

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

INITIAL STATEMENT OF REASONS

HEARING DATE: TBD

SUBJECT MATTER OF PROPOSED REGULATIONS: Notice to Consumers of Licensure by the Acupuncture Board

SECTION AFFECTED: Title 16, Division 13.7, California Code of Regulations, Section 1399.469.3

INTRODUCTION:

During the previous two sunset reviews of the California Acupuncture Board (Board), the Legislature has made a point of identifying regulations required by Section 138 of the Business and Professions Code, which requires all healing arts programs within the Department of Consumer Affairs to require their licensees to provide notice to their clients or customers that they are licensed by this state. This statute also requires that the process to adopt these regulations begin on or before June 30, 1999 and to date, the Board has not done so until now. According to the Legislature, the purpose of this statute is to inform consumers of the appropriate regulatory body that regulates a particular licensee or practitioner.

During the 2012 review of the Board by a joint hearing of the Senate Business, Professions and Economic Development and the Assembly Business, Professions and Consumer Protection Committees, they indicated that the Medical Board of California had promulgated regulations pursuant to Business and Professions Code section 138 to require physicians and surgeons to inform their patients that they are licensed by the Medical Board including the Medical Board's contact information. The Committees encouraged the Board to do the same. In its Sunset Review Report, the Board noted, "The Board intends to promulgate regulations to post such required notice."

By law, public protection is the highest priority of the Board, and is enhanced when patients and other interested parties are made aware of the Board's existence at a time close to when services are provided.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT

The Board currently licenses 17,200 licensees throughout 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 violations of the Acupuncture Licensure Act (hereinafter “ALA”); monitoring licensees whose licenses have been placed on probation; overseeing approval of Acupuncture Schools and training programs; and administering the California Acupuncture Licensing Exam (CALE).

Business and Professions Code 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 Practice Act.

The primary purpose of these proposed regulations is to implement, interpret, and make specific the provisions of section 138 of the Business and Professions Code relative to providing conspicuous notification to consumers that acupuncturists are licensed and regulated by the Board, require that the notice include a statement to that effect, and contain the Board’s telephone number and its Web Site address.

The Board is proposing the following changes:

Adopt Section 1399.469.3 of Division 5 of Title 16 of the California Code of Regulations (Notice to Consumers):

The proposed regulations require a licensed acupuncturist engaged in the practice of acupuncture to provide notice to each patient of the fact that he or she is licensed and regulated by the Board. This proposal would require the notice include a statement that acupuncturists are licensed and regulated by the Board and contain the Board’s telephone number and Web site address.

The proposed regulations would specify that the notice is required to be provided posting in an area visible to patients on the premises where services are provided in at least 48-point type font.

Factual Basis/ Rationale:

Existing law, Business and Professions Code section 138, specifies that every board within the Department shall initiate the process of adopting regulations to require its licentiates to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The Board is not exempt from this requirement, because it does not currently have in statute or regulation, a requirement that provides for consumer notice of a practitioner’s status as a licensee of this state. The Board chose to include the requirement of a 48-point or larger font for the posted notice, which is large and readable by the consumer from a distance.

Benefits

As previously specified, the protection of the public is the Board’s highest priority when

exercising its licensing, regulatory, examination and disciplinary functions. This proposal is consistent with that priority. An informed consumer is in a better position to make a reasoned choice relating to acupuncture health care. Additionally, an informed consumer would be able to assist the Board in regulating the practice of Acupuncture via the Board's complaint process, should a problem arise.

Often consumers are unaware of the existence and role of the Board or the public services it offers, for example license verifications, statutes and regulations, or the complaint process. If consumers do not know that they can contact the Board when an issue with a licensee arises or where to seek information about a licensee, then the Board's effectiveness is hampered and its priority of public protection is compromised. The adoption of this proposal will promote better communication with the public regarding the Board's contact information and purpose. The notice would also promote transparency in both government and the profession by making information regarding license status and the State's responsibility to regulate the profession easily available to the public.

Additionally, this proposed regulation complies with the provisions of Business and Professions Code section 138, which requires boards within the Department to promulgate regulations requiring licentiates to provide notice to their clients or customers that the practitioner is licensed by this state.

UNDERLYING DATA

1. Sunset Background Paper
2. SB 540 – Senate Committee on Business, Professions and Economic Development Bill Analysis, As Amended April 25, 2011
3. Senate Bill 540 (Price, Chapter 385, Statutes of 2011)
4. September 12, 2014 Acupuncture Board meeting minutes

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation has an estimated expense of less than \$5.00 per office, which would be minor and absorbable. This minimal cost is outweighed by the benefits to the public of providing accessible information that fully informs consumers about the license status of their acupuncture health practitioner and the regulatory agency who is responsible for regulating Acupuncture in the State of California.

Cost Impact on Representative Private Person or Business:

Specifically, this proposed regulation requires acupuncturists to notify their patients that they are licensed and regulated by the Board and to provide the Board's contact

information. Acupuncturists may provide the notice by posting of a sign. The Board believes that the vast majority of acupuncturists would implement this regulation via the easiest means by posting a sign in a visible place, such as a reception /check-in area or waiting room. The most "professional" way to achieve this would be for a practice setting to print the sign on a laser jet printer (less than \$0.05 per page) and then buy a simple black plastic "document" frame (estimated to cost \$4.50 at an office supply store). Thus, per office, the cost would be less than \$5.00 to implement. The Board does not maintain data relating to the number or percentage of licensees who own a business, therefore a number or percentage of businesses that may be impacted cannot be predicted. The estimated expense of less than \$5.00 per office would be minor and absorbable.

Implementation cost for the Board:

Any implementation costs to the Board are negligible and absorbable within existing resources. By giving such notice to the public, it must be expected that some additional calls will be made to the Board. Some members of the public will contact the Board with questions about a person's license status, how to obtain their Acupuncture records, how to file a complaint, how to get certain forms from the Board, etc. However, by providing a direct link to the Board's Web site, the Board also estimates that there will be fewer calls to the Board, since those who are computer-savvy will then access that information directly.

ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs within the State of California

This proposal will not create or eliminate jobs within the State of California because the proposed regulations will not be of sufficient amount to have the effect of creating or eliminating jobs.

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

This proposal will not create new business or eliminate existing businesses within the State of California because the proposed regulations will not be of sufficient amount to have the effect of creating or eliminating businesses.

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

It will not affect the expansion of businesses currently doing business within the State of California because the proposal will not be of a sufficient amount to have the effect of limiting or furthering the expansion of businesses.

Benefits for the Health and Welfare of California Residents:

This regulatory proposal benefits the health and welfare of California residents because it requires the posting of a conspicuous and obvious notice that the Acupuncturist is

specifically licensed and regulated by the Board, and allows the consumer to have information on how to contact the Board directly should any problems arise.

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 these regulations.