

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

NOTICE IS HEREBY GIVEN that the California Acupuncture Board ('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, 2nd Floor, Sapphire Room
Sacramento, CA 95834
June 6, 2016 at 9am**

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 6, 2016 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 and of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 4927.5, 4938, 4939, 4941, and 4944 of the BPC, the Board is considering changes to Division 13.5 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

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").

BPC Section 4928.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, examination, school approval 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).

There is not an existing federal regulation or statute comparable to this proposal.

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.

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

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.

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 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.

Policy Statement Overview/Anticipated Benefits:

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.

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.

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.

Policy Statement Overview/Anticipated Benefits:

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 related to school approval matters thus was no longer viable.

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.

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.

Policy Statement Overview/Anticipated Benefits:

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.

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 Sections 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.

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.

Policy Statement Overview/Anticipated Benefits:

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 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 specified information. 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.

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.

Consistency and Compatibility with Existing State Regulations

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.

INCORPORATION BY REFERENCE

- Application for Board Approval of Curriculum (rev 1/1/17)

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

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.

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 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 incorporated by reference "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.

Impact on Jobs/New Businesses:

The Board has made an initial determination 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.

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 extremely small and would not create any measurable impact.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has made an initial determination that the proposed regulatory action would have a minor, negligible statewide adverse economic impact directly affecting small businesses.

The proposed CCR Section 1399.433 (Criteria for International Education Training and Clinical Experience) would affect individuals and companies which are not based within the United States. These companies and individuals may face an economic impact which is not able to be measured or calculated due to the fact they may be located in a foreign country.

This determination is based upon the fact that an Acupuncture School in the State of California, who has not previously received Board approval of their curriculum, may incur minor administrative costs related to the proposed CCR Section 1399.437 (Requirements for Board Approval of Curriculum). 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 small business impact.

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 REGULATION

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.

CONSIDERATION OF ALTERNATIVES

The Board must determine that 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.

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 any document incorporated by reference, 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 the Board at 1747 North Market Blvd, Suite 180, Sacramento, CA 95834.

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:

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| 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: | acupuncture@dca.ca.gov |

The backup contact person is:

| | |
|-----------------|--|
| Name: | Ben Bodea Acting 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 http://www.acupuncture.ca.gov/about_us/dpopp.shtml