. 6. NAC 634A.080 is hereby amended to read as follows:

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

2. If the application is submitted pursuant to subsection 1 of NRS 634A.140, the applicant must submit evidence showing that he or she has earned a bachelor's degree from an accredited college or university in the United States.

3. If the application *for licensure by endorsement* is submitted pursuant to subsection 2 of NRS 634A.140, the applicant must submit evidence that he or she ~~has~~ :

(a) *Has* lawfully practiced Oriental medicine in another state or foreign country for at least 4 years ~~+~~; *and*

(b) *Holds Oriental Medicine Certification by the National Certification Commission for Acupuncture and Oriental Medicine or its successor organization.*

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

(a) *The school or college of Oriental medicine is:*

(1) *Accredited by the Accreditation Commission for Acupuncture and Oriental Medicine or its successor organization; or*

(2) *In pre-accreditation status with the Accreditation Commission for Acupuncture and Oriental Medicine or its successor organization and satisfies the requirements of paragraph (b).*

(b) The program of study includes training or instruction in the subjects of acupuncture, moxibustion, herbology, Oriental physiology, Oriental pathology, Oriental diagnosis, tuina ~~†~~ or *qigong*, biology, ~~†~~ physics, ~~†~~ chemistry ~~†~~ or biochemistry, anatomy, Western physiology, Western pathology, Western diagnosis, pharmacology, laboratory and radiology. ~~†~~ and ~~—(b)†~~

(c) The program of study:

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

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

5. *For the purposes of subsection 1, the Board will deem a master's degree to be the equivalent of a 4-year program of study if the program of study for the degree conforms to the requirements of paragraphs (b) and (c) of subsection 4.*

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

Sec. 7. NAC 634A.085 is hereby amended to read as follows:

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

1. *Have passed* the examinations for ~~acupuncture and Chinese herbology administered by a national organization approved by the Board.~~ *Oriental Medicine Certification administered by the National Certification Commission for Acupuncture and Oriental Medicine or its successor organization within the 12 months preceding the date of application for licensure;*
or

2. *Be certified by the National Certification Commission for Acupuncture and Oriental Medicine or its successor organization.*

Sec. 8. NAC 634A.095 is hereby amended to read as follows:

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

(a) Before taking the practical examination ~~pass~~ :

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

(2) Pass the Test of English as a Foreign Language Internet-Based Test with a total score of at least 80; and

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

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

Sec. 9. NAC 634A.100 is hereby amended to read as follows:

634A.100 1. *Until such time as the Board implements a process for administering a practical examination online:*

(a) The practical examination will be given in June and December of each year.

(b) An applicant may not take the practical examination unless the applicant has first passed the examinations required pursuant to NAC 634A.085. The Executive Director shall notify an applicant of the time and place of the practical examination not later than 20 days before the date on which the practical examination is scheduled.

~~{2.}~~ *(c)* During the practical examination, only the testing consultant and the applicants will be allowed in the examination rooms.

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

~~—4.}~~ 2. *Upon the implementation of a process for administering the practical examination online:*

(a) Examinations will be offered at times and places established by the Board but at least two times each year in accordance with NRS 634A.120.

(b) The Board will notify an applicant of his or her eligibility to take the practical examination online. Not later than 90 days after notification by the Board, the applicant must take the examination online at the facility that is designated by the Board.

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

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

~~—(b) Skills pertaining to sterilization.~~

~~—(c) Skills pertaining to the use of herbs.~~

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

~~(e)~~ *(b) The Clean Needle Technique, as presented in the current guidelines of the Clean Needle Technique course administered by the Council of Colleges of Acupuncture and Oriental Medicine.*

(c) Oriental medicine theory, herbology and acupuncture.

(d) Oriental herb safety and herb-drug interactions.

(e) Applicable laws and regulations pertaining to health and safety.

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

~~5.~~ *4. The practical examination will be given in written form.* Each applicant shall take the ~~practical~~ examination in the English language.

~~6.~~ *5.* An applicant must receive an overall score of ~~75~~ *70* percent on the practical examination and ~~60~~ *65* percent on ~~all~~ *each* of its sections or subparts to pass the ~~practical~~ examination.

Sec. 10. NAC 634A.137 is hereby amended to read as follows:

634A.137 1. ~~1A~~ *Except as otherwise provided in subsection 2, a person or entity shall not offer a course of continuing education for licensees in this State unless the person or entity has first obtained approval for the course from the Board pursuant to this section.*

2. *Courses in the core competency of Acupuncture and Oriental Medicine and Biomedicine (AOM-BIO) which are approved for recertification by the National Certification Commission for Acupuncture and Oriental Medicine may be offered as courses of continuing education for licensees in this State without approval from the Board and are exempt from the imposition of fees for approval of courses of continuing education pursuant to NAC 634A.165.*

3. A person or entity may apply for approval of a course of continuing education by submitting to the Board:

(a) An application, on a form provided by the Board, which must include information indicating the specific subject or topics to be presented and the name of each proposed instructor;

(b) All material relating to the course, including, without limitation, written material to be provided to a licensee attending the course; and

(c) The fee required pursuant to NAC 634A.165.

~~3~~ 4. If the Board approves a course of continuing education pursuant to this section, the Board will determine the number of hours of continuing education that a licensee may receive for attending the course.

5. *Board approval of a course of continuing education other than a course described in subsection 2 expires 4 years after that approval.*

Sec. 11. NAC 634A.140 is hereby amended to read as follows:

634A.140 ~~{Each}~~ *Except as otherwise provided in this section, each* person who holds an active or inactive license to practice Oriental medicine shall pay to the Board an annual ~~{registration}~~ fee *for the renewal of the license* as required by NAC 634A.165. *The Board will prorate by month the annual fee for the first renewal of an active or inactive license to practice Oriental medicine.*

Sec. 12. NAC 634A.150 is hereby amended to read as follows:

634A.150 *1.* Any person whose license has been cancelled pursuant to NRS 634A.160 and who desires to reinstate his or her license may have the license reinstated if:

~~{1}~~ *(a) Not later than 1 year after the date on which the license was cancelled:*

(1) The person submits to the Board all required fees for the period during which his or her license was cancelled, plus any late fee set forth in NAC 634A.165; ~~{~~

~~—2.}~~ *and*

(2) The person submits proof of compliance with the applicable requirements concerning continuing education; and

~~{3}~~ *(b)* The Board reinstates the license of the person at a regularly scheduled meeting.

2. Any person whose license has been cancelled pursuant to NRS 634A.160, who fails to comply with the requirements of paragraph (a) of subsection 1 and who desires a license must reapply for a new license.

Sec. 13. NAC 634A.165 is hereby amended to read as follows:

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

Original application for licensure as a doctor of Oriental medicine	\$1,000.00
Renewal of active license before February 1	700.00

Renewal of inactive license before February 1	500.00
Penalty for late renewal of license within 90 days after February 1	100.00
Penalty for late renewal of license more than 90 days after February 1	200.00
Penalty for reinstatement of cancelled license	200.00
Original application for use of fictitious name.....	100.00
Replacement of pocket license	100.00
Replacement of license.....	200.00
Original fee for practical examination	1,000.00
Reexamination fee for practical examination.....	500.00
Transfer of license from active status to inactive status.....	200.00
Transfer of license from inactive status to active status.....	500.00
Approval of course of continuing education	100.00
Temporary certificate for lecturing or training.....	100.00
Check returned for insufficient funds.....	25.00
For copies of this chapter and chapter 634A of NRS.....	10.00
For other copies, per page	0.25
For other copies, per compact disc or tape recording	20.00
Original application fee for a school or college of Oriental medicine	5,000.00
	2,000.00
Annual fee for approval of curriculum before February 1	5,000.00
	1,000.00

Sec. 14. NAC 634A.170 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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