

TITLE 16. ACUPUNCTURE BOARD
Department of Consumer Affairs

NOTICE IS HEREBY GIVEN that the Acupuncture 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 the:

Department of Consumer Affairs
2005 Evergreen Street, 1st Floor Hearing Room
Sacramento, California

April 14, 2010
9:00 a.m.

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 5:00 p.m. on April 14, 2010 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 144, 4928.1, 4955, and 4965 of the Business and Professions Code; and Section 11105 of the Penal 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

Business and Professions Code sections 4933 authorizes the Board to adopt, amend, or repeal, such rules regulations as may be reasonably necessary to enable it to carry into effect the provisions of law relating to the practice of acupuncture. The Board is proposing the following:

The main purpose of the proposed language is to establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Acupuncture Board ("Board") if the licensee was initially licensed prior to 2001 or if an electronic record of the fingerprint submission no longer exists. Generally, this proposal would:

- set requirements and time frames for when the licensee would be required to submit criminal history information and other related records to the Board;
- specify the conditions and the purpose for which a full set of fingerprints would be required;
- establish that the licensee would be responsible for paying the costs associated with furnishing fingerprints and conducting criminal offender record searches;
- require a licensee to certify compliance with the new fingerprinting requirements on his or her renewal form and maintain records of his or her compliance for at least 3 years;
- authorize a waiver of these new fingerprinting requirements for licensees who are inactive or actively serving in the military outside of the country;
- mandate that licensees disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds; and,
- specify that failure to comply with these requirements or submit a full set of fingerprints to DOJ renders any application for renewal incomplete and is grounds for discipline by the Board.

Proposed changes, by section, are more specifically identified as follows.

Add Section 1399.419.1. Response to Board Inquiry.

The section would provide that if the Board asks a licensee to provide criminal history information, the licensee must respond to the request within 30 days by making available all documents and other records requested, and specifies that the information provided must be accurate. This section would establish the timeframe for a licensee's compliance to the Board's inquiries and would ensure that accurate information is received from the licensee. This section would protect consumers by assisting the Board's enforcement staff in the gathering of information and the investigative process for determining whether a licensee is in compliance with the Acupuncture Licensure Act.

Section 1399.419.2. Fingerprint and Disclosure Requirements for Renewal of License.

This heading text would inform licensees that the sections that follow relate to fingerprinting and disclosure requirements for the renewal of a license.

Add Section 1399.419.2(a)

This section would establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Acupuncture Board ("Board") if the licensee was initially licensed prior to 2001 or if an electronic record of the fingerprint submission no longer exists. Licensees need to be made aware that certain groups of licensees will be required to be fingerprinted as a condition of license renewal, and this regulation would authorize the Board to require fingerprinting of these licensees. This section would protect consumers by giving the Board access to currently available DOJ information relative to criminal arrests and convictions and would enable the Board to determine if violations of the Acupuncture Licensure Act have occurred.

Add Section 1399.419.2(a)(1)

This section would establish that the cost of fingerprinting and conducting the criminal history record check must be paid by the licensee. This regulation is necessary to authorize assessment of costs to licensees, which is consistent with fingerprinting and record check costs that have been paid by every other licensee or applicant since 2001.

Add Section 1399.419.2(a)(2)

This section would establish that as part of the renewal process, each licensee will be asked to certify on his or her renewal form whether or not they have submitted fingerprints to the Department of Justice as required.

Add Section 1399.419.2(a)(3)

This section would establish an exemption from or waiver of the fingerprinting requirement if the license is on an inactive status or if the licensee is actively serving in the military outside the country.

Add Section 1399.419.2(a)(4)

This section would require affected licensees to retain a receipt, as specified, of compliance with the fingerprinting requirement for a period of at least three years. This requirement is necessary to provide evidence that a licensee has complied with the fingerprinting requirement.

Add Section 1399.419.2(b)

This section would mandate that if a licensee is convicted of any violation of the law during the prior renewal cycle, the licensee must disclose that fact to the Board, with infractions specified that may be omitted. This reporting requirement is necessary for consumer protection and enforcement of the Acupuncture Licensure Act. This information is necessary to determine if disciplinary action is warranted pursuant to the Board's authority (e.g., Sections 141 and 4955 of the Business and Professions Code).

Add Section 1399.419.2(c)

This section would mandate that since the licensee last applied for renewal, whether he or she has been denied a license or had any disciplinary action against another license that the licensee may hold must be reported. This reporting requirement is necessary for consumer protection and enforcement of the Acupuncture Licensure Act. Many licensees hold other licenses either in California or in other states. This language would assist the Board in obtaining information relative to discipline taken by other corresponding state or government licensing entities. This information is necessary to determine if disciplinary action is warranted pursuant to the Board's authority (e.g., Sections 141 and 4955 of the Business and Professions Code).

Add Section 1399.419.2(d)

This section would establish that failure to comply with these requirements would result in non-renewal of the license until the licensee complies with all of the requirements of this section (e.g., fingerprinting, disclosure or record-keeping requirements). This requirement is needed to ensure compliance with the unprofessional conduct statutes of the Acupuncture Licensure Act and prevents possible renewal of a license for a licensee who has violated the law.

Add Section 1399.419.2(e)

This section would provide that failure to furnish a full set of fingerprints as required is grounds for discipline by the Board. The Board must have the ability to enforce the requirements of the section by disciplining the license of a licensee who refuses to comply with the requirements for fingerprinting. The licensee could be in violation of the law or potentially cause patient harm if the Board does not have the ability to verify the criminal history of its licensees through the DOJ or take action for non-compliance.

Add Section 1399.419.2(f)

This section would require that licensees, as a condition of restoring their license from inactive to active status, would be required to submit a full set of fingerprints to the DOJ according to the provisions of Section 1399.419.2. This provision is necessary to ensure that criminal offender record information continues to be transmitted to the Board upon reactivation of a license.

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 does not anticipate needing any additional positions or funding to process the additional fingerprint records or the applicable disciplinary actions that may result from fingerprint reports.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires 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. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should be no initial or ongoing cost impact upon vendors because they are already equipped to provide the service and the fingerprinting of the approximate 5,000 licensees will be extended over a two-year period.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant 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: Acupuncturists who have not previously been fingerprinted or for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of license renewal, reactivation, or reinstatement. The one-time cost for a person to get fingerprinted is approximately \$65.00. Of this fee, \$51.00 goes to the Department of Justice for conducting the background check and providing the criminal record report to the Board and the remainder is for the vendor for fingerprinting the individual. Vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The regulation will not have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should not be any cost impact on vendors because they are already equipped to provide the service. This regulation will generate revenue for the vendors of Live Scan.

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 as and less burdensome to affected private persons than the proposed action.

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 the Board at 444 North 3rd Street, Suite 260, Sacramento, California 95811.

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:	Erica Davalos
Address:	444 North 3 rd Street, Suite 260 Sacramento, CA 95811
Telephone No.:	916-445-3019
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E-Mail Address:	erica_davalos@dca.ca.gov

The backup contact person is:

Name: Janelle Wedge, Executive Officer
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Website Access: Materials regarding this proposal can be found at www.acupuncture.ca.gov