

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

NOTICE IS HEREBY GIVEN that the California Acupuncture Board (hereinafter “Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
1747 North Market Blvd, 1st floor hearing room
Sacramento, CA 95834
June 30, 2014 at 9:00am**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than June 30, 2014 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4933 of the Business and Professions Code, and to implement, interpret or make specific Sections 4928.1, and 4955 of the Business and Professions Code, the Board is considering changes to Division 13.7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board currently regulates a total of 16,678 licensees, all of whom have been issued a license to practice Acupuncture in California. The Board’s highest priority is the protection of the public when exercising its licensing, regulatory, examination, school approval and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; 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; overseeing approval of Acupuncture Schools and training programs; and administering the California Acupuncture Licensing Exam (CALE).

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.

The Department of Consumer Affairs (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.

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. Existing laws do not provide the Board with the authority to receive reports or require examinations of applicants. These changes have been proposed to provide the Board with the ability to provide better public protection by receiving more timely information from licensees and the authority to examine applicants for possible physical or mental illness affecting competency.

Therefore, the Board is proposing the following changes:

Amend Section 1399.405 of Article 1 of Chapter 13.7 of Title 16 of the California Code of Regulations (Delegation of functions to Executive Officers):

Existing law authorizes the Board to hire an Executive Officer. Existing regulations delegate certain functions to its Executive Officer relative to actions taken in connection with the Administrative Procedures Act.

This proposal amends Section 1399.405 for the purpose of delegating to the Executive Officer (or her designee) the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Policy Statement Overview/Anticipated Benefits: Adoption of this proposed amendment is expected to shorten the timeframe for the settlement of these types of cases, protecting public health and safety and also allowing quicker resolution of these cases for licensees.

Amend Section 1399.419 of Article 2 of Chapter 13.7 of Title 16 of the California Code of Regulations (Application Review and Criteria for Evaluation Rehabilitation)

This proposal amends Section 1399.419 to provide 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.

Policy statement overview/Anticipated Benefits: Adoption of the proposed amendment is expected to increase public protection by allowing the Board to screen license applicants with mental or physical illness that might affect their ability to safely practice. This allows the Board to protect public safety by ensuring qualified practitioners are licensed.

Adopt Section 1399.469.1 of Article 2 of Chapter 13.7 of Title 16 of the California Code of Regulations (Required Actions Against Registered Sex Offenders):

This proposal adopts a new Section 1399.469.1, which provides the Board with the authority to revoke a license or deny an application for licensure upon finding that an applicant or licensee was convicted of a sex offense. It would also require the Board to deny a petition to reinstate or reissue a license if the petitioner was convicted of a sex offense.

This proposal would also require that in specific cases of a licensee having sexual contact with a person or any finding that a licensee has committed a sex offense, or been convicted of a sex offense, a proposed decision would contain an order revoking the license. The proposed order could not contain an order staying the revocation of the license.

Policy Statement Overview/Anticipated Benefits: Adoption of this proposed amendment is expected to increase public 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, renewal, or the reinstatement of a license if the Board finds that they have been convicted of a sex offense.

Adopt Section 1399.469.2 of Article 2 of Chapter 13.7 of Title 16 of the California Code of Regulations (Unprofessional Conduct Defined):

This proposal adopts a new Section 1399.469.2 to define the term “conviction” for the purposes of this Section, and to specify that the following acts constitute unprofessional conduct:

- Including or permitting to be included in a civil settlement agreement provisions that prevent a person from contacting, cooperating with, or filing a complaint with the Board, or requiring that a person attempt to withdraw a complaint already filed with the Board;
- Failure to provide records requested by the Board within 15 days;
- Failure to cooperate and participate in any board investigation pending against the licensee;
- Failure of a licensee to report an indictment within 30 days;
- Failure of a licensee to report an arrest within 30 days;
- Failure of a licensee to report a felony charge within 30 days;
- Failure of a licensee to report a felony or misdemeanor conviction within 30 days;
- Failure of a licensee to report disciplinary action taken by another professional licensing entity or other specified agency within 30 days and;

- Failure or refusal to comply with a court order issued in the enforcement of a subpoena.

Policy statement overview/Anticipated Benefits: Adoption of these proposed amendments regarding unprofessional conduct is expected to enhance public protection. Specifically, this regulatory change will protect the public by enabling the Board to take action against licensee who refuses to cooperate in Board investigations or licensees who actively subvert Board investigations.

Consistency Evaluation

After conducting an evaluation of the regulations that are related to or would affect this area, the Board has determined that the regulatory proposal is not inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

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 Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837.

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. 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 Notice of Proposed Changes 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 psychologist will not incur a fiscal impact. The Board is responsible for the full cost of the examination. Existing law, Section 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 psychologist designated to perform the examination. The physicians and surgeons or the psychologist 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.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal would not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Licensees who have committed unprofessional conduct 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. 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 psychologist will not incur a fiscal impact. The Board is responsible for the full cost of the examination. If an examination finds that the applicant is unable to safely practice, their application may be denied by the Board.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Licensees who have committed unprofessional conduct 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 psychologist 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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulation would not have a significant economic impact on small businesses. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837.

Small businesses owned by 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's small business as a result of this regulation.

Licensees found to have committed unprofessional conduct 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 small business where the licensee works depending on the nature and severity of the violation. A small 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 small business; therefore the number or percentage of small businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a small 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. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

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 small 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.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposal will not create or eliminate jobs within the State of California; will not create or eliminate existing businesses within the state; will not affect the expansion of businesses currently doing business within the State of California; will not affect worker safety; and do not affect the state's environment.

Benefits of the Proposed Regulation

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.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.”

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from:

California Acupuncture Board
1747 North Market Blvd, Suite 180
Sacramento, CA 95834
Telephone no: (916) 515-5200
Website: www.acupuncture.ca.gov

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Marc Johnson, Policy Coordinator
Address: 1747 North Market Blvd, Suite 180
Sacramento, CA 95834
Telephone No.: (916) 515-5200
Fax No.: (916) 928-2204
E-Mail Address: marc.johnson@dca.ca.gov

The backup contact person is:

Name: Terri Thorfinnson, Executive Officer
Address: 1747 North Market Blvd, Suite 180
Sacramento, CA 95834
Telephone No.: (916) 515-5200
Fax No.: (916) 928-2204
E-Mail Address: acupuncture@dca.ca.gov

Website access:

Materials regarding this proposal can be found at the Board's Web site at:
www.acupuncture.ca.gov