

ADOPTED REGULATION OF THE STATE

BOARD OF ORIENTAL MEDICINE

LCB File No. R071-02

Effective November 25, 2002

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

AUTHORITY: §§1-11 and 14-38, NRS 634A.070; §12, NRS 634A.165; §13, NRS 634A.225.

Section 1. Chapter 634A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. *“Board” means the state board of Oriental medicine.*

Sec. 3. *“Doctor of Oriental medicine” means a person who is licensed pursuant to chapter 634A of NRS to practice as a doctor of Oriental medicine.*

Sec. 4. *“Executive director” means the executive director of the board.*

Sec. 5. *“Licensee” means a doctor of Oriental medicine.*

Sec. 6. *“Oriental medicine” has the meaning ascribed to it in NRS 634A.020.*

Sec. 7. *1. A person who desires to be licensed by the board as a doctor of Oriental medicine must:*

(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 application any applicable fees set forth in section 14 of this regulation; 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 application;

(c) Written consent of the applicant to an investigation of his 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. 8. 1. To comply with the requirement of passing an examination in Oriental medicine that is administered by a national organization approved by the board pursuant to NRS 634A.120, an applicant for licensure as a doctor of Oriental medicine must pass the examinations for acupuncture and Chinese herbology administered by a national organization approved by the board:

(a) Not earlier than the 2 years immediately preceding the date on which his application is submitted; and

(b) Not later than the date on which his application is complete.

2. If an applicant has passed any of the examinations required pursuant to subsection 1 more than 2 years immediately preceding the date of submission of his application, the applicant shall be deemed not to have passed that examination for the purpose of complying with subsection 1 and must retake and pass that examination in accordance with the provisions of subsection 1.

Sec. 9. 1. *The board may reject an application for licensure as a doctor of Oriental medicine if it appears that:*

(a) The applicant is not qualified for licensure or is not of good moral character or reputation;

(b) Any credential submitted is false;

(c) The application is not made in proper form or other deficiencies appear in it; or

(d) The application is not completed within 6 months.

2. *The board will reject an application if the applicant's check to pay any applicable fees is returned for insufficient funds.*

Sec. 10. 1. *A license issued to an alien automatically terminates if he loses his entitlement to remain and work in the United States.*

2. *A license issued to an alien after the effective date of this regulation must state in a conspicuous manner:*

This license is issued subject to any limitations imposed by the United States Department of Justice, Immigration and Naturalization Service. This license becomes void immediately upon the termination of the right of the person named herein to remain and work in the United States lawfully.

Sec. 11. 1. *A licensee shall not operate under a fictitious name unless he complies with chapter 602 of NRS and files with the board a certified copy of the certificates issued by the county clerk.*

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

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

Sec. 12. *A person who is not a licensee may be issued a temporary certificate pursuant to NRS 634A.165 if:*

1. The person submits an application to the board, on a form provided by the board, that includes:

(a) The curriculum vitae of the applicant;

(b) The specific topic concerning Oriental medicine or acupuncture which is the subject of the seminar, lecture or teaching;

(c) The specific dates for which the temporary certificate is requested; and

(d) Evidence that the person is competent with respect to the specific topic concerning Oriental medicine or acupuncture which is the subject of the seminar, lecture or teaching;

2. The person submits the appropriate fee for issuance of a temporary certificate pursuant to section 14 of this regulation; and

3. The board approves the application at a regularly scheduled meeting.

Sec. 13. *1. 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. 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 section 14 of this regulation.

3. 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.

Sec. 14. *The board will charge and collect the following fees:*

<i>Original application for licensure as a doctor of Oriental medicine</i>	<i>\$400.00</i>
<i>Deposit for initial background investigation</i>	<i>300.00</i>
<i>Renewal of license before February 1.....</i>	<i>400.00</i>
<i>Late renewal of license within 90 days after February 1</i>	<i>50.00</i>
<i>Late renewal of license more than 90 days after February 1</i>	<i>50.00</i>
<i>Reinstatement of canceled license</i>	<i>100.00</i>
<i>Original application for use of fictitious name</i>	<i>50.00</i>
<i>Replacement of identification card</i>	<i>20.00</i>
<i>Replacement of license</i>	<i>40.00</i>
<i>Original fee for practical examination</i>	<i>1,000.00</i>
<i>Reexamination fee for practical examination</i>	<i>300.00</i>
<i>Transfer of license from active status to inactive status</i>	<i>50.00</i>
<i>Transfer of license from inactive status to active status</i>	<i>400.00</i>
<i>Approval of course of continuing education</i>	<i>100.00</i>
<i>Temporary certificate for lecturing or training</i>	<i>100.00</i>

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

Sec. 15. *A request for the board to consider or take action upon a matter at a meeting must be received by the board at least 15 business days before the date of the meeting.*

Sec. 16. NAC 634A.005 is hereby amended to read as follows:

634A.005 As used in this chapter, unless the context otherwise requires, ~~["board" means the state board of Oriental medicine.]~~ *the words and terms defined in sections 2 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 17. NAC 634A.010 is hereby amended to read as follows:

634A.010 **1.** *The board will designate a person to act as executive director of the board.*

2. The principal office of the board is the office of that person designated as the ~~secretary treasurer of the board.~~ *executive director.* The *principal* office of the board will be open during regular business hours.

Sec. 18. NAC 634A.055 is hereby amended to read as follows:

634A.055 **1.** Except as otherwise provided in subsection 2, ~~each~~ *an* applicant for a license *to practice Oriental medicine* must ~~demonstrate at~~ :

(a) Before taking the practical examination, pass the Test of English as a Foreign Language with a score of at least 550; and

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

2. ~~[No applicant for a license as an assistant in acupuncture is required to satisfy the English requirement of this section.]~~ *Subsection 1 does not apply to an applicant who graduated from a high school or college in the United States.*

Sec. 19. NAC 634A.080 is hereby amended to read as follows:

634A.080 1. ~~[Applications]~~ *An applicant* for a license to practice Oriental medicine ~~[or any branch thereof, must be filed with the secretary-treasurer of the board at least 6 months before the date of the examination in which the applicant wishes to participate.~~

~~—2.—~~ ~~An application must be completed in English by the applicant, and must be either typed or written.]~~ *must submit, together with his application, evidence that he has successfully completed an accredited 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 has earned a bachelor's degree from an accredited college or university in the United States.*

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

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

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

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

(b) The program of study:

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

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

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

Sec. 20. NAC 634A.090 is hereby amended to read as follows:

634A.090 1. ~~[An applicant for a license from the board shall, as part of his application, furnish written consent to an investigation of his personal background, professional training and experience by the board or any person acting on its behalf. Each applicant shall furnish to the board, along with his application, a set of his fingerprints and written consent for the board to submit the fingerprints to any law enforcement agency in connection with his application for a license.~~

~~—2.— Each applicant shall also submit as a part of his application a nonrefundable deposit of \$300] *The deposit* to be used to defray the expenses of the investigation of each applicant's background and training ~~[~~ *is nonrefundable.* If the cost of the investigation exceeds the sum deposited, no further consideration will be given to the application until the applicant has~~

tendered in full such additional investigative fees as the board deems reasonably necessary to complete the investigation.

~~[3.—No]~~

2. *An* applicant may *not* take the *practical* examination for which he has applied before the investigation of his background and training has been completed.

Sec. 21. NAC 634A.100 is hereby amended to read as follows:

634A.100 1. ~~[Examinations]~~ *The practical examination* will be given in June and December of each year. *An applicant may not take the practical examination unless the applicant has first passed the examinations required pursuant to section 8 of this regulation. The executive director shall notify an applicant of the time and place of the practical examination not later than 20 days before the date on which the practical examination is scheduled.*

2. During the *practical* examination, only ~~[members of the board,]~~ the testing consultant ~~[,]~~ *and* the applicants ~~[, or others specifically requested by the board to be present,]~~ will be allowed in the examination rooms.

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

4. As a part of any *practical* examination, the board may examine an applicant as to his basic knowledge of ~~[anatomy, physiology, bacteriology, biochemistry, pathology and hygiene.~~

~~—5.— Each applicant for a license as a doctor of Oriental medicine, a doctor of acupuncture or an assistant in acupuncture shall bring with him to the examination, at his own expense, his own needles and other equipment necessary for demonstrating his skill and proficiency in acupuncture.~~

~~6.]~~ *the following subjects:*

(a) *Needling. The board may require a demonstration of needling on a patient or on the applicant himself.*

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

(f) *Use of the English language, as described in NAC 634A.055.*

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

~~7.]~~ 6. An applicant ~~[for licensure]~~ must receive an overall score of ~~[70]~~ 75 percent on the *practical* examination and 60 percent on all of its sections or subparts to pass the *practical* examination.

Sec. 22. NAC 634A.110 is hereby amended to read as follows:

634A.110 1. An applicant for a license ~~[from the board]~~ *to practice Oriental medicine* who has failed ~~[an]~~ *the practical* examination may apply for reexamination by the board no earlier than 6 months after the date of the *practical* examination failed by the applicant. A person seeking reexamination shall notify the ~~[secretary treasurer of the board]~~ *executive director* by completing a form prescribed by the board and submitting ~~[therewith a fee of \$100.]~~ *the fee set forth in section 14 of this regulation.*

2. If an applicant who has failed ~~[an examination of the board]~~ *the practical examination* failed only one section of the *practical* examination, he will be reexamined only with respect to

the section *that* he failed. If the applicant failed two or more sections of the *practical* examination, he must repeat the entire *practical* examination at the time of reexamination.

3. ~~Any applicant for a license~~ *An applicant* may *not* take the ~~prescribed~~ *practical* examination or any portion thereof ~~no~~ more than three times within any 5-year period. If an applicant must retake only a portion of ~~an~~ *the practical* examination and the applicant does not successfully complete that portion after his third attempt, he must at any future reexamination repeat the entire *practical* examination then being administered by the board.

Sec. 23. NAC 634A.135 is hereby amended to read as follows:

634A.135 1. ~~A person licensed to practice Oriental medicine or any branch thereof~~ *Except as otherwise provided in this section, a licensee* shall complete, during each calendar year, at least 10 hours of continuing education.

2. ~~The continuing education must be in a subject relating to the field of Oriental medicine or acupuncture, or both, must be provided to licensees in a format of personal instruction, including in a classroom or at an educational seminar, and must be approved by the board. As used in this subsection, "personal instruction" does not include instruction provided in a video format.] A licensee may only receive credit for hours of continuing education in courses that have been approved by the board pursuant to section 13 of this regulation.~~

3. *Beginning with the 2003 calendar year, a licensee who earns more than 10 hours of credit for continuing education in any calendar year may carry forward up to 15 hours of excess credit and apply such excess credit to the educational requirements for the next two calendar years if the licensee indicates in writing, at the time he submits the form for renewal of his license pursuant to NRS 634A.167, that he intends to carry forward such excess credit.*

4. A licensee who is not practicing in this state may request the board to classify his license as inactive. A person who holds an inactive license is exempt from the requirements set forth in this section regarding continuing education.

~~[4.]~~ 5. A person who is requesting the board to change the classification of his license from inactive to active must:

(a) Satisfy the requirements of continuing education for the year in which he seeks to reclassify his license; ~~[and]~~

(b) Submit proof to the board that he has satisfied the applicable requirements ~~[.]~~; *and*

(c) Submit the fee set forth in section 14 of this regulation.

Sec. 24. NAC 634A.150 is hereby amended to read as follows:

634A.150 Any person whose license has been canceled pursuant to NRS 634A.160 and who desires ~~[another license from the board]~~ *to reinstate his license* may have his license reinstated if ~~[he:~~

~~—1.— Pays to the board all annual registration fees due at the time of reinstatement for all years in which the fees were not paid; or~~
~~—2.— Successfully completes the examination then being prescribed by the board for new licensees.] :~~

1. The person submits to the board all required fees for the period during which his license was canceled, plus any late fee set forth in section 14 of this regulation;

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

3. The board reinstates the license of the person at a regularly scheduled meeting.

Sec. 25. NAC 634A.160 is hereby amended to read as follows:

634A.160 1. If a license is revoked, the license and the identification card previously issued by the board must be surrendered by the licensee to the ~~{secretary-treasurer of the board}~~ *executive director* within 5 days ~~{of}~~ *after* receipt of a notice of revocation.

2. If a license is suspended for a fixed period, the license and the identification card previously issued by the board must be surrendered by the licensee to the ~~{secretary-treasurer of the board}~~ *executive director* within 5 days after receipt of a notice of suspension. ~~{The license and identification card will be returned to the licensee upon the termination of the suspension.}~~

3. If a license or identification card must be surrendered pursuant to subsection 1 or 2 but has been lost, stolen or destroyed, the licensee must complete and file an affidavit with the board stating that the license or identification card has been lost, stolen or destroyed and that the licensee will immediately return the license or identification card if it is later recovered by the licensee.

4. If the license or identification card of a licensee is lost, stolen or destroyed, the licensee must:

(a) Complete and file an affidavit with the board stating that the license or identification card has been lost, stolen or destroyed and that the licensee will immediately return the license or identification card if it is later recovered by the licensee; and

(b) Pay the fee set forth in section 14 of this regulation for replacement of the license or identification card.

Sec. 26. 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 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 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.*

Sec. 27. NAC 634A.210 is hereby amended to read as follows:

634A.210 1. *The provisions of* NAC 634A.210 to 634A.570, inclusive, *and section 15 of this regulation* govern all practice and procedure before the board unless otherwise directed by the board.

2. *The provisions of* NAC 634A.210 to 634A.570, inclusive, *and section 15 of this regulation* will be liberally construed to secure a just, speedy and economical determination of all issues presented to the board.

3. If any provision of NAC 634A.210 to 634A.570, inclusive, *and section 15 of this regulation* or any application thereof to any person, thing or circumstance is held invalid, the board intends that such invalidity *will* not affect the remaining provisions, or their application, that ~~fean~~ *may* be given effect without the invalid provision or application.

Sec. 28. NAC 634A.230 is hereby amended to read as follows:

634A.230 1. Fees and remittances must be paid to the board by money order, bank draft or check payable to “State Board of Oriental Medicine.” Remittances in currency or coin are wholly at the risk of the remitter and the board assumes no responsibility for their loss. Postage stamps will not be remitted.

2. The board ~~may~~ *will not* refund any part of the application fee to an applicant ~~for good cause shown.~~ *if the applicant:*

(a) Does not complete his application by providing all the documentation required by the form for application within 6 months after the actual date of filing of the form by the applicant;

(b) Withdraws his application; or

(c) Dies before he is issued a license by the board.

Sec. 29. NAC 634A.250 is hereby amended to read as follows:

634A.250 Additional information with reference to proceedings before the board or the status of any matter may be secured by applying to the ~~[board's secretary-treasurer]~~ *executive director* at the principal office ~~[.]~~ *of the board.*

Sec. 30. NAC 634A.370 is hereby amended to read as follows:

634A.370 1. Upon the initiative of any interested person, or upon the initiative of any member of the board, a complaint may be made alleging one or more causes of action based on chapter 634A of NRS. ~~[Facts constituting acts or omissions must be stated with such particularity as to enable the respondent to prepare a defense to the complaint. All applicable citations, statutes, regulations or orders of the board must be stated with the dates on which the acts or omissions occurred. If more than one cause of action is alleged, each cause of action must be stated and numbered separately.]~~

2. Two or more complainants may join in one complaint if their respective causes of action are against the same person and deal with substantially the same violation of a law, regulation or order of the board.

3. Every complaint must be in writing and must be filed with the ~~[secretary-treasurer]~~ *executive director* of the board.

4. Complaints will be set for hearing at the earliest convenience of the board, unless notice of satisfaction of the complaint, by answer or otherwise, is received by the board.

5. At least 30 days before the date set for the hearing, the board will notify the respondent of the date, time and place of the hearing and, together with the notice, provide the respondent with a copy of the complaint and copies of all communications, reports, affidavits or

depositions in possession of the board relevant to the complaint. Evidence obtained after the date on which the notice and copies of relevant material were provided to the respondent pursuant to this subsection may not be presented to the board unless it is shown that the evidence was not available upon diligent investigation before that date and that the evidence was given or communicated to the respondent immediately after it was obtained.

Sec. 31. NAC 634A.380 is hereby amended to read as follows:

634A.380 1. ~~Upon receipt of a verified complaint, the board will forward a copy thereof to the party or parties against whom the complaint is made. The party or parties may respond to the complaint by filing an answer within 20 days of receipt thereof.~~

~~2. If a party fails to answer within 20 days, he shall be deemed to have denied generally the allegations of the complaint.]~~ *The respondent shall file an answer within 20 days after service of the notice and relevant material pursuant to subsection 5 of NAC 634A.370. The answer must contain an admission or denial of each of the averments contained in the complaint and any defenses upon which the respondent will rely.*

2. *The answer may be served by personal delivery to the board at its principal office or by certified mail to the principal office of the board.*

3. *Upon the presentation of evidence that the respondent received notice of the complaint and hearing and has not filed an answer within the time prescribed pursuant to this section, his default may be entered and a decision may be issued based upon the allegations of the complaint.*

Sec. 32. NAC 634A.410 is hereby amended to read as follows:

634A.410 ~~[1.—All]~~

Except as otherwise provided by specific statute or regulation, all notices, opinions and documents required to be served by the board, other than decisions or orders, and all documents filed by any party ~~[may be served by mail, and service thereof shall be deemed complete when a copy of the paper or document, properly addressed and stamped, is deposited in the United States mail.~~

~~—2. Parties will be notified either personally or by certified mail of any decision or order.]~~
must be served in accordance with the provisions of Rule 4 of the Nevada Rules of Civil Procedure.

Sec. 33. NAC 634A.440 is hereby amended to read as follows:

634A.440 **1.** The board may before a hearing or during a hearing, on *a* proper showing ~~[]~~ *of good faith*, grant a *request for a* continuance for the submission of further or additional proof of any subject ~~[]~~ *that is relevant to the hearing.*

2. *A request for a continuance before a hearing must be received within 7 business days before the date scheduled for the hearing.*

Sec. 34. NAC 634A.450 is hereby amended to read as follows:

634A.450 **1.** If a party fails to appear at a hearing scheduled by the board and no continuance has been requested or granted, the board may hear the evidence of such witnesses as may have appeared and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it.

2. If, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing scheduled by the board or fails to request a continuance thereof, the person may, within a reasonable period of time not to exceed 15 days, apply to the ~~[secretary-treasurer of the board]~~ *executive director* to reopen the proceedings, and the board, upon finding such cause sufficient

and reasonable, will immediately fix a time and place for a hearing and give the person notice thereof. At the time and place fixed, the person may testify in his own behalf or present such other evidence as may be beneficial to his cause. Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the board.

Sec. 35. NAC 634A.460 is hereby amended to read as follows:

634A.460 1. Subpoenas requiring the attendance of a witness at a hearing may be issued by the ~~[secretary-treasurer-of-the]~~ board upon application in writing.

2. Subpoenas for the production of documents, books or other records, unless issued by the board on its own motion, will be issued only upon application in writing. The application must specify, as clearly as possible, the documents, books or other records desired.

3. The board, at or before the time specified in the subpoena for compliance therewith, may:

(a) Quash the subpoena if it is unreasonable or oppressive; or

(b) Condition denial of a motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the documents, books or other records desired.

Sec. 36. NAC 634A.560 is hereby amended to read as follows:

634A.560 ~~[1.—All petitions for declaratory orders and advisory opinions must be in writing using substantially the format of Form No. 1.*~~

~~—2.—Upon submission of a petition for a declaratory order or advisory opinion, the board will, within 30 days, either deny the petition in writing, stating its reasons, or initiate proceedings pursuant to NRS 233B.060.~~

~~*See adopting agency for form.]~~

1. A petition for a declaratory order or an advisory opinion may be filed only by a holder of or applicant for a license or certificate.

2. The original and seven copies of the petition must be filed with the executive director not less than 10 days before the next regularly scheduled meeting of the board. The petition must be submitted to the board at that meeting. Within 30 days after the meeting, the board will issue its declaratory order or advisory opinion.

Sec. 37. NAC 634A.570 is hereby amended to read as follows:

634A.570 1. ~~[All petitions]~~ *A petition* requesting the adoption, filing, amendment or repeal of any regulation must be in writing . ~~[using substantially the format of Form No. 2.*~~
~~—2.— A copy of any denial or other correspondence from the board to the petitioner will be served by mailing a copy thereof to the petitioner.~~

~~*See adopting agency for form.]~~

2. The original and seven copies of the petition must be filed with the board.

Sec. 38. NAC 634A.030, 634A.040, 634A.045, 634A.050, 634A.060, 634A.065, 634A.070, 634A.120, 634A.190, 634A.200 and 634A.420 are hereby repealed.

TEXT OF REPEALED SECTIONS

634A.030 Copy of regulations and records of board. Persons requesting a copy of the regulations of the board will be charged \$1 to cover the cost of handling and mailing. Persons

requesting copies of other records of the board which are open and available to the public by law will be charged 20 cents per page for all copies.

634A.040 Doctors of Oriental medicine, acupuncture or herbal medicine: Evidence of education.

1. Each applicant for a license to practice Oriental medicine, acupuncture or herbal medicine must present evidence satisfactory to the board which discloses in detail the formal schooling or other type of training the applicant has previously undertaken which qualifies him as a practitioner of Oriental medicine, acupuncture or herbal medicine.

2. Satisfactory evidence of formal schooling or other training may include, but is not limited to, certified copies of diplomas, transcripts and licenses, if any, issued to an applicant by the Government of the Republic of China (Taiwan), the People's Republic of China, Korea or Japan.

3. Whenever possible, all copies of official diplomas, transcripts and licenses or certificates must be forwarded directly to the board from the issuing agency rather than from the applicant.

634A.045 Doctors of Oriental medicine, acupuncture or herbal medicine: Evidence of experience. An applicant for a license to practice as a doctor of Oriental medicine, a doctor of acupuncture or a doctor of herbal medicine must present satisfactory evidence to the board that he has practiced such a healing art full time for a minimum of 6 years before the date of his application.

634A.050 Assistants in acupuncture: Evidence of education.

1. An applicant for a license as an assistant in acupuncture must present to the board satisfactory evidence that shows in detail his successful completion of a 3-year course of study in acupuncture in any school or college approved by the board in any country, territory or province teaching such a skill.

2. Satisfactory evidence of formal schooling or other equivalent training totaling 1400 or more hours of study may include, but is not limited to, certified copies of diplomas, transcripts or licenses issued by the Republic of China (Taiwan), the People's Republic of China, Korea or Japan.

3. An applicant for a license as an assistant in acupuncture may submit with his application a certificate or license issued by the Republic of China (Taiwan), the People's Republic of China, Korea or Japan, which acknowledges that the applicant possesses the necessary qualifications to practice acupuncture.

4. Whenever possible, all copies of official diplomas, transcripts, licenses or certificates must be forwarded directly to the board from the issuing agency rather than from the applicant.

634A.060 Applicants failing examination: Alternative license as assistant in acupuncture. An applicant for a license as a doctor of Oriental medicine or a doctor of acupuncture whose grade on the examination given by the board falls below that required for a person to be licensed as a doctor of Oriental medicine or a doctor of acupuncture may be licensed as an assistant in acupuncture if he meets the standards set by the board for such a position.

634A.065 Relicensure of assistants in acupuncture as doctors: Generally. A person who is licensed as an assistant in acupuncture and who desires to be licensed as a doctor of Oriental medicine or a doctor of acupuncture may appear before the board at any regular meeting to demonstrate his proficiency in English, and if the licensee meets all the other requirements of NRS 634A.140, he may be relicensed as a doctor of Oriental medicine or a doctor of acupuncture without an additional examination or fee.

634A.070 Relicensure of assistants in acupuncture as doctors: Examination.

1. If a person is licensed by the board as an assistant in acupuncture because he lacks the number of years of experience required by NRS 634A.140 or the ability to communicate reasonably in the English language, the person, if his score on the examination would ordinarily have qualified him for licensure as a doctor of Oriental medicine or a doctor of acupuncture, will automatically be relicensed as a doctor of Oriental medicine or doctor of acupuncture, as appropriate, when the person submits satisfactory evidence to the board that he is reasonably fluent in the English language.

2. An assistant in acupuncture whose original test score was below the level required for licensure as a doctor of Oriental medicine or a doctor of acupuncture must pass another examination before his license will be upgraded to that of doctor.

634A.120 Conflicts of interest. No member of the board or the Oriental medicine advisory committee will participate in preparing, examining or grading an examination or in any other decision made with respect to any applicant to whom the member is related in the third degree of affinity or consanguinity.

634A.190 Restrictions on procedures performed by assistants in acupuncture.

1. A person licensed as an assistant in acupuncture is restricted in his activities to only those procedures which a licensed, supervising doctor of Oriental medicine or a doctor of acupuncture may request him to do by a written order.

2. An assistant in acupuncture may not perform any diagnosis of patients or recommend or prescribe any forms of treatment or medication.

3. An assistant in acupuncture may treat patients only under the direct supervision of a doctor of Oriental medicine or a doctor of acupuncture who is on the same premises where the treatment is to be given.

634A.200 Supervision of assistants in acupuncture. A doctor of Oriental medicine or a doctor of acupuncture shall not employ or attempt to supervise more than one assistant in acupuncture.

634A.420 Proof of service. There will appear on all documents required to be served by the board, other than decisions or orders, an acknowledgment of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to) (by mailing a copy thereof, properly addressed, with postage prepaid, to).

Dated at, this(day) of(month) of(year)

.....

Signature

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R071-02

The State Board of Oriental Medicine adopted regulations assigned LCB File No. R071-02 which pertain to chapter 634A of the Nevada Administrative Code on October 5 and 15, 2002.

Notice dates: 2/15/2002, 4/10/2002, 5/2/2002, 6/17/2002 and 9/3/2002

Hearing dates: 6/1/2002, 7/20/2002, 10/5/2002 and 10/15/2002

Date of adoption by agency: 10/5/2002 and 10/15/2002

Filing date: 11/25/2002

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited.

The public workshop and a public hearing for adoption of regulations, which regulations are contained in LCB File No. R071-02 were noticed four (4) times for the workshop and three (3) times for the adoption of regulations: February 12, 2002, April 10, 2002, May 2, 2002, June 17, 2002 and September 3, 2002 by posting the notice at all the main libraries in all the counties in the state of Nevada and mailing special notice to those persons on the special notice mailing list. The hearing on the intent to act upon the proposed regulations was set for June 1, 2002, July 20, 2002, and re-noticed for October 5, 2002 at which time the regulations were adopted with the exception of Sections 21 and 23, which were continued to October 15, 2002.

2. The number of persons who:

(a) Attended each hearing: 0 on 3/8/02; 3 on 5/26/02; 9 on 6/1/02; 1 on 7/20/02; 6 on 10/5/02; and 8 on 10/15/02

(b) Testified at each hearing: 0 on 3/8/02; 1 on 5/26/02; 0 on 6/1/02; 1 on 7/20/02; 6 on 10/5/02; and 0 on 10/15/02

(c) Submitted to the agency written comments: Written comments were submitted by Farolyn McSweeney, O.M.D., Damon Yang, O.M.D. and Duk-Joon Lee, O.M.D.

3. A summary of response from the public, affected administrators and businesses and explanation of how persons may obtain a copy of the summary.

Public response focused on several matters: 1) Using the California examination in Oriental Medicine instead of the Board creating their own; 2) allowing foreign trained individuals to practice Oriental Medicine in Nevada; 3) exempting licensees 65 years or older from the continuing education requirement; 4) defining "good moral character"; 5) reducing annual fee every two years; 6) requiring the English language exam is discriminatory; and 7) allowing continuing education credits to be earned over two years instead of one. A copy of the written comments may be obtained by calling the Nevada Board of Oriental Medicine at (702) 786-7280 or writing to the Board at 4475 S. Pecos Road, Las Vegas, Nevada 89121.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulations were adopted at the Nevada Board of Oriental Medicine hearing on October 5, 2002 with certain changes to proposed amendments to the regulations as set forth in LCB File No. R071-02 dated June 12, 2002. The changes were made at the request of board members. Changes were made to the language of certain proposed regulations as a result of the hearing on October 5, 2002. The changes made were to Sections 8, 19, 21 and 23. The changes made were submitted to LCB for review.

5. The estimated economic effect of the adopted regulations on the administrators, businesses and the public affected thereby. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

(a) A beneficial effect is that the public will be better served by better prepared and qualified licensees. One adverse economic effect to the licensees is that late renewals of licenses will be assessed a late fee and licensees will be charged other fees such as reinstatement or inactive fees or lost license or identification fees. An adverse effect to applicants is the increased fees for the practical examination.

(b) The immediate and long-term effects are the same.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The board will incur costs for the creation of a practical examination and for the reproduction of statute and regulation handbooks. There will also be increased hours for the board's executive director to handle additional procedures created by proposed regulations. Most of the cost to the agency should be defrayed by the fees charged.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

None is known.

8. If the regulation includes provisions that are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

None.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are 30 licensees. Renewal fees have been reduced by \$100, so the Board will collect \$3,000 less for license fees. However, the fees for the examination have increase to \$1,000, which will be used to pay for the preparation and administration of the examination by an independent contractor. The number of applicants ranges from two to eight at any one time.