

***NCCAOM® Professional Development Activity (PDA)
Department and Provider Agreement***



***National Standards of Continued Competence
In Acupuncture and Oriental Medicine***



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NCCAOM® Professional Development Activity (PDA) Department and Provider Agreement

I acknowledge I have received and reviewed the documents listed below:

NCCAOM® Code of Ethics

NCCAOM® Grounds for Professional Discipline

NCCAOM® PDA Handbook

NCCAOM® PDA Product and Service Disclaimer

Attestation

I acknowledge and agree to abide by the NCCAOM® Professional Development Activity (PDA) provider duties and responsibilities as outlined in the *NCCAOM® PDA Handbook*. I further acknowledge and agree to abide by the terms of the *NCCAOM® Grounds for Professional Discipline*, the *NCCAOM® Professional Development Activity (PDA) Department and Provider Agreement*, and the *NCCAOM® PDA Product and Service Disclaimer*. I understand that the documents may be promulgated or modified from time to time by NCCAOM; that all information submitted in connection with a PDA application or at any time to NCCAOM is accurate, true, and complete in all respects; and that any violation, breach, or noncompliance with the PDA Provider duties and responsibilities as outlined and stated in the *NCCAOM® PDA Handbook* will constitute grounds for denial of any or all courses and/or revoking of the PDA Providership at the sole discretion of the NCCAOM's Recertification Committee, the PDA Advisory Panel, the Professional Ethics Committee and/or the NCCAOM Board of Commissioners.

This Agreement shall be binding upon the parties, their successors, assigns, and personal representatives.

Representations and Warranties

1. PDA Provider Warranty: The PDA Provider warrants to the NCCAOM that:
 - A. the PDA Provider has the power and authority to enter into and perform its obligations under this Agreement,
 - B. the PDA Provider created the program and all intellectual property rights therein,
 - C. the PDA Provider's program does not infringe another's intellectual property,
 - D. the PDA Provider will comply with all applicable international, federal, state, and local laws in performance of his/her obligations under the Agreement,
 - E. the PDA Provider will cooperate with the NCCAOM as is reasonably necessary to perform his/her obligations under the Agreement, and

- F. the PDA Provider will represent the NCCAOM in a professional manner that will not damage the NCCAOM's reputation or good will.
2. The NCCAOM Warranty: The NCCAOM warrants to PDA Provider that:
- A. it has the power and authority to enter into and perform its obligations under this Agreement,
 - B. the NCCAOM will comply with all applicable international, federal, state, and local laws in performance of its obligations under the Agreement,
 - C. the NCCAOM will cooperate with the PDA Provider as is reasonably necessary to perform its obligations under the Agreement, and
 - D. the NCCAOM will represent the PDA Provider in a professional manner that will not damage the PDA Provider's reputation or good will.

Indemnification

1. The PDA Provider – The PDA Provider agrees to indemnify and defend the NCCAOM and its officers, directors, agents and employees from all liability, losses, injuries, damages, claims, demands, suits, actions, fees (including, but not limited to, reasonable attorneys' fees), costs, charges or judgments, based on:
- A. a violation of PDA Provider's representations and/or warranties as outlined in this Agreement,
 - B. a violation of the PDA Provider's duties and responsibilities as outlined in the *NCCAOM® PDA Handbook*,
 - C. a claim or allegation by a third party that PDA Provider's use of the program breaches this Agreement,
 - D. any violations of the applicable terms as outlined in the *NCCAOM® Grounds for Professional Discipline*, the *NCCAOM® PDA Product and Service Disclaimer*, and the *NCCAOM® Certificate Disclaimer*, and
 - E. the negligent and/or willful misconduct by the PDA Provider (each, a "Claim"). The PDA Provider shall, at its own cost and expense and not subject to reimbursement, defend all such Claims and satisfy all judgments, orders or decrees with respect to the Claim, subject to the NCCAOM providing the PDA Provider with prompt notice of any Claim, and cooperation in the defense and settlement of the Claim.
2. By the NCCAOM – The NCCAOM agrees to indemnify and defend the PDA Provider and its directors, officers, agents and employees, from all liability, law suits, injuries, damages, claims, demands, suits, actions, fees (including, but not limited to, reasonable attorney's fees), costs, charges or judgments, based on (i) a knowing violation of the NCCAOM's Representations and/or Warranties, or (ii) the willful misconduct by the NCCAOM (each, "Capital Claim"). The NCCAOM shall, at its own cost and expense, not subject to reimbursement, defend all such Claims, and satisfy all judgments,

orders or decrees with respect to the Capital Claim, subject to the PDA Provider providing the NCCAOM with prompt notice of any Capital Claim, the PDA Provider cooperation in the defense and settlement of the Claim, while the NCCAOM retains sole control over the defense or settlement of the Claim.

Independent Contractors

The parties are and shall be independent contractors and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

Limitation of Liability

Neither the NCCAOM, its officers, directors, employees, or agents, shall be liable to the PDA Provider or any other party for any loss, damage, claim, liability or expense of any kind or nature caused directly or indirectly by the PDA Provider furnishing its program, or for any reason related to the PDA Provider's affiliation with NCCAOM, howsoever caused.

Choice of Law, Arbitration and Attorney Fees

1. This Agreement shall be governed by and interpreted under the laws of Washington, D.C. without giving effect to any choice of law rules.
2. Any action or proceeding arising from or in connection with this Agreement shall be brought solely in the federal or state courts located in Washington, D.C. and each of the parties hereto hereby consent to the jurisdiction of those courts for any such action or proceeding.
3. The losing party shall bear the prevailing party's reasonable costs (including the cost of the arbitrator and attorneys' fees) arising from any dispute between the parties related to this Agreement.

Severability

If any term or provision of this Agreement or the application thereof, shall for any reason and to any extent be invalid or unenforceable, then the remaining provisions of this Agreement, or the application shall not be affected thereby, but rather shall continue in full force and effect. The parties will, in good faith, negotiate a mutually acceptable and enforceable substitute for unenforceable provision, which substitute will be as consistent as possible with the original intent of the parties.

Survival

All provisions of this Agreement relating to the parties' Representations and Warranties, duties and responsibilities, proprietary rights, indemnification, and limitation of liability shall survive the termination or expiration of this Agreement.

Amendment

No amendment, change, waiver, or discharge of the Agreement shall be valid unless in writing and signed by all parties.

Term and Termination

1. The term of the Agreement is indefinite until it has been terminated.

2. To terminate the Agreement, either the NCCAOM or the PDA Provider must provide written notification of termination, which will become effective thirty (30) days after receipt of the termination notice.

3. Upon termination of this Agreement, PDA Provider shall:
 - A. cease affiliating his/her PDA program with the NCCAOM,
 - B. cease using the NCCAOM's PDA-related trademarks,
 - C. return all material related to the NCCAOM's PDA program within thirty (30) days of the termination date.