

NEWSLETTER

BOARD
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PASSAGE OF HOUSE BILL 404

The State Board of Acupuncture successfully changed its law in Annapolis this legislative session through the passage of HB 404. All changes in the Bill will become effective on October 1, 2019.

The Board's current law was written 20 years ago, at a time when the Board was a part of, and supervised by, the Board of Physicians. The profession of acupuncture has grown nationally and the Board wanted to update its law to more accurately reflect the therapies that are practiced by the acupuncture profession today.

The Bill broadens the definition of acupuncture to include the principals of East Asian medical theories. Because many acupuncture schools across the country are moving towards the Doctorate of East Asian Medicine degree, the Board included East Asian medicine in its definition so that practices such as Tai Chi, massage, herbal medicine, dietary therapy, light, injection therapy and various other therapies can be included. The Bill also changed the use of "acupuncture needle" to "needles" and allows for the stimulation of the entire body instead of just acupuncture points. The Board is now working on regulatory changes that will further define its scope of practice.

The Board also removed all references to the word "Oriental" in its law, because the term is considered offensive. The Board will now refer to its practices as acupuncture and East Asian Medicine.

Below are the substantive changes made defining the Board's scope:

Note: [brackets are deletions], underlines are insertions

(b) "Acupuncture" means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions **[with an associated point or combination of points]** ACCORDING TO EAST ASIAN MEDICAL THEORIES.

(2) "Practice acupuncture" includes:

(i) Stimulation of **[points of]** the body by the insertion of **[acupuncture]** needles;

(ii) The application of moxibustion; and

(iii) Manual, mechanical, thermal, electrical, **OR OTHER EAST ASIAN MEDICAL** therapies only when performed in accordance with the principles of **[oriental acupuncture]** East Asian medical theories **AND PRACTICES.**

The entire Bill can be read and referenced on the Maryland General Assembly's website:

<http://mgaleg.maryland.gov/2019RS/bills/hb/hb0404E.pdf>

Americans with Disabilities Act and Hearing Interpreters

The Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 U.S.C. §12101, *et seq.*, the first civil rights measure to thoroughly address the discrimination facing the disability community, ensures a level playing field for persons with disabilities with respect to employment and access to goods and services offered by private, state, and local government entities. The prohibition against discrimination on the basis of disability includes an obligation to make reasonable accommodations to meet the needs of patients with disabilities. This has been interpreted by some as creating a requirement that physicians provide and pay for the cost of hearing interpreters for their patients who are hearing disabled. While there will be instances where a physician must provide a hearing interpreter, there is no hard and fast requirement for the provision of such services.

The ADA requirement to provide "auxiliary aids and services" includes a responsibility of making aurally delivered materials accessible for hearing disabled patients. This may be accomplished through multiple means, including qualified interpreters, note taking, written materials, and telecommunications devices for deaf persons. The first step is to determine, in consultation with the patient, the appropriate auxiliary aid or service. In some instances, such as when a conversation is particularly important relative to the care and services being provided, or is particularly complex, effective communication may only be ensured through the use of a qualified interpreter. No special accreditation is needed to meet ADA standards, and qualified interpreters may include: family members or friends, as long as they are effective, accurate, impartial (especially in personal or confidential situations), and an acceptable choice to the patient; personnel from the practice or facility; or interpreters from interpreter services.

The ADA does not mandate the use of interpreters in every instance. The health care professional can choose alternatives to interpreters as long as the result is effective communication. Alternatives to interpreters should be discussed with hearing impaired patients, especially those not aware that such alternatives are permissible under the Act. Acceptable alternatives may include: note taking; written materials; or, if viable, lip reading. A health care professional or facility is not required to provide an interpreter when:

- ◆ it would present an **undue burden**. An undue burden is a significant expense or difficulty to the operation of the facility. Factors courts use to determine whether providing an interpreter would present an undue burden include the practice or facility's operating income and eligibility for tax credits, and whether it has sources of outside funding or a parent company. Courts also consider the frequency of visits that would require the services of an interpreter. However, the single factor of the cost of an interpreter exceeding the cost of a medical consultation generally has not been found by the courts to be an undue burden or,
- ◆ it would **fundamentally alter** the nature of the services normally provided. For example, in sensitive situations, utilizing a family member as an interpreter, or an interpreter not affiliated with the practice or facility, may be inappropriate.

Where use of an interpreter would fundamentally alter the nature of the services provided or constitute an undue burden (difficult elements to prove in a court action), the physician permitted to refer the patient to another physician, if alternatives are not viable.

The health care professional determines whether an interpreter or other alternative is necessary to ensure effective communication. Some circumstances will call for the use of a qualified interpreter more than others. For example, a consultation with a hearing impaired person for a routine matter may warrant only use of a pen and paper as an alternative. However, more complicated situations with serious ramifications may necessitate the use of a qualified interpreter. Although the health care professional makes the final decision regarding use of an interpreter or other alternative, the patient's choice should be given primary consideration. Also, the reasonableness of a determination not to provide an accommodation may be challenged in court in an enforcement action. If there is a disagreement between the health care professional and the patient over the need for a qualified interpreter, the effectiveness of each viable option should be discussed. Factors or options for consideration include whether an option presents an undue burden to the practice or facility, and what option or options would ensure effective communication.

Courts have found an ADA violation where the health care professional decides not to use an interpreter and there is evidence that the method used did not result in effective communication.

The health care professional or facility responsible for the care must pay for the cost of an interpreter. Health care professionals or facilities cannot impose a surcharge on an individual with a disability directly or indirectly to offset the cost of the interpreter. The cost of the interpreter should be treated as part of overhead expenses for accounting and tax purposes. Tax relief is available for expenditures made toward interpreters. The Internal Revenue Service may allow a credit of up to 50% of cumulative eligible access expenditures made within the taxable year that exceed \$250 but do not exceed \$10,250. This tax credit may be applied to reasonable and necessary business expenditures made in compliance with ADA standards in order to provide qualified interpreters or other accessible tools for individuals with hearing impairments.

More information can be found at the Americans with Disabilities Act website below:

<https://www.ada.gov/effective-comm.htm>

BOARD COMPOSITION

BOARD MEMBERS

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**Tom Ingegno, L.Ac., DACM
PROFESSIONAL MEMBER**

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**INVESTIGATOR:
David Bruce**

**BOARD COUNSEL:
David Finkler, AAG**

FREE CEU'S OFFERED BY THE OFFICE OF MINORITY HEALTH DISPARITIES

The Maryland Department of Health's Office of Minority Health and Health Disparities provides free training on cultural competency for all health professionals. The Board of Acupuncture will accept up to 10 hours of cultural competency training for your CEU requirements.

The Office provides teaching tools on their website to improve cross-cultural communications skills, deliver culturally and linguistically appropriate healthcare services to diverse populations, and develop programs and policies to improve health outcomes and reduce health disparities.

Cultural competency is the ability of health organizations and practitioners to recognize individuals' cultural beliefs, values, attitudes, traditions, language preferences, and health practices and apply this knowledge to influence positive health outcomes. Health literacy is the degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions. Health information can overwhelm even persons with advanced literacy skills.

To learn more about the Office of Minority Health and Health please visit their website at: <https://health.maryland.gov/mhhd/Pages/Cultural-And-Linguistic-Competency.aspx>

If you have questions regarding these classes, please contact the Office of Minority Health and Health directly at 410-767-6500 or toll free at 1-877-463-3454.

FAILURE TO NOTIFY BOARD ON ADDRESS CHANGE \$50 FINE

Failure to notify the Board of a change in your home or office address will result in a \$50 fine. A change in your address can be submitted by mail or email. Whenever the Board receives returned mail from the United States Postal Service, you will automatically receive a fine notice from the Board. Failure to pay the fine may result in disciplinary action against your license.

NAME CHANGE REQUESTS

The Board will change a licensee's name only when a request is received in writing and proper legal documentation is attached.

VERIFICATION OF LICENSE TO ANOTHER STATE

To provide verification of your acupuncture license to another state, please send your verification request or form (available on website) directly to the Board with a \$50 check made payable to the Maryland Acupuncture Board. You must provide your name, license number and the state to which you would like the verification mailed. Please ensure that you provide the State's address and phone number.

ACUPUNCTURE TREATMENTS AT COMMUNITY ACUPUNCTURE CLINICS AND HEALTH FAIRS

The Board of Acupuncture expects that proper ACAOM standards of practice be maintained at community acupuncture clinics, health fairs, and other public venues. Treating individuals at such locations must require the same measure of care and privacy that you would offer to your patients within the confines of your private office.

If you offer a trial or single treatments to individuals at open forums, you must ensure that the following procedures are followed or completed:

- ◆ Informed consent form
- ◆ History and evaluation
- ◆ Follow up care and contact information is provided in case of adverse reaction such as headache after treatment, swelling, etc.
- ◆ Treatment rendered in a private place, if requested
- ◆ Record of individual is maintained for 5 years
- ◆ HIPPA compliant
- ◆ Sanitation and hygiene is maintained such as clean needle technique, sharps container, gloves, handwashing between patients, etc.

Roles of Professional Societies and the Board of Acupuncture

National and state acupuncture associations serve to advocate for your profession and to promote the practice of acupuncture and East Asian medicine. These societies advocate on your behalf on issues such as insurance coverage, national recognition, educational standards, and national/state laws and regulations.

The Board of Acupuncture is a regulatory body that serves to protect the public, not advocate for the profession. The Board is mandated by the Maryland Acupuncture Practice Act to:

1. Ensure that acupuncturists are appropriately credentialed and licensed to provide safe acupuncture treatment to Maryland patients;
2. Ensure that acupuncturists maintain a high level of education through renewal of licenses; and
3. Receive and resolve complaints in an effective and timely manner.

BILLING PRACTICES

PAYMENT DISCOUNTS

The Board recognizes only two forms of discounts as legally acceptable: "time of service payment" discounts and discounts for financial hardship.

The U.S. Department of Health and Human Services (HHS) has ruled that discounts for "cash" payments are not legal. However, it is acceptable to offer a "time of service payment" discount because it is recognized that there is an increased administrative cost to billing a third party payer and waiting to receive payment. If, for any reason, the patient does not provide full payment at the time of service, the provider must charge the patient the same rate he or she charges the insurance company. Additionally, the provider must extend the same "discount" to the insurer if an insurance company or designee could pay the provider for services the same day those services are rendered.

Discounts for financial hardship do not have a formally recognized limit. However, the Board recommends that licensees clearly document the financial hardship. A lack of insurance benefits for acupuncture is not sufficient to constitute financial hardship.

PREPAYMENT PLANS

In order to avoid possible conflicts with the Maryland Acupuncture Practice Act, the Board recommends that licensees who choose to offer prepayment plans clearly explain all terms and conditions to the patient. The Board strongly encourages licensees to reimburse expeditiously patients who cancel treatments and request reimbursement of unused payments.

REMOVAL OF NEEDLES

Although some believe that the removal of needles by assistants in China and other countries or states may be common practice, the Maryland Board of Acupuncture considers the insertion and the removal of needles as part of the practice of acupuncture, for which a Maryland acupuncture license is required. Delegation of the removal of needles may result in your being charged for aiding and abetting the unlicensed practice of acupuncture.

SETTING UP HOME OFFICES

The Board licenses acupuncturists as independent practitioners and does not regulate the location of clinics or home offices, except to emphasize accommodations for the disabled and maintenance of Occupational Safety and Health Administration (OSHA) standards.

It is within the jurisdiction of the county or city in which the licensee works to determine whether any zoning requirements exist and it is incumbent upon the licensee to comply with those requirements.

Board Meeting Schedule

The Board of Acupuncture traditionally meets on the second Tuesday of every other month, starting at 1:00 p.m. Scheduled months are January, March, May, July, September and November. All meetings are held at 4201 Patterson Avenue, usually in Room 105. Scheduled meetings:

November 12, 2019
January 14, 2020
March 10, 2020
May 12, 2020
July 14, 2020
September 8, 2020
November 10, 2020

These meetings are open to the public and you are encouraged to attend. Please call the Board before the meeting to confirm the proper time and room number.

**MARYLAND
ACUPUNCTURE BOARD**
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