



The Accreditation Commission for Acupuncture and Oriental Medicine

Policy Title: ACAOM Legal Costs and Obligations Policy

Approved By: ACAOM Executive Committee

Document History: Implementation Date: 27 March 2018

Last Updated:

Related Policies: [ACAOM Commission Actions Policy](#); [ACAOM Fees and Dues Schedule](#)

References: [34 CFR Part 602](#); [20 U.S. Code § 1099\(b\)](#); this policy was adapted from Middle States Commission on Higher Education's "Discovery Requests and Litigation Expense" Policy (effective June 27, 2013); WASC Senior College and University Commission's "Legal Costs and Obligations" Policy (last revised September 6, 2016)

Responsible Official: ACAOM Executive Director

Policy Summary: This guidance outlines how legal costs and obligations associated with discovery requests, investigations, inquiries, litigation, legal and financial reviews are handled.

PURPOSE

The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM or Commission) does not charge dues or fees for the purpose of generating funds to respond to subpoenas or other inquiries, which may be compelled by law. Further, ACAOM does not believe that it is fair for the Commission, its representatives, volunteers, and indirectly its pre-accredited and accredited member institutions/programs, to bear the financial burden, whether insured or not, of defending against legal actions related to one or a small number of institutions/programs. Therefore, as a condition of ACAOM's consideration of an institution's/program's application for accreditation, or its pre-accredited or accredited status with ACAOM, each such institution/program agrees to abide and be bound by the policy statements and provisions set forth herein.

DISCOVERY REQUESTS WHERE THE COMMISSION IS NOT A PARTY

The Commission is not obligated to comply with third-party discovery requests or other document/information production requests except as legally required. If a third-party requestor serving a subpoena or document/information request does not offer advance reimbursement for all reasonable production costs, including but not limited to, electronic discovery costs, copying, delivery costs, and staff time to fulfill the request, the Commission may, at its discretion, charge such costs at a reasonable rate to the requestor for which the documents have been subpoenaed or requested.

If disclosure is sought by subpoena and/or court order, the Commission will promptly notify the institution/program (whose documents are being requested) of the request to enable the institution/program to file its objections to the appropriate court.

INVESTIGATIONS, INQUIRIES AND LITIGATION WHERE THE COMMISSION IS A PARTY¹

Institutions and programs that are applicants or candidates for accreditation with ACAOM, or are accredited/pre-accredited by ACAOM shall indemnify, hold harmless, and otherwise, without limiting the meaning of such terms, reimburse ACAOM and its Commissioners, officers, employees, agents, representatives and volunteers (“the covered parties”) from and against any and all loss, cost, damage, liability and expense, including without limitation attorneys' fees, arbitration costs, litigation costs, costs of document production, time and travel expenses of individuals falling within the scope of the covered parties, and other costs and expenses, all as associated with or arising out of arbitration, litigation, discovery, subpoena caused or initiated by any institution/program or any person acting in the stead of or on behalf of an institution/program, or any investigation conducted by any federal agency, state agency, or law enforcement body based on alleged acts or omissions of ACAOM related to such institution/program (collectively, “losses”) and suffered, sustained or incurred by the covered parties as a result of, arising out of, or in connection with (a) any alleged action or failure to act by an institution/program or its corporate parent, majority shareholder, corporate member, sponsor, or affiliate, including the governing board members, officers, employees, agents, advisory board, or representatives of any of the aforementioned; or (b) any alleged act or omission of ACAOM relating to an institution/program.

Reimbursement for the “time . . . of individuals falling within the scope of the covered parties” referred to in the above provision shall mean time and a half based on any such individual’s then current hourly wage, hourly fee, or if the individual is in a salaried position, the individual’s hourly equivalent. This same concept of reimbursement shall apply to all individuals falling under the scope of covered parties whether such individual serves in a compensated or uncompensated position with ACAOM.

To the extent permitted by law, if the Commission is named as a party to litigation initiated by a third party but relating to activities or omissions of ACAOM accredited/pre-accredited institution or program, the institution/program shall be responsible for the payment of all reasonable costs incurred by the Commission including staff time, court costs, attorneys’ fees, and all other related expenses incurred in the preparation for, prosecution of or response to any such litigation (“litigation costs”).

LITIGATION COSTS

In the event ACAOM is the prevailing party in any action or proceeding brought by an institution/program, or brought by ACAOM to enforce any provision of this policy, as the prevailing party ACAOM shall be entitled to litigation costs defined above. In the event the institution/program maintains pre-accreditation or accredited status at the time ACAOM becomes a prevailing party with respect to any claim(s), ACAOM shall invoice the institution/program for such litigation costs as set forth below. “Prevailing party” means that ACAOM was successful in (a) defending against any claim or action asserted by an institution/program or any person acting in the stead or on behalf of any institution/program, or (b) obtaining a judgment in its favor on any claim or action asserted by it against an institution/program.

The Commission shall not be entitled to recover litigation costs if judgment is entered for the institution/program and against the Commission, and the institution/program is awarded the relief of damages requested from the Commission.

¹ Fees and costs associated with *reconsideration, appeal and arbitration* of Commission actions are governed by ACAOM’s [Commission Actions Policy](#) and ACAOM’s [Fees and Dues Schedule](#) specifically referenced and incorporated herein.

TRANSLATION SERVICES AND LEGAL AND FINANCIAL REVIEWS

An institution/program shall be responsible for the fees and related expenses incurred by ACAOM arising from the review by third party consultants or advisors of legal and financial agreements, projections, and proposals submitted by such institution/program as a part of, arising from, or in the course of such institution's/program's pursuit of approvals, consents, accreditation status or other actions by ACAOM ("translation/legal/financial review costs"), including without limitation any such expenses incurred by ACAOM in the course of its administration of matters arising from substantive change reviews (i.e., foreign language translation fees, etc.).

PAYMENT AND NON-PAYMENT REMEDIES

ACAOM may charge an institution/program for losses and translation/legal/financial review costs as and when incurred, and for litigation costs upon qualifying as the prevailing party and payment of such charges shall be due from the institution/program upon presentation in accordance with the terms set forth therein. ACAOM may take any action it deems appropriate under the circumstances in the event of an institution's/program's default in payment in full of any charges as and when due, including without limitation, in ACAOM's sole discretion, sanctions up to and including withdrawal of the defaulting institution's/program's accreditation status as well as other remedies available at law.

CHOICE OF LAW, JURISDICTION AND VENUE

ACAOM and each institution/program understands that:

"[N]otwithstanding any other provision of law, any civil action brought by an institution of higher education [or program] seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary of the Department of Education for the purpose of this subchapter and part C of subchapter I of chapter 34 of title 42 and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court." (See 20 U.S.C. 1099b(f)).

Institutions/programs hereby consent to the United States district court located in Minneapolis, Minnesota, exclusively as the "appropriate United States district court" for purposes of the above statute. Each institution/program hereby further consents and agrees that jurisdiction and venue for any other civil action which might arise out of or as a consequence of an institution's/program's active or inactive accreditation status, or the pursuit of such status with ACAOM, shall exclusively be brought in the United States District Court for the District of Minnesota located in Minneapolis, Minnesota, or the state courts of Minneapolis, Minnesota, whichever of these courts shall have proper subject matter jurisdiction and each institution/program submits to the personal jurisdiction of such courts.

Revision History

Date Revised	Summary of Revisions	Approved By