

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

INITIAL STATEMENT OF REASONS

HEARING DATE: TBD

SUBJECT MATTER OF PROPOSED REGULATIONS: Criteria for International Training and Clinical Experience; Criteria for Approval of Acupuncture and Oriental Medicine Curriculum; Criteria for Approval of Acupuncture Training Program; Requirements for Board Approval of Curriculum.

SECTIONS AFFECTED: Adopt Section 1399.433, amend Section 1399.434, repeal Section 1399.436, and amend Section 1399.437 of Division 13.7 of Article 3.5 of Title 16 of the California Code of Regulations (CCR).

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The Board currently regulates approximately 16,957 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, 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 the Act; monitoring licensees whose license has been placed on probation; overseeing approval of Acupuncture Schools and training programs; and administering the California Acupuncture Licensing Exam (hereafter "CALE"). California Business and Professions Code (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 Acupuncture Licensure Act (Act).

Problem:

On September 17, 2014, Governor Jerry Brown signed Senate Bill SB 1246 (Lieu, Chapter 397, Statutes of 2014), hereafter referred to as (SB 1246). SB 1246 extended the effective date of the Board of Acupuncture (Board) until January 1, 2017 and made several changes to the provisions contained in the Act.

BPC Section 4938 provides requirements for licensure by the Board. One of the requirements is that a person completes an approved education and training program, a tutorial program, or if education and training is completed outside the United States educational training and clinical experience meeting the standards contained in BPC Sections 4939 and 4941.

Specifically, SB 1246 redefines what constitutes an “approved educational and training program” for purposes of the Act. Presently, BPC Section 4927.5 defines an approved educational and training program as one approved by the Board pursuant to BPC Section 4939. However, beginning January 1, 2017, per BPC Section 4927.5¹ an approved educational and training program will be one that, among other things, is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), approved by the Bureau of Private Postsecondary Education (BPPE), and:

Offers curriculum that includes at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction. Has submitted that curriculum to the board, and has received approval of the curriculum. (BPC 4927.5(a)(1).)

Thus, SB 1246 removes the Board’s authority to approve schools and training programs in the United States. Starting January 1, 2017, the school approval function will be performed by another entity. However, the curriculum must be approved by the Board as set forth in BPC Section 4927.5. Additionally, SB 1246 amended BPC Section 4939 to require the Board to establish standards for the approval of educational training and clinical experience received outside of the United States.

Proposed Solution:

These proposed regulations would implement, interpret and make specific the provisions of BPC Sections 4927.5 and 4939. Pursuant to BPC Section 4927.5, the Board is proposing amendments to its current training program approval criteria regulation found at CCR Section 1399.434 to clarify that it relates to curriculum approval only and to make a few clarifying changes. The actual curriculum requirements will remain the same. The Board is also proposing to adopt CCR Section 1399.433 which sets educational training and clinical experience for those trained outside the United States. These standards are identical to those in CCR Section 1399.434; thus, students would be held to the same curriculum standards regardless of where their education is completed. Additionally, the Board is proposing to repeal CCR Section 1399.436, the curriculum standards for those beginning their training program prior to 2005, which is not compliant with the required curriculum standards of 3000 hours as set forth in BPC Section 4927.5, nor is it consistent with having all licensee applicants meet the same standards. The Board is also proposing a new process for approving curriculum as set forth in the amended CCR Section 1399.437.

Specifically, the Board is proposing the following changes:

Adopt Section 1399.433 of Division 13.7 of Title 16 of the California Code of Regulations:

This regulatory proposal would, beginning January 1, 2017, set forth the number of hours and specific course of training and clinical experience standards that must be met for acupuncture license applicants completing educational training and clinical

¹ Unless otherwise indicated, the BPC sections referred to for the purposes of this proposal are the BPC sections which will be effective January 1, 2017; thus requiring the changes put forth in this proposal.

experience outside of the United States. The total number of hours is a minimum of 2,050 hours of didactic and laboratory training, and a minimum of 950 hours of supervised clinical instruction. Additionally, the components of the curriculum including subject matter and required hours for each are included in the proposal.

Anticipated benefits of this regulatory action:

These proposed curriculum standards will protect consumers by ensuring that licensed acupuncturists continue to meet the same educational training and clinical experience standards the Board has been consistently applying to those beginning education and training since 2005. This will also benefit the public protection by ensuring that from January 1, 2017, forward those educated outside of the United States are held to the same requirements as those educated within the United States. All licensed acupuncturists will meet an appropriate minimum standard. Additionally, the Board will have fulfilled its statutory duty pursuant to BPC Section 4939.

Factual Basis/Rationale:

Pursuant to SB 1246, beginning January 1, 2017, BPC section 4939 will require the Board to establish standards for the approval of educational training and clinical experience received outside of the United States. Therefore, the Board has developed this proposal to comply with BPC 4939. This matter was first evaluated by the Board Education Committee, then the full Board. It was determined that all acupuncture licensure applicants should be required to have the same educational training and clinical experience, regardless of where education is completed. It was also determined that the current curriculum components that the Board has applied to licensure candidates since 2005 remains appropriate.

These proposed standards for those completing educational training and clinical experience outside the United States are equivalent to the current standards as set forth used for all licensee applicants that started education from 2005 forward. Additionally, the standards include at least 3,000 hours of which at least 2,500 hours are didactic, and at least 950 hours are supervised clinical instruction, which will be statutorily required for curriculums within the United States beginning January 1, 2017. Although the Board has the authority under BPC section 4939 to establish whatever standards it deem appropriate for qualifying for licensure and protecting public safety, the proposed standards reflect the Board's determination that the standards for all licensure applicants, regardless of where education is completed, be the same. These proposed curriculum and clinical standards will protect consumers by ensuring that only qualified applicants who meet the Board's educational standards are eligible for licensure in California.

Amend Section 1399.434 of Division 13.7 of Title 16 of the California Code of Regulations:

The proposed revisions to CCR Section 1399.434 delete language related to Board approval of schools and training programs. Reference to "training program" in the title of

this Section is deleted and the word curriculum is added to clarify that the Section relates to curriculum standards and not the entire school training program.

The introductory sentence of CCR Section 1399.434 is removed, and a new statement reflects that to be approved by the Board a curriculum shall consist of at least a 2,050 hours of didactic and laboratory training and at least 950 hours of supervised clinical instruction. CCR Section 1399.434(i) is deleted. Additionally, international classification of diseases has been capitalized, ICD has been changed to ICD-10 throughout the Section, and in subdivision (d)(9) the phrase “and diagnostic” is added, Current Procedural Terminology is added before (CPT), and “ICD-10 diagnostic codes” is added.

Anticipated benefits from this regulatory action:

The public will be further protected by this proposal as the regulation will come into compliance with BPC 4927.5 as it will read on January 1, 2017, and it will be clear to students, schools, and patients that the curriculum components in this regulation apply to those programs in the United States. This proposal provides important clarity to all persons impacted by the change in BPC Section 4927.5.

Factual Basis/Rationale:

Pursuant to SB 1246, effective January 1, 2017, the Board no longer has authority to approve school or program as it does under the current BPC Section 4939. Instead, BPC Section 4927.5 will provide that schools and colleges within the United States must have Board approval of curriculum. This regulatory proposal would delete obsolete non-conforming language regarding the Board’s approval of schools to conform to the changes made by SB 1246 and instead the proposed language refers to curriculum approval. The proposed components of the curriculum are not changed by this proposal.

Additionally, it was determined that updates for clarity were appropriate to make it clear what diagnostic codes were referred to and to spell out Current Procedural Terminology rather than only having the abbreviation (CPT). Also, subdivision(i) was removed because the statement related to the number of hours was moved to the introductory sentence for clarity and the remaining portion relates to school approval matters thus is no longer viable.

Repeal Section 1399.436 of Division 13.7 of Title 16 of the California Code of Regulations:

This proposal will repeal CCR 1399.426 in its entirety.

Anticipated benefits from this regulatory action:

Repealing CCR Section 1399.436 will conform to changes made by SB 1246. Additionally, repealing CCR Section 1399.436 will protect public safety. The curriculum standard in CCR Section 1399.436 is significantly lower than the current standard

contained in CCR Section 1399.434 and BPC Section 4927.5. By repealing this section, it will strengthen consumer protection by ensuring that only applicants who meet the 3,000 curriculum hours may be licensed as an acupuncturist in California. This will also benefit the public protection by ensuring that from January 1, 2017, forward those educated outside of the United States are held to the same requirements as those educated within the United States. All licensed acupuncturists will meet an appropriate minimum standard.

Factual Basis/Rationale:

The curriculum standards set forth in CCR 1399.436 were created prior to 2005. In 2005, new curriculum standards set forth in CCR Section 1399.434 were promulgated with more required hours and other additional requirements. When the new standards became effective in 2005, CCR 1399.436 was not repealed. The result was two separate curriculum standards: CCR Section 1399.434 pertained to course work begun after 2005 and CCR Section 1399.436 pertained to course begun prior to 2005.

Effective January 1, 2017, pursuant to BPC 4927.5, an approved educational and training program must include at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction. CCR Section 1399.436 currently contains old curriculum standards requiring only 1,548 didactic hours and 800 clinical hours. Therefore, this regulation conflicts with statute in regard to approved educational and training programs within the United States.

The Board does have the authority pursuant to BPC Section 4939 to establish standards related to educational training and clinical experience outside of the United States. However, it was determined that all acupuncture licensure applicants should be required to have the same educational training and clinical experience, regardless of where education is completed. Therefore, the Board has proposed to adopt CCR 1399.433 discussed earlier in this document, which requires those completing education outside the United States to meet the same number of hours required for United States programs, and to complete the same curriculum components.

Amend Section 1399.437 of Division 13.7 of Title 16 of the California Code of Regulations:

The proposed revisions delete language related to school approval. The proposed new language addresses requirements for Board curriculum approval.

This regulatory proposal would require that the educational and training program seeking Board approval of curriculum meet certain requirements and submit an "Application for Board Approval of Curriculum" (rev 1/1/17). The proposed regulation and form require the following be provided to the Board: institution's name, institution's contact information, institution's contact person's and his or her contact information, program requested for Board approval of curriculum, course number, course clock hour, course unit, title of course, number of units (by semester, quarter, or trimester), course syllabus, and course catalog.

The proposal requires documentation to be submitted in English. Applications for curriculum approval will be deemed received when the Board receives a complete application. If after being notified in writing by the Board that an application is incomplete and what documentation is still needed, the applicant does not provide the required documents within 30 days the application is deemed abandoned. Any applications submitted after an abandoned application will be deemed a new application. Changes to curriculum after the Board has approved a curriculum constitutes a new curriculum that shall be approved prior to implementation.

Anticipated benefits from this regulatory action:

This regulatory proposal will bring CCR 1399.437 into compliance with changes enacted by SB 1246. Additionally, this regulatory proposal establishes a process for the Board to approve curriculum as required. This proposed process strengthens consumer protection by ensuring there is a clear process for curriculum approval and that the Board has the required information to ensure that the curriculum is appropriate as required by BPC Section 4927.5.

Factual Basis/Rationale:

Effective January 1, 2017, the Board will no longer have the authority for school or training program approval; therefore, language related to such is removed to comply with the change in statute. The proposed language sets forth the Board's a process for approving curriculum of educational and training programs as authorized by BPC 4927.5. It also incorporates by reference the "Application for Board Approval of Curriculum" (rev 1/1/17).

This information requested by the form would ensure that adequate information and documentation is provided to the Board to determine if the curriculum from the educational and training program meets the Board's established curriculum standards. In order to effectively evaluate whether the curriculum meets the requirements of CCR Section 1399.434, the Board has determined a need for the: institution's name, institution's address, institution's telephone number, institution's contact person, program requested for Board approval of curriculum, course number, title of course, number of units (by semester, quarter, or trimester), course syllabus, and course catalog.

Specifically, the form requests the institution's name and institution's address for identification purposes and also requests a point of contact should further clarification be necessary during the review of the curriculum. The application also requires the program requested for Board approval of curriculum for clarity.

The form also requires a course-by-course list of the Board's required curriculum. This course-by-course list includes each Board's curriculum standards as outlined in CCR Section 1399.434 and the institution's course number, clock hour, and course unit that may fulfill the Board's requirements. In order to determine if the courses fulfill the Board's requirements, the application also requests each course syllabus. Without the course syllabus that should contain specific detail about course objectives and course

subject content and weekly class content, the Board would be unable to determine whether in fact that courses meet the Board's curriculum requirements.

In addition, the application also requests a full list of courses from the program with full course title, course number, course unit, and course hour. This information, in addition to the course-by-course list, will assist staff with determining if the courses meet the Board's required curriculum hours of 3,000 hours. A full list of courses with hours and indication of which curriculum requirement each course meets is required by the Board in order to facilitate the determination of whether the curriculum meets curriculum standards in terms of both required subject content and hours. Thereafter, this final course list, if approved, becomes the document the Board will utilize for determining whether applicants meet the Board's curriculum requirements for exam and licensure. The application also requires a current course catalog to verify that the program is offered or will be offered at the institution.

The form is incorporated by reference in CCR Section 1399.437 because it would otherwise be cumbersome, unduly expensive and otherwise impractical to publish in the California Code of Regulations. The form is available on the Board's website and from the Board upon request. The information is to be submitted in English as that is the language in which the Board primarily conducts its business.

In the event that the institution makes changes to a curriculum that has been approved by the Board, the changed curriculum constitutes a new curriculum that would require Board approval to prevent schools from receiving approval then changing curriculum such that it no longer meets the requirements for content. This will protect students so that students are not unknowingly in a program that does not meet the statutory and regulatory requirements to be a licensed acupuncturist and will protect the public to ensure that all licensees have the required training.

As the Board is required by BPC 4927.5 to review and make a determination within 30 days of receiving the curriculum, applications are deemed incomplete if missing any required documentation and deemed abandoned if the information is not provided within 30 days. The Board cannot make a proper determination regarding the curriculum without the required information so these provisions are necessary for the Board to complete its statutory obligation and to provide notice to applicants of the process.

UNDERLYING DATA:

1. Senate Bill 1246 (Chaptered 397, Statutes of 2014)
2. Approved minutes and meeting materials for the July 21, 2015 Acupuncture Board Education Committee Meeting
3. Approved minutes and meeting materials for the September 18, 2015 Acupuncture Board Meeting
4. Draft minutes and meeting materials for the September 25, 2015 Acupuncture Board Education Committee Meeting

5. Approved minutes and meeting materials for the November 13, 2015 Acupuncture Board Meeting
6. Proposed "Application for Board Approval of Curriculum(rev 1/1/17)" form incorporated by reference

BUSINESS IMPACT:

The Board has made an initial determination that the proposed regulatory action would have a minor, negligible statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The proposed CCR Section 1399.433 would affect individuals and companies which are not based within the United States. These companies and individuals would face an economic impact which is not able to be measured or calculated due to the fact they may be located in another country. However, the standards are the same that the Board has been using for all licensee applicants who began their education and training since 2005; hence this will have the same impact that is currently felt in this area.

The proposed CCR Section 1399.437 may affect an Acupuncture School in the State of California by incurring minor administrative costs when applying for curriculum approval or re-approval of curriculum due to a change. These administrative costs may include filling and completing the proposed form "Application for Board Approval of Curriculum" (rev 1/1/17), providing copies of syllabus and course catalogs, and additional administrative costs such as postage and shipping.

The proposed CCR Sections 1399.434 and 1399.436 would have no business impact.

Cost Impact on Representative Private Person or Business:

The Board has made an initial determination that the proposed regulatory action would not have a significant impact on a private person or business. There may be a very small number of individuals who are not yet licensed and began their acupuncture training before 2005, when the older standards as proposed to be repealed in CCR Section 1399.436 applied,. These individuals would be required to re-take an approved acupuncture training program in order to qualify to take the CALE. However, this number is believed to be extremely small and would not create any measurable impact.

Implementation Costs for the Board:

The Board has made a initial determination that the proposed regulatory action would not have any additional implementation costs for the Board. There may be a small rise in staff workload as additional schools approved by ACAOM may apply for Board approval of their Acupuncture curriculum, but those costs are absorbable within existing Board resources.

ECONOMIC IMPACT ANALYSIS:

Creation or Elimination of Jobs Within the State of California

The Board has determined that this regulatory proposal will not create or eliminate jobs within the State of California. The regulatory proposal impacts the educational requirements a person must meet to be eligible for licensure as an acupuncturist, and the curriculum requirements for schools within the United States. The requirements for education are the same that have been applied to licensure candidates since 2005. The regulatory proposal does repeal the lower educational standards for those who began education before 2005 and have no yet been licensed, however, this population is very small in number. The curriculum requirements are the same that have been used as part of the school approval process for several years. Hence, as the regulatory proposal maintains the same standards that are already in use, the regulation is not expected to create or eliminate jobs within the state.

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

The Board has determined that this regulatory proposal will not have any impact on the creation of new businesses or the elimination of existing businesses in the State of California. The regulatory proposal impacts the educational requirements a person must meet to be eligible for licensure as an acupuncturist, and the curriculum requirements for schools within the United States. The requirements for education are the same that have been applied to licensure candidates since 2005. The regulatory proposal does repeal the lower educational standards for those who began education before 2005 and have no yet been licensed, however, this population is very small in number. Hence, as the regulatory proposal maintains the same standards that are already in use, the regulation is not expected to create or eliminate existing businesses within the state. Additionally, currently schools must be approved by the Board, and this approval includes curriculum approval. The curriculum requirements in this regulatory proposal are the same that have been used as part of the school approval process for several years; hence there is no anticipated change for businesses in regard to submitting curriculum to the Board for review and approval. In fact, businesses will submit less to the Board under this regulatory proposal. However, pursuant to the statute, school approval, other than curriculum, will now be handled by another entity. As the school approval function is simply moved from the Board to another entity, it is not expected that the regulatory proposal will create or eliminate new businesses within the state.

Expansion of Businesses Within the State of California:

The Board has determined that this regulatory proposal will not prevent the expansion of businesses within the State of California. The regulatory proposal impacts the educational requirements a person must meet to be eligible for licensure as an acupuncturist, and the curriculum requirements for schools within the United States. The requirements for education are the same that have been applied to licensure candidates since 2005. The regulatory proposal does repeal the lower educational standards for those who began education before 2005 and have no yet been licensed, however, this population is very small in number. Hence, as the regulatory proposal

maintains the same standards that are already in use, the regulation is not expected to lead to the expansion of businesses within the State. Additionally, currently schools must be approved by the Board, and this approval includes curriculum approval. The curriculum requirements in this regulatory proposal are the same that have been used as part of the school approval process for several years; hence there is no anticipated change for businesses in regard to submitting curriculum to the Board for review and approval. In fact, businesses will submit less to the Board under this regulatory proposal. However, pursuant to the statute, school approval, other than curriculum, will now be handled by another entity. As the school approval function is simply moved from the Board to another entity, it is not expected that the regulatory proposal will lead to expansion of new businesses within the state.

Benefits for the Health and Welfare of California Residents:

This regulatory proposal benefits the health and welfare of California residents, as this proposed process strengthens consumer protection by ensuring all applicants have met the Board's curriculum standards, including those applicants whom have been educated outside the United States.

Benefits for Worker's Safety:

The proposal does not affect worker safety because the proposed regulations are not relative to workers safety.

Benefits for the State's Environment:

This regulatory proposal does not affect the state's environment because the proposed regulations are not relevant to the State's environment.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulations. The Board is directed by statute to develop standards for educational training and clinical experience outside the United States.

One possible alternative would be to promulgate these regulations without including the proposed CCR Section 1399.433 (Criteria for International Education Training and Clinical Experience). This alternative is unreasonable because the statute provides that the Board is required to comply with the requirements of BPC section 4927.5 and 4939 by January 1, 2017, including implementation of criteria for international education training and clinical experience outside of the United States.

Another possible alternative would be to delay or not promulgate these regulations. This alternative is unreasonable because the statute provides that the Board is required to comply with the requirements of BPC section 4927.5 and 4939 by January 1, 2017. A delay is unreasonable due to the express statutory requirement of compliance by January 1, 2017. The Board must act to implement the statutory requirement as soon as possible.