

**TITLE 16. CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

HEARING DATE: June 30, 2014

SUBJECT MATTER OF PROPOSED REGULATIONS: Consumer Protection Enforcement Initiative (CPEI)

SECTIONS AFFECTED: Title 16, Division 13.7, California Code of Regulations (CCR), Sections 1399.405, 1399.419, 1399.469.1 and 1399.469.2.

INTRODUCTION: The Board's highest priority is the protection of the public when exercising its licensing, regulatory, examination, school approval and disciplinary functions, as mandated by Business and Professions Code (hereafter "BPC") section 4928.1. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; administering the California Acupuncture Licensing Exam (CALE); investigating complaints against licensees and disciplining licensees for violating of the Acupuncture Licensure Act (hereinafter "ALA"); monitoring licensees whose license has been placed on probation; and overseeing approval of Acupuncture Schools and training programs. BPC section 4933 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the ALA.

In July 2009, the *Los Angeles Times* published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. These articles exposed the need for healing arts boards within the Department of Consumer Affairs (Department) to improve the enforcement process to ensure patient safety.

As a result of the article, the Department held an informational hearing and investigated the problems that were addressed in the *Los Angeles Times* article. The Department developed a report (*Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010"*) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to be enacted.

When the bill failed to be enacted into law, the Department encouraged the healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

On August 19, 2010, the California Acupuncture Board (Board) reviewed proposed regulatory amendments that would improve the Board's enforcement process in an effort to address public concern. The Board then voted to direct staff to initiate the rulemaking process to amend the regulations. On October 25, 2013, the Board reviewed additional regulatory amendments for the proposed CPEI package. Initially, staff had proposed combining CPEI and regulations relating to SB 1441 (Uniform Standards Relating to Substance Abuse and Recommended Disciplinary Orders and Conditions of Probation) into one regulatory package. Upon advice of Legal Counsel, the combined regulatory package was broken into individual regulatory packages for review and vote by the Board. The Board then voted to direct staff to commence the regulatory process and authorize the Executive Officer to make non-substantive changes.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

Amend Section 1399.405 of Division 13.7 of Title 16 of the California Code of Regulations (Delegation of Functions).

This proposed amendment to Section 1399.405 provides the Board with the authority to delegate to the Executive Officer (or their designee) the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Fact basis/Rationale:

The Board currently has the authority to render decisions on proposed decisions prepared by Administrative Law Judges (ALJ) and settlement agreements prepared by the deputy attorney general (DAG). In the event of a disciplinary case against a Board licensee, the ALJ issues a proposed decision after a licensee has had an opportunity to dispute the charges at an administrative hearing. However, the licensee and DAG may negotiate a settlement agreement to resolve the case prior to the hearing. In this case, the licensee admits specific charges and agrees to proposed disciplinary action. Board members must vote to approve all proposed decisions and settlement agreements.

In a case that is resolved with a settlement agreement, a licensee has voluntarily admitted to charges and agreed to the revocation, surrender or suspension of their license. Allowing the executive officer to approve such an agreement, instead of requiring a full board vote, will shorten the timeline for these cases, allowing them to take effect more quickly.

Amend Section 1399.419 of Division 13.7 of Title 16 of the California Code of Regulations (Review and Processing of Exam Applications).

This proposed amendment to Section 1399.419 provides the Board the authority to require an examination of an applicant by a physician and surgeon, or psychologist if it appears the applicant may be unable to safely practice due to a mental illness or a physical illness that affects competency. If the applicant does not comply with the evaluation, the application would be deemed incomplete. The report of the evaluation would be provided to the applicant, and the Board is responsible for the cost of the

examination. The Board's proposal would also authorize the Board to deny the application if the evaluation demonstrates that the applicant is unable to safely practice.

Fact Basis/Rationale:

Existing law, BPC Section 820, authorizes the Board to examine licensees for mental illness or physical illness affecting competency. In the past, the Board has experienced applicants demonstrating behavior that could potentially affect competency and could lead to unprofessional conduct endangering patient safety. The Board has experience with examination applicants who have displayed unreasonable anger and have endangered patient safety during the examination process.

Currently, the Board is not authorized to further evaluate applicants who pass a licensure examination, even though they may demonstrate a physical or mental illness affecting the competency necessary to safely practice. This section provides the Board with the ability to have applicants examined by physicians and surgeons or psychologists if the applicant demonstrates that he may be unable to practice competently due to physical or mental illness to protect the consumers of Acupuncture services from unsafe, incompetent, negligent or impaired licensees

Adopt Section 1399.469.1 of Division 13.7 of Title 16 of the California Code of Regulations (Required Actions against Registered Sex Offenders).

The Board proposes to amend California Code of Regulations, Title 16, Section 1399.469.1 to require an Administrative Law Judge (ALJ) to order revocation of a license when issuing a proposed decision that contains any findings of fact that: (1) a licensee engaged in any act of sexual contact with a patient, client, or customer; or, (2) the licensee has been convicted of or committed a sex offense. This proposal would prohibit the proposed decision issued by the ALJ under such circumstances from containing an order staying the revocation of the license or placing the licensee on probation. Furthermore, this proposal specifies that the terms "sexual contact" has the same meaning as defined in Business and Professions Code Section 729(c) and the term "sex offense" has the same meaning as defined in Education Code Section 44010.

Fact Basis/Rationale:

Business and Professions Code (hereafter "BPC") section 4928.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. BPC section 4933 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the ALA.

Existing law, BPC Section 726, specifies that the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and is grounds for disciplinary action for any person licensed under Division 2 (Healing Arts) of the BPC.

Existing law, BPC Section 729, defines “sexual contact” as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

Existing law, BPC Section 4955(b), specifies that a licensee may have their license revoked, suspended, reprimanded, or placed on probation by the Board for the conviction of a crime substantially related to their qualifications, functions, or duties as an Acupuncturist.

Existing law, Education Code Section 44010, defines “sex offense” as any one or more of the following offenses:

- Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.
- Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.
- Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

- Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- Any attempt to commit any of the offenses specified in this section.
- Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

According to the Administrative Procedure Act, ALJs are not granted any discretion to decide a matter. They can only propose a decision predicated upon findings made during a hearing in which he or she presided. This allows a board to retain the sole discretion to decide a matter. As provided in Government Code section 11517(c) (2)(B), the Board has the authority and discretion to “reduce or otherwise mitigate the proposed penalty and adopt the balance of a proposed decision”. However, if a board believes that a stiffer penalty should be assessed, it can only be done by non-adopting a proposed decision.

Because of the seriousness of sex offenses and sexual misconduct and the potential threat to consumers that sex offenders pose, adoption of this proposed amendment is expected to increase consumer protection. Specifically, this regulatory change will protect the public by ensuring that current licensees who are in direct contact with vulnerable populations are ineligible for licensure or renewal of licensure if the Board finds that they have been convicted of a sex offense. This is the same requirement that is currently placed on applicants for licensure.

Adopt Section 1399.469.2 of Division 13.7 of Title 16 of the California Code of Regulations (Unprofessional Conduct).

This section adopts a new Section 1399.469.2 of Chapter 13.7 of Title 16 of the California Code of Regulations to further define unprofessional conduct.

Section 1399.469.2(a): Section 1399.469.2(a) would further define “Unprofessional Conduct” to prohibit the inclusion of provisions in agreements to settle civil disputes that would forbid another party to the dispute from contacting, cooperating with, or filing a complaint with the Board, or that would require another party to the dispute to attempt to

withdraw a complaint the party has filed with the Board, either before or after the filing of an action to which the licensee or registrant is or expects to be named as a party.

Factual Basis/Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current law, BPC Section 4955, does not prohibit the inclusion of provisions in agreements to settle civil disputes that would forbid another party to the dispute from contacting, cooperating with, or filing a complaint with the Board, or that would require another party to the dispute to attempt to withdraw a complaint the party has filed with the Board, either before or after the filing of an action to which the licensee or registrant is or expects to be named as a party.

The increasing use of provisions in civil dispute settlements prohibiting the other party from contacting, cooperating with, or filing complaints with the Board, hereafter, an “agreement not to pursue,” denies consumers the right to file complaints and prevents the Board from investigating and disciplining licensees or registrants who present a danger to consumers. These licensees or registrants may continue to practice and harm the public because the Board is not aware of civil dispute settlements. This proposal would prevent licensees or registrants who have violated the law from avoiding disciplinary action against their licenses. “Agreements not to pursue” can delay and thwart the Board’s effort to investigate possible cases of misconduct, thereby preventing the Board from protecting the public. These clauses delay action by the Board and tarnish the reputation of competent and reputable licensed Acupuncturists. By allowing repeat offenders who injure patients to hide their legal acts from the Board further prevents the Board from protecting consumers.

It has been argued that a licensee or registrant should not be subject to review by the Board after a civil settlement has been reached. Protection from license disciplinary action does not attach to civil proceedings or subsequent administering proceedings. Criminal, civil, and administrative proceedings each serve entirely different legal functions. No ordinary citizen can claim immunity from one proceeding because he or she already underwent the other. It necessarily follows that Board licensees and registrants should not enjoy any exception to the rule of legal process.

Section 1399.469.2(b): Section 1399.469.2(a) specifies that the failure of a licensee to provide records requested by the Board within 15 days constitutes unprofessional conduct unless the licensee is unable to comply for good cause. “Good cause” is specified to include physical inability to access the requested records in the time allowed due to an illness or travel.

Factual Basis/Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify that failure to provide records is a ground for finding that unprofessional conduct occurred.

While the Board has the authority to impose a monetary fine against a licensee as a penalty, there is no current provision for the Board to take disciplinary action against the licensee for not complying with a records request. A licensee who does not provide requested information, or who does not cooperate with the Board, can create a significant delay in an investigation and can endanger patient safety. This proposed subdivision identifies the failure of a licensee to provide requested records as an act of unprofessional conduct, and ultimately authorizes the Board to take disciplinary action against a licensee who fails to provide records. This will enable the Board to more quickly investigate the underlying allegations and offenses and act accordingly to provide better consumer protection. If a licensee is able to demonstrate “good cause” for being unable to comply with a records request, they may contact the Board and may be granted an extension of time to return the records depending on the licensee’s circumstances.

Section 1399.469.2(c): Section 1399.469.2(c) specifies that the failure of the licensee to cooperate and participate in any Board investigation pending against the licensee constitutes unprofessional conduct.

Factual Basis/ Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify that any failure to cooperate or participate in a Board investigation is a ground for finding that unprofessional conduct occurred.

A failure of the licensee to cooperate and participate with the Board in an investigation further erodes the Board’s mandate of consumer protection. This proposal would not, however, deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution or other constitutional or statutory privileges. Additionally, this proposal would not require the licensee to cooperate with a request that would require them to waive any constitutional or statutory privilege.

Section 1399.469.2(d)(1): Section 1399.469.2(d)(1) specifies that the failure of the licensee to provide information regarding the bringing of an indictment or the charge of a felony against the licensee to the Board within 30 days constitutes unprofessional conduct.

Factual Basis/ Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify the failure to report to the Board the bringing of an indictment or the charge of a felony against the licensee constitutes unprofessional conduct.

Currently, a licensee is required to renew their license every two years. Upon renewal, a licensee is asked if they have been convicted of a crime since their last renewal. If a licensee notifies the Board that they have been convicted since the last renewal, the Board identifies the type of conviction. If the conviction is found to be substantially

related to the practice of Acupuncture, the Board will take disciplinary action against the license. The types of convictions that can be found to be substantially related to the practice of Acupuncture include: crimes of violence, dishonesty, sexual abuse or misconduct, or cases related to repeated acts of substance abuse

This proposed subdivision identifies the failure of a licensee to provide information regarding the bringing of an indictment or the charge of a felony against a licensee to the Board within 30 days as an act of unprofessional conduct, and ultimately authorizes the Board to take disciplinary action against a licensee who fails to provide this information. As current law does not allow for such timely reporting, this will enable the Board to more quickly investigate the underlying allegations and offenses and act accordingly to provide better consumer protection.

Section 1399.469.2(d)(2): Section 1399.469.1(d)(2) specifies that the failure of the licensee to report an arrest to the Board within 30 days constitutes unprofessional conduct.

Factual Basis/ Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify failure to report an arrest is a ground for finding that unprofessional conduct occurred.

This section would further define as “Unprofessional Conduct” the failure of a licensee to report to the Board within 30 days the arrest of the licensee. Currently, as part of the licensing process, all applicants for licensure as Acupuncturists are fingerprinted for purposes of conducting criminal history background checks through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). In most cases, the Board receives subsequent arrest notifications for licensees convicted of crimes. The Board, however, may not always be made aware of convictions or other actions. By requiring licensees to report this information, the Board gains an additional enforcement tool so that a determination may be made to pursue disciplinary action against the licensee, as appropriate.

Section 1399.469.2(d)(3): Section 1399.469.2(d)(3) specifies that for the purposes of this section, the term “conviction” means a plea or verdict of guilty, or a conviction following a plea of no contest and any conviction that has been set aside or deferred pursuant to California Penal Code Sections 1000 or 1203.4, including infractions, misdemeanors, and felonies. For the purposes of this section, the term “conviction” does not include traffic infractions with a fine of less than one thousand dollars unless the infraction involved alcohol or controlled substances.

Factual Basis/ Rationale: Existing law, BPC Section 4956, states: “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter.” This proposed

subdivision further defines the meaning of “conviction” to include the language from BPC Section 4956, but also includes language referencing Penal Code section 1000 and 1203.4 pertaining to convictions that have been set aside or deferred. The definition also specifies that “convictions” do not include traffic infractions with a fine of less than one thousand dollars unless it involved alcohol or controlled substances. The Board has previously proposed regulations requiring retroactive fingerprinting of all licensees. Within that proposed regulation, the definition of “conviction” specified that it did not include traffic infractions with a fine of less than one thousand dollars. In order to provide consistency throughout the Board’s regulations, the same language has been used in this proposed language.

Section 1399.469.2(d)(4): Section 1399.469.2(d)(4) specifies that the failure of a licensee to provide information regarding disciplinary action taken by another professional licensing entity, an authority of this state or of another state, an agency of the federal government, or the United States military to the Board within 30 days, constitutes unprofessional conduct.

Factual Basis/ Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify that failure to provide notice of disciplinary action taken by another professional licensing entity, an authority of this state or another state, an agency of the federal government, or the United States Military to the Board within 30 days as a ground for finding that unprofessional conduct occurred.

This proposed subdivision identifies that the failure of a licensee to provide information regarding a disciplinary action taken by another professional licensing entity, or authority of this state or of another state, an agency of the federal government, or the United States military to the Board within 30 days as an act of unprofessional conduct, and ultimately authorizes the Board to take disciplinary action against a licensee who fails to provide this information. By requiring licensees to report disciplinary action from other professional licensing entities or other authorities, the Board will be able to quickly investigate the underlying allegations and offenses and act accordingly to provide better consumer protection.

Section 1399.469.2(e): Section 1399.469.2(e) specifies that the failure of a licensee to comply with a court order, issued in the enforcement of a subpoena, to release records, constitutes unprofessional conduct.

Factual Basis/Rationale: Existing law, BPC Section 4955, specifies that the Board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct. Current Law, BPC Section 4955, does not specify that failure to comply with a court order, issued in the enforcement of a subpoena, to release records, constitutes unprofessional conduct.

Failing to comply with a court order to release records hinders the Board's ability to conduct an investigation, and therefore prevents the Board from protecting the public. This regulatory change will increase public protection by requiring that the licensee or registrant complies with a court order to provide records needed for an investigation.

UNDERLYING DATA:

1. Charles Ornstein, Tracy Weber and Maloy Moore, "Problem nurses stay on the job as patients suffer", *Los Angeles Times*, July 12, 2009
<<http://www.latimes.com/news/local/la-me-nurse12-2009jul12,0,2185588.story>>, accessed on March 10, 2014
2. Department of Consumer Affairs "Consumer Protection Enforcement Initiative A Systematic Solution to a Systematic Problem, Updated 1/21/10"
3. Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010"
4. Senate Bill 1111 (Negrete McLeod) from 2009/2010 Legislative Session as Amended in Senate April 12, 2010
5. August 19, 2010 Acupuncture Board Meeting Minutes
6. October 25, 2013 Acupuncture Board Meeting Minutes

BUSINESS IMPACT:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Board currently regulates a total of 16,678 licensees, all of whom have been issued a license to practice Acupuncture in California.

The main purpose of the proposed language is to provide the Board with the means to expedite the enforcement process by further defining unprofessional conduct, allowing the Executive Officer to approve settlement agreements, requiring actions against registered sex offenders, and by permitting the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

The Board has determined that the following types of businesses may be affected by the proposal:

- Businesses owned by licensees of the Board who face disciplinary action due to sexual misconduct.

- Businesses that employ licensees of the Board who face disciplinary action due to sexual misconduct.

Licensees may incur a nominal fee for the copying and mailing of records requested by the Board. However, current statute requires licensees to comply with the Board's records request or they risk being fined. Since current statute previously required the copying and submission of records, there should be no additional fiscal impact to the licensee or their business as a result of this regulation. Licensees will be considered to

have committed unprofessional conduct if they fail to provide records requested by the Board within 15 days to 30 days. As a result, licensees may face disciplinary action against their license.

Licensees may incur a nominal fee when reporting an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to the Board. This regulation does not specifically state the manner of how a licensee is to report to the Board. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their notification to the Board. Licensees will be considered to have committed unprofessional conduct if they fail to report an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to the Board within 30 days. As a result, licensees may face disciplinary action against their license.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Applicants required by the Board to be examined by a physician and surgeon or psychologists will not incur a fiscal impact. The Board is responsible for the full cost of the examination. Existing law, BPC Section 820, authorizes the Board to examine licensees for mental illness or physical illness that may affect competency. Since licensees may already be subject to such an examination, the Board has determined that the proposed regulation will not have a significant statewide adverse economic impact on the businesses of the physicians and surgeons or psychologists designated to perform the examination. The physicians and surgeons or the psychologists designated to perform the examination have the necessary equipment to perform the examination and will not experience additional costs as a result of this regulation. However, the physician and surgeons or psychologist may incur more revenue as a result of this regulation, depending on how many applicants are required to be examined.

The Board currently regulates 16,678 licensees, all of whom have been issued a license to practice in California. Since the Board's inception in 1976, the Board has been compelled to examine one licensee as provided in BPC Section 820. Such an examination has cost the Board approximately \$2,500 each time. The Board averages approximately 540 applications for licensure a year, with 673 being issued in 2013. The Board does not maintain data regarding the number of applicants who have

demonstrated physical or mental illnesses affecting competency, therefore it is difficult to estimate the number of applicants the Board may examine. Based upon the number of licensees examined pursuant to existing authority, the fiscal impact of the proposed regulatory action on State government would be minor and any additional expenditure would be absorbable by the Board.

Fiscal Impact on Individuals: This proposal would impact individual licensees of the Board whose license has been revoked as a result of committing a violation relating to sexual misconduct (i.e. engaging in sexual contact with a patient, client, or customer, or having been convicted of or committed a sex offense as defined). Revocation of a license means that the individual would no longer be able to legally practice which would result in a loss of income earned by an individual when the license was valid. Licensees who are in compliance with the law will not incur any fiscal impact.

Fiscal Impact on the Board: The Board estimates that approximately one (1) licensee will have his or her license revoked annually as a result of committing a violation relating to sexual misconduct. This estimate is based the number of cases the Board has encountered over the last three years that have gone to an ALJ for a proposed decision involving sexual misconduct violations. Every case referred to the Attorney General's Office costs the Board an average of \$5,000 (\$3,500 Attorney General's Office Expenses + \$750 Office of Administrative Hearing Expenses + \$750 Evidence/Witness Expenses).

ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California:

This regulatory proposal affects individual acupuncturists who may be or are the subject of a Board complaint. The proposed regulations will expedite the enforcement process and authorize the Board to examine applicants for possible physical or mental illnesses affecting competency, thus enhancing consumer protection. These activities are currently being performed by existing state staff and the regulations enhance their job abilities.

This proposal would only impact individual licensees of the Board whose license has been revoked as a result of committing a violation relating to sexual misconduct. The Board estimates that approximately one (1) licensee will have his or her license revoked annually as a result of committing a violation relating to sexual misconduct which may result in the potential elimination of employment. Therefore, no jobs in California will be created or eliminated.

Creation of New or Elimination of Existing Businesses within the State of California:

This regulatory proposal affects individual acupuncturists who may be or are the subject of a Board complaint. The proposed regulations will expedite the enforcement process and authorize the Board to examine applicants for possible physical or mental illnesses affecting competency, thus enhancing consumer protection. These activities are

currently being performed by existing state staff and the regulations enhance their job abilities.

This proposal would only impact individual licensees of the Board whose license has been revoked as a result of committing a violation relating to sexual misconduct. The Board estimates that approximately one (1) licensee will have his or her license revoked annually as a result of committing a violation relating to sexual misconduct which may result in the potential elimination of a business if owned by a licensee whose license to practice is revoked. Therefore, no jobs in California will be created or eliminated.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California:

This regulatory proposal affects individual acupuncturists who may be or are the subject of a Board complaint. The proposed regulations will expedite the enforcement process and authorize the Board to examine applicants for possible physical or mental illnesses affecting competency, thus enhancing consumer protection. These activities are currently being performed by existing state staff and the regulations enhance their job abilities.

This proposal would only impact individual licensees of the Board whose license has been revoked as a result of committing a violation relating to sexual misconduct. The Board estimates that approximately one (1) licensee will have his or her license revoked annually as a result of committing a violation relating to sexual misconduct which may result in the potential elimination of a business if owned by a licensee whose license to practice is revoked. Therefore, no existing businesses in California will be expanded or eliminated.

Benefits of the Regulations:

This regulatory proposal affects individual acupuncturists who may be or are the subject of a Board complaint. The proposed regulations will expedite the enforcement process and authorize the Board to examine applicants for possible physical or mental illnesses affecting competency, thus enhancing consumer protection. These regulations will not affect worker safety; and do not affect the state's environment.

This proposed regulation will not affect any federally funded State agency or program.

SPECIFIC TECHNOLOGIES OR EQUIPMENT: This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES: No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Do not seek a regulatory change.

Rejected: The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. These proposed regulatory changes provide the Board with the means to expedite the enforcement process and provide better public protection. Without this regulatory change, the Board would not be able to receive records or reports in a more expedited manner. Waiting for a licensee to renew their license to obtain conviction information would be less effective and could endanger patient safety. Licensing an applicant who demonstrates mental or physical illness that may affect competency, but who successfully completes an examination and is subsequently licensed, has the potential to cause detrimental patient harm and would be less effective. This regulation gives the Board the ability to further examine applicants that demonstrate mental or physical illness that may affect competency, but who otherwise successfully complete an examination. With this new authority, the Board would be able to deny the application, and provide better patient protection if the applicant is found to be unable to safely practice.