

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

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action.

Subject Matter of Proposed Regulations: Application Process for Licensing Examination and Re-examination, and Criteria, and Procedures for Approval of a Credential Evaluation Service

SECTION(S) AFFECTED:

Adopt Sections 1399.409, 1399.416.2, 1399.416.3, and 1399.416.4, and, Amend Sections 1399.411, 1399.413, 1399.414, 1399.416, 1399.417, and 1399.419 of Title 16 of the California Code of Regulations (CCR)¹

BACKGROUND AND INTRODUCTION:

The California Acupuncture Board (Board) regulates the practice of acupuncture in California and is the sole issuer of acupuncture licenses in the state. The Board regulates over twelve thousand active licensed acupuncturists. The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license.

In fiscal year 2019 – 2020 the Board received 296 exam applications. In fiscal year 2020 – 2021 the Board received 319 exam applications. The Board also receives, on average annually, 65 applications for re-examination and 11 applications from foreign-trained applicants.

Historically, the Board has never had authority to approve programs or schools outside of the United States. There has also been a need to provide more of an authentication process for applicants who completed their education and training outside of the United States. In the past, the validation process for foreign education has been met with obstacles as there is not a line of communication between these foreign schools and the Board, nor was there a standard for credential evaluations when accepted by the Board. Additionally, the Board has encountered applicants submitting fraudulent foreign transcripts and with fraudulent credential evaluations.

Under Business and Professions Code (BPC) section 4927.5, the Board has authority to

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 16.

approve curriculum offered by domestic schools that are accredited by the Accreditation Commission for Acupuncture and Herbal Medicine (ACAHM) or have pre-accreditation status by ACAOM and received full institutional approval from the Bureau for Private Postsecondary Education (BPPE). Since ACAHM also does not accredit schools outside of the U.S., there was a need to provide more of an authentication process for foreign education.

Assembly Bill 2190 (AB 2190) (Salas, Chapter 667, Statutes of 2016) was the Acupuncture Board's (Board) Sunset Review bill, arising from the Board's joint review by the Senate and Assembly Business and Professions Committees. Substantively, it made changes related to the Board's approval of educational training and clinical experience received outside the United States.

With the enactment of Business and Profession Code (BPC) section 4939, authority for the Board to utilize and vet educational credential evaluation services to provide a way for applicants who obtained education from outside the U.S. to obtain equivalent credits was created.

BPC section 4939 also requires the Board to establish by regulation an application process, criteria, and procedures for approval of credential evaluation services accepted by the Board and that these regulations shall require the credential evaluation service to provide information, furnish evaluations, be reevaluated, perform evaluations, and perform other functions and tasks.

Staff brought proposed language implementing the requirements and authority from BPC section 4939 and other amendments for general cleanup of the examination and application sections within Article 2 at the Committee and Board level at the public March 2021 and August 2021 meetings.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

This regulatory proposal implements the provisions of AB 2190. In addition, related regulation sections contain outdated language from when the California Acupuncture Licensing Examination (exam) was administered twice a year. In October 2018, the Board changed to offering the exam through computer-based testing administration which occurs throughout the year.

Other regulatory sections related to foreign-trained applicants and the credential evaluation reports furnished to the Board required updating. The Board's requirements for application for examination are being delineated in this proposal, and the proposed Application Update for Examination/Licensure, currently incorporated by reference, is being repealed. Instead, the requirements to apply for examination and re-examination are provided directly in the regulations.

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION:

This proposal would strengthen oversight and provide greater assurances of the accuracy, completeness, and timeliness of foreign-trained applicant submissions by creating minimum requirements for Board approval of credential evaluation services, incorporating an application form, specifying definitions, and requiring credential evaluation services to attest to facts and representations made to the Board.

Additionally, the regulations will provide clear and consistent requirements for applicants applying for the exam based upon the education and training pathway they completed. Old and nonapplicable deadlines and policy related to the prior method of administering the exam are removed to establish relevant and clear guidelines for the exam application process. The proposal also amends the documentation and submission standards for the Board. Overall, this proposal creates a transparent process and allows applicants to demonstrate eligibility for an acupuncture license with more ease.

FACTUAL BASIS/RATIONALE

The proposed regulatory language reflects all of the requirements set by BPC section 4939 for the credential evaluation service application process.

Additionally, amendments have been made to outdated language from when the exam was administered twice a year to align provisions with the Board's current computer-based testing administration which occurs throughout the year. Changes have also been made to identify requirements of the Board's applications for examination and update for examination to ensure the most current information needed to process these applications is included in regulation.

Throughout the proposed language, reference and authority sections have been updated. General clean-up, such as grammatical corrections, reorganization, and edits for clarity have also been addressed. The Board's motion from its August 26, 2021 meeting to approve the proposed regulatory text and initiate the rulemaking process included authority delegated to the Executive Officer to make any non-substantive changes to the package. Based upon this authority, Board staff made some non-substantive changes technical in nature to the proposed text prior to submission to the Office of Administrative Law.

Below is a summary and explanation of each amendment:

1399.409. Definitions.

This new proposed regulation provides definitions of commonly used terms within the entire article, including:

1. Foreign-trained applicant
2. Credential evaluation
3. Credential evaluation service
4. Transcript

Rationale:

By creating one regulation section that provides clear definitions of relevant commonly used terms, this creates consistency, context, and eases comprehension of each regulation that contains the term. Where appropriate, cross references are added.

1399.411. Certification of documentation.

The proposed amendments to this section breaks out the documentation and submission requirements by the education completed by the applicant: domestic versus foreign trained; and requires submission of domestic transcripts via mail as specified or via secure electronic submission as specified.

Rationale:

It is necessary to separately identify the documentation and submission requirements for domestic versus foreign trained since there are different standards set by law, i.e. BPC section 4939.

Requiring that domestic educated applicants submit original transcripts directly from the program is a way to ensure the authenticity of the document and mitigates efforts of fraud and tampering. The regulation needs to allow for electronic submission in a secure fashion since most programs are transitioning to this process. Additionally, as technology advances, the Board needs discretion on what is acceptable for electronic submission of transcripts. This is expected to be handled on a case-by-case basis until the accreditor or BPPE establishes general standards.

For new subsection (b), the proposal requires that submission of foreign transcripts come to the Board directly from the credential evaluation service.

Rationale:

The submission of original transcripts by the Board approved credential evaluation service is set by BPC section 4939 and so there was no discretion for the Board to deviate from this standard. The regulation references the proposed regulation Title 16 CCR section 1399.416.3, which sets out all of the requirements of a credential evaluation service when completing an evaluation for submission to the Board.

1399.413. Application for Licensing Examination.

The title of this section is being amended to more clearly describe its purpose.

Subsection (a) identifies the requirements of an application for the licensing examination and establishes new application requirements for all applicants.

Rationale:

Historically, the Board has not had an application for licensing examination incorporated by reference in regulation, nor were all of the requirements of this process in regulation. It is necessary the Board put forth all requirements for applying for the licensing examination. These requirements are:

(1) Applicant's full legal name

Rationale:

Official documents contain an applicant's legal name and therefore having the applicant's full legal name is necessary for cross referencing and identification.

(2) Other name(s) applicant has used or has been known by

Rationale:

Many individuals may choose to practice under a name that is not their full legal name or may have been licensed elsewhere under a different name. Therefore, providing other names by which the applicant may be known is required for identification purposes to account for some individuals having documentation that displays previous names or for individuals who have AKAs ("also known as") that differ from their legal name.

(3) Applicant's physical address

Rationale:

An applicant's address is required for contact information. Additionally, having a physical location for each applicant will be necessary should future enforcement action need to be taken on the licensee, e.g. serving administrative subpoenas or disciplinary documents.

(4) Applicant's mailing address which may include a post office box number or other alternate address

Rationale:

BPC section 27 and CCR section 1399.406 requires providing a valid address for each applicant which will become their address of record if licensed. Per BPC section 27, alternate addresses and PO boxes are permitted in lieu of an

applicant's home address. It is this address that will be publicly available should the applicant be licensed.

(5) Email address, if any

Rationale:

Email is the most convenient and effective method for written communication to the applicant and is required for managing their online account through the Board's Licensing system. Email is the preferred mode of communication for the Board. Email accounts may be obtained for free and most individuals applying for licensure have email accounts. Access to email may be from personal computers or smart phones, or for free from local libraries.

(6) Applicant's telephone number

Rationale:

An applicant's telephone number is required for verbal communication and a more immediate mode of contact with applicants. This faster method of communication may save an applicant time in learning of and curing deficiencies in the application, which may save time in reaching an approval of the application. This in turn may allow the applicant to sit for examination sooner, meaning that they could become licensed more quickly.

(7) Applicant's Social Security Number or Individual Taxpayer Identification Number

Rationale:

This number is required to be collected pursuant to section 30 and 494.5 of the Code and Pub. L 94-455 (42 U.S.C.A. § 405(c)(2)(C)), and will be used exclusively for identification, tax enforcement purposes or compliance with any judgment or order for family support in accordance with Section 17520 of the Family Code.

(8) Applicant's birthdate

Rationale:

An applicant's birthdate is required for identification purposes and necessary for linking to the applicants fingerprint results.

(9) Examination language preference

Rationale:

CCR section 1399.441 requires applicants to inform the Board of an applicant's language preference for the exam.

(10) Color copy of a U.S. state or federal government issued picture identification

Rationale:

A color copy of a U.S. state or federal government issued picture identification is necessary for identification purposes. Board staff uploads and sends the picture ID to the testing center to verify the applicant taking the exam is the correct person, assisting with fraud prevention.

(11) For applicants who have completed an approved educational and training program as defined in Section 4927.5 of the Code, provide:

(A) the name and location of each school or college where acupuncture education and training was obtained, including any higher education, undergraduate education, and education for which transfer credit was later awarded by another acupuncture school or college, if applicable; and,

(B) the dates of attendance for each approved educational and training program; and,

(C) the documentation required by section 1399.416(a), provided to the Board in the manner prescribed by section 1399.411.

Rationale:

BPC section 4944 and CCR section 1399.414 subsection (b) requires the above information for the Board to determine if an applicant has completed the required coursework to approve the applicant for the exam. BPC section 4938 subsection (a) (2) (A) (i) requires a person eligible for acupuncture licensure to complete an approved educational and training program. Proper documentation of an applicant's education and training is necessary to determine eligibility for the licensing exam.

(12) For foreign-trained applicants, provide:

(A) a list of the name(s) and address(es) of schools where acupuncture or Asian medicine education was obtained,

(B) the dates of attendance for each school,

(C) certified transcripts from each school for each educational program completed and provided to the Board in the manner prescribed by section 1399.411; and,

(D) the results of an evaluation of the applicant's education from a credential evaluation service provided directly to the Board by the service as prescribed by Section 1399.416.3.

Rationale:

Similar to the review of training within the United States, this subsection provides for review of foreign-trained applicants. BPC section 4944 and CCR section 1399.414 subsection (b) requires sufficient information for

the Board to determine if an applicant has completed the required coursework to approve the applicant for the exam. BPC section 4938 subsection (C) requires a person eligible for acupuncture licensure who completed their education and training outside of the United States to complete education and training comparable to the coursework required under CCR section 1399.434. Proper documentation of an applicant's education and training is necessary to determine exam eligibility and that the applicant's training and clinical experience meets the standards established pursuant to BPC sections 4939 and 4941.

(13) For applicants who completed a tutorial program approved by the Board pursuant to section 1399.425, provide tutorial program start and completion date(s).

Rationale:

BPC section 4944 and CCR section 1399.414 subsection (b) requires sufficient information for the Board to determine if an applicant has completed the required coursework to schedule or approve the applicant for the exam. BPC section 4938 subsection (B) requires a person eligible for acupuncture licensure to complete a Board approved tutorial program. Proper documentation of an applicant's education and training is necessary to determine exam eligibility.

(14) A list of any other acupuncture or healing arts license or certification in any jurisdiction, including any state, agency of the federal government or country, and providing the type of license, license number, date of issuance, and dates of practice.

Rationale:

Other related licensure or certification status and history are relevant for Board staff to evaluate to determine if the applicant has any prior discipline or acts substantially related to the qualifications, functions, or duties of an acupuncturist that may warrant the denial of a license. Under the authority of BPC section 4944, the Board may investigate applicants to make the final determination for the issuance of a license.

(15) A statement signed under penalty of perjury by the applicant that all statements made in the application are true and correct.

Rationale:

It is necessary to require an applicant to attest to the truth and correctness of each of the statements made on any official application to the Board. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board relies upon applicants' self-reported information in evaluating applications. If Board staff discover an omission or misstatement, then the applicant's signature under penalty of perjury can be used in an

administrative disciplinary case against the licensee. This provides public protection.

Subsection (b) identifies the requirements of an application for re-examination and establishes new re-examination requirements for all applicants who request to re-take the examination.

The Application Update for Examination/Licensure that is currently incorporated by reference in regulation is outdated and has not been updated in regulation since 1996. Since that time, there have been many changes to laws and regulations, as well as the application procedures and necessary information. Instead of incorporating a new and updated form in regulation, the Board chose to go the route of identifying all of the application requirements for applying for re-examination in the regulatory text and delete the form itself. It is necessary the Board put forth all requirements for re-applying for the licensing examination. These requirements are:

(1) Applicant's full legal name

Rationale:

As in the initial application for examination, described above, the applicant's full legal name is necessary for identification purposes. In addition, there may have been a legal name change since applicant last applied for the exam, so capturing the applicant's current legal name is necessary.

(2) Applicant's Examination ID Number

Rationale:

This number is necessary for identification purposes to cross reference with the applicant's prior application account in the Board's computer system.

(3) Applicant's current mailing address, if different than previously supplied

Rationale:

As in the initial application for examination, described above, the applicant's address is necessary pursuant to BPC section 27 and CCR section 1399.406.

(4) Applicant's email address, if any

Rationale:

As in the initial application for examination, described above, a current email address (which may have changed since the initial application) is necessary for effective communication.

(5) Applicant's telephone number

Rationale:

As in the initial application for examination, described above, a current telephone number (which may have changed since the initial application) is necessary for effective communication.

(6) Examination language preference

Rationale:

As in the initial application for examination, described above, CCR section 1399.441 requires an applicant to inform the Board of an applicant's language preference for the exam. It is necessary for the applicant to re-state their language preference in case it has changed from their prior application.

(7) A statement signed under penalty of perjury by the applicant that all statements made in the application are true and correct.

Rationale:

As in the initial application for examination, described above, it is necessary to require an applicant to attest to the truth and correctness of each of the statements made on any official application to the Board.

Additionally, under the Note, Authority and Reference sections are being updated as appropriate.

1399.414. Request for re-evaluation of denial of application to take licensing exam; Approval to Test.

This section title is being amended to better describe its purpose.

Subsection (a) adds text to specify the application is for applying for the exam for more specificity and clarity. The amendments identify the Board's response time to an applicant's request for denial to take the licensing examination so there is transparency in the process for the applicant's benefit.

Subsection (b) identifies the qualifications for licensure an applicant is required to complete to be approved to take the examination. Only paragraphs (1), (2), and (5) of BPC section 4938 are identified because they are the only qualifications for licensure that can be met prior to getting approved to take the exam. The word "approve" is proposed instead of "schedule" since the Board no longer schedules the applicant for the exam and only can approve an applicant for the exam. Scheduling is now delegated to the testing sites where the applicant chooses to go.

Subsection (c) makes a grammatical correction to the erroneous text that reads "constructed to deprive." For accuracy and clarity, the text is being changed to "construed to deny."

1399.416. Equivalent Educational Training and Clinical Experience Qualifying for

Licensure.

This section sets forth the specific requirements how an applicant documents they have met the curriculum requirements to qualify for licensure under BPC section 4938. This proposal breaks the section into subsections for better organization and clarity.

Subsection (a):

1. Removes the unnecessary preface in the first line of text.
2. Specifies that the documentation requirements in this subsection apply to applicants who have completed an educational and training program versus a foreign-trained applicant. By enacting BPC section 4939, the Legislature has intended for there to be a separate application process for applicants based on the pathway for which they are eligible for licensure. Therefore, the documentation requirements need to clearly be set out for each pathway.
3. Removes reference to CCR section 1399.436 since this section was repealed in 2017 with the enactment of Chapter 397, Statutes of 2014 (SB 1246).
4. Identifies specific documentation that is required for licensure that may not be completed at the school offering the educational and training program, and therefore, would not show up on the applicant's transcript. It is authorized for CPR to be taken from the American Red Cross, American Heart Association, or other organization pursuant to CCR section 1399.434 subsection (f) paragraph (3). Board staff regularly evaluate completion of this coursework requirement by a CPR card or certificate of completion from a provider certified by the above listed organizations. Additionally, if a school does not offer its own clean needle technique (CNT) course, many schools refer students to the Council of Colleges of Acupuncture and Herbal Medicine to complete their CNT coursework requirement. In this case, the course would not show up on a transcript and would be in the form of a CNT course certificate that is accepted by the Board. In the Board's experience, transcripts usually do not include these course requirements, and they are completed through later, separate course work where they receive certificates of completion that are not reflected on the transcript. These provisions make it clear what the Board will accept as part of the requirements for completion per 16 CCR 1399.434.
5. Adds clinical experience to the documentation requirement for foreign-trained applicants to explicitly include the clinical experience in addition to the education required by the curriculum requirements pursuant to CCR section 1399.434. Without calling this out, the regulation is vague on the documentation requirement for education. The specificity helps with clarity.
6. Removes the reference to the credential evaluation service being a member of the National Association of Credentials Evaluation Services, Inc. (NACES)

and adds that the credential evaluation service be Board-approved. This change was necessary based upon the statutory change of BPC section 4939 that requires that foreign-trained applicants utilize a Board-approved credential evaluation service to evaluate any education and training completed outside of the United States. A course-by-course evaluation is also specified because Section 4939 subsection (d) paragraph (8) indicates that each evaluation contain an English translation of each course title and the semester unit equivalence. Section 4939 also authorizes the Board to approve credential evaluation services while providing an application process.

7. References new CCR section 1399.416.4, which is relevant because it establishes the requirements and documentation for an applicant organization to become a Board approved credential evaluation service.
8. Specifies that all foreign-trained applicants must have successfully completed equivalent coursework to the coursework required of applicants from board-approved educational and training programs in section 1399.434. Adding this clarifying statement is necessary after the regulation was divided up into subsections and separate requirements for applicants based on their education and training pathway. Previously, CCR section 1399.416 required that all applicants (despite where their education was obtained) document education and experience that meets the requirements of CCR sections 1399.436 and 1399.434. Reference to CCR section 1399.436 has been removed since this section was repealed. The new regulatory text does not substantively change any prior legal requirement, but only clarifies that this standard applies to both domestic-trained and foreign-trained applicants in a more organized fashion.

1399.416.2 Foreign-Trained Applicant Equivalent Training and Clinical Experience Qualifying for Licensure; Processing and Remediation.

This is a new proposed regulation section.

Subsection (a) establishes the Board's procedures for reviewing the results of a credential evaluation once received from a credential evaluation service for the evaluation of a foreign-trained applicant. BPC section 4939 subsection (c) mandates that the Board examine the results of each applicant's credential evaluation to determine examination eligibility. This new subsection identifies the standards for this process, which is necessary for transparency with the applicant and so there is standardization across the applicants. This subsection also provides that the Board shall notify the applicant in writing if they have met the experience requirements, which means via written mail or email to allow for flexibility in communication and technological accessibility.

Subsection (a) also establishes the Board's procedures and process for a foreign-trained applicant if their education is determined to not meet the curriculum

requirements set forth in CCR section 1399.434. BPC section 4939 subsection (c) provides that the Board may offer an applicant additional education, training, or standardized testing to satisfy the educational requirements. The new section further interprets this authority by specifying the option for an applicant to complete any missing coursework within 180 days after written notice that the applicant does not meet the educational requirements. Specifying 180 days to complete missing coursework was determined based upon existing CCR section 1399.417 subsection (a) paragraph (1) which identifies an application is deemed abandoned if an applicant fails to complete their application within 180 days. The section provides a clear process for when this scenario arises. This subsection also provides that the Board shall notify the applicant in writing if the applicant is missing courses or training, which means via written mail or email to allow for flexibility in communication and technological accessibility.

Subsection (b) establishes the requirements and procedures for a foreign-trained applicant to complete missing courses for the completion of their education and training. This is necessary to ensure public protection while enabling applicants to continue towards licensure. Three separate pathways are provided for applicants with missing coursework to fulfill the missing requirement(s). A technical, grammatical change for consistency was made to add “or” after option 1 so it is clear that an applicant need only complete missing coursework from one of the three pathways. Each pathway is distinct from the other. Although, approved educational and training programs are also at private institutions that meet the qualifications under the second pathway as well. This second pathway is included to cover coursework taken at a private institution that is equivalent to coursework required by an approved educational and training program.

The first pathway provides that an applicant complete missing coursework from an educational institution with an approved acupuncture educational and training program that offers coursework in compliance with CCR section 1399.434. A technical correction for consistency removed the word “Board” from approved acupuncture educational and training program from the adopted language as it is consistent with Business and Professions Code section 4927.5 terminology. This pathway would address applicants missing California-approved coursework, generally more related to Asian Medicine, clinical hours, and herbs.

The second pathway allows for coursework to be taken at a private institution of higher education accredited by an accrediting agency recognized by the United States Department of Education and approved by the Bureau for Private Postsecondary Education. This is a broad population of institutions where other basic science coursework required by CCR section 1399.434 can be taken.

The third pathway allows for coursework to be taken at any private institution of higher education as defined by Education Code section 66010. This includes community colleges and California State Universities. Again, this would allow applicants to take some basic science courses required by CCR section 1399.434.

Subsection (c) sets forth the process for an applicant to demonstrate or document satisfactory completion of the missing coursework after it has been completed. This subsection refers to the documentation standards and process established by CCR section 1399.411 so the documentation standards are consistent for applicants providing proof of education and training initially and for missing coursework later on.

1399.416.3 Credential Evaluations by Evaluation Services of Foreign Education Requirements.

This new regulation section sets forth the requirements for an evaluation provided to the Board by a Board-approved credential evaluation service. Additionally, it provides the procedures expected of a Board-approved credential evaluation service.

Subsection (a) requires the evaluator to provide original evaluations to the Board for examination to strengthen the authentication process. Section 4939 of BPC requires that all evaluations be provided in English. Requiring that the evaluations come to the Board via first class mail or priority mail is a step in reducing fraudulent activity to reduce tampering and meets industry standards observed.

Subsection (b) provides that evaluations shall be based upon the applicant's original transcripts and degrees. Requiring that the evaluation process include original records is necessary to reduce any fraudulent activity. A statement from the evaluator affirming evaluations are based upon the applicant's original transcripts and degrees is required by BPC section 4939 subsection (d) paragraph (5).

Subsections (c), (d), (e), and (f) rephrase the provisions of BPC section 4939 subsection (d) paragraphs (7) and (8) for clarity so the evaluator understands the Board's expectations of the evaluator and the mandates placed upon the evaluator.

Subsection (g) states that the requirement of submitting an applicant's original transcripts and degrees to the Board falls on the evaluator. This is included in this new regulation focused on Board-approved evaluators for clarity and to cross reference with CCR section 1399.411 subsection (b) which also sets this requirement of foreign-trained applicants.

Subsection (h) requires the name or names of the applicant as shown on their transcript as well as the name under which the applicant requested the evaluation for identification purposes. The evaluation will need to be matched with the applicant's application for examination where they are also required to provide current and any previous name(s) they used during their education and training. Including this requirement is necessary for identification purposes.

Subsection (i) is included because there is a connection with the Board once an evaluator receives Board approval. It is necessary that this affiliation not be misconstrued as a stamp of approval or assurance of acceptance to the Board exam on behalf of the Board. In addition, the Board needs to manage the messages the evaluator is providing to the applicant through this process. Therefore, the Board found

it necessary that each evaluation provided to an applicant by a Board-approved credential evaluation service contain a disclaimer that the evaluator is not authorized by the Board to opine on whether coursework will be approved by the Board or make them eligible for the exam or licensure. Such a requirement is a way to protect the consumer, namely applicants, so they do not fall prey to misinformation or false assurances regarding their exam/licensure eligibility.

1399.416.4 Requirements for Approval and Renewal of Credential Evaluation Services of Foreign Education; Process for Denial or Revocation of Service Approvals; Appeal Procedures.

This proposed new regulation establishes the requirements and documentation for an application to become a Board-approved credential evaluation service.

Subsection (a) requires the evaluator (Service) complete an application required by the Board to become Board approved. By having a standardized application process, the Board can use set criteria to determine credible evaluators.

Subsection (b) sets forth all of the requirements of a complete application from an evaluator to receive Board approval.

Paragraph (1) requires all of the basic identifying information of the organization applying with the Board be disclosed on the application. It also lists all of the different contact information to be provided to the Board to allow for communication with the evaluator. A primary contact person must be provided so there is one person established for communication, which is necessary for consistent messaging.

Paragraph (2) restates the requirement from BPC section 4939 subsection (d) paragraph (11) subparagraph (A) for clarity. It's necessary that all the requirements of the application process be itemized for the evaluator.

Paragraph (3) restates the requirement from BPC section 4939 subsection (d) paragraph (11) subparagraph (B) for clarity. It's necessary that all the requirements of the application process be itemized for the evaluator.

Paragraph (4) requires a written affirmation from the credential evaluation service at the time of application that they meet the specified qualifications of a Board approved credential evaluation service. A statement from the evaluator affirming evaluations are based upon the applicant's original transcripts and degrees is a way to ensure the mandate of BPC section 4939 subsection (d) paragraph (5) is understood and will be carried out by the evaluator.

Paragraph (5) addresses the requirement from BPC section 4939 subsection (d) paragraph (10). It requires the evaluator applicant disclose three accredited schools or licensing agencies that utilize the evaluator's services. A contact person at each institution must also be provided for checking such references. Having access to other schools and agencies who have used the evaluator in the past provides greater assurance that the evaluator is credible.

Paragraph (6) also implements the requirement from BPC section 4939 subsection (d) paragraph (10). The statutory mandate for the application process for evaluators is included as a regulatory requirement.

Paragraph (7) requires that all evaluators applying for Board approval provide three sample evaluations for the Board's review. This requirement was included to aid the Board in its evaluation of each evaluation service. Sample evaluations provide an idea of the type of product the Board can expect to receive from that organization, and three is deemed a sufficient number to avoid outliers.

Paragraph (8), subparagraphs (A) and (B) implement the statutory requirements from BPC section 4939 subsection (d) paragraphs (2) and (4).

Paragraph (8), subparagraph (C) requires the evaluator to affirm they agree to follow a six (6) year retention policy of all documents. The regulation allows the evaluator to make such a policy change or implementation up to 30 days after Board approval. In the Board's experience, 30 days is a reasonable amount of time for an organization to put a new policy into practice. The regulation identifies that all documents be retained for six years based upon the time it can take the Board from complaint receipt to discipline of a license for an allegation involving fraud with a licensee's education, transcript, or evaluation of those records. These types of cases are more egregious and complex. They often involve foreign governments, institutions (domestic and international), witnesses, and various verification methods that can take more time than the average enforcement case for the Board. It is necessary that the relevant documents related to the allegation of fraud be retained for a period of time that will allow the Board to conduct its investigation.

Subsection (c) details the additional information required with an application.

Paragraph (1) requires all evaluator applicants to furnish their current written procedure for how fraudulent transcripts are identified and statement certifying compliance with said procedures. This is included as a requirement of the application process for the implementation of BPC section 4939 subsection (d) paragraph (6).

Paragraph (2) is included as a requirement of the application process for the implementation of BPC section 4939 subsection (d) paragraph (9).

Paragraph (3) is included as a requirement of the application process for implementation of BPC section 4939 subsection (d) paragraph (10) related to the required inclusion of three letters of reference from both public and private agencies.

Paragraph (4) is included as a requirement of the application process for implementation of BPC section 4939 subsection (d) paragraph (10) related to the required inclusion of statistical information on the number of applications processed, annually, for the past five years.

Subsection (d) requires all Board-approved evaluators to submit notification to the Board within 60 days of any changes to the information previously provided to the

Board. This allows the Board to stay current on contact information, policy changes, and other organization changes that could affect approval of the evaluator. Sixty (60) days is seen as a reasonable amount of time for the Service to make and inform the Board of changes.

Subsection (e) sets forth the term of approval for a credential evaluation service and establishes a renewal process that will involve a reevaluation, which is required by BPC section 4939 subsection (d) paragraph (3).

Subsection (f) requires a Board-approved credential evaluation service to respond within 30 days of receipt of a Board inquiry or investigation to retain Board approval. This requirement was included to provide the Board some leverage in receiving timely responses to matters of importance that may affect the eligibility of an applicant for examination or licensure. It also provides the Board authority in requiring that a Board-approved credential evaluation service cooperate in an investigation. The Board is reliant on the Service's evaluation of applicants' education and credentials so ensuring their cooperation is key. In the Board's experience, 30 days is sufficient to receive, research, and respond to a request for information.

Subsection (g) establishes grounds for revocation of Board approval of a credential evaluation service. Providing authority to revoke a Board-approved credential evaluation service is important in the event there is cause. The Board does not want an applicant to utilize the services of an unreputable evaluator as the applicant could potentially cause consumer harm as a licensee. This was included for public protection and necessary enforcement.

Subsection (h) establishes the Board's notice requirements when the approval of a credential evaluation service is denied or revoked. It is necessary to provide proper notice during a disciplinary process for entities who have Board-approval, similar to licensure, registration, or certification. These notice requirements provide due process.

Subsection (i) establishes the appeal process for credential evaluation services when a Board provides notice of revocation or denial of approval. It is necessary to provide an appeal process for a Service if the Board revokes or denies approval. Providing due process is standard in any disciplinary matter or disapproval from a licensing and regulatory agency.

Subsection (j) provides for closure. It would be unnecessary to hold an informal hearing should the matter resolve.

1399.417. Abandonment of Applications.

Proposed amendments to this section add numerical descriptors after numbers one through ten which is consistent with Board practice. This existing section identifies the circumstances in which the Board considers an applicant's application for the examination abandoned and indicates that an application submitted after the abandonment period shall be treated as a new application for examination.

Subsection (a) paragraph (2) is amended to identify the procedure in which an applicant can request their eligibility for re-examination be extended for one year upon “good cause” after the failure of an examination. One year is being identified as opposed to previously stating the applicant can extend eligibility for two more consecutive administrations of the examination because the examination is no longer offered only twice a year. Due to the Board’s change to computer-based testing, applicants approved for the exam may request to re-take the exam upon notification of failure to pass. Additionally, there is no substantive change by specifying one year since it is the same duration of time as previously provided where two administrations of the exam were required to be offered per year; however, it is stated in different terms.

Subsection (a) paragraph (3) is amended to allow extension of exam eligibility for one year upon written explanation to the Board when an applicant who fails the examination fails to reapply for examination. One year is being identified as opposed to previously stating the applicant can extend eligibility for two more consecutive administrations of the examination because the examination is no longer offered only twice a year. Due to the Board’s change to computer-based testing, the exam is offered based upon the frequency requested by the applicant. Additionally, there is no substantive change by specifying one year since it is the same duration of time as previously provided where two administrations of the exam were required to be offered per year; however, it is stated in different terms. The subsection is also amended to require that good cause be established for the Board to approve a request for extension of exam eligibility to make the criteria and process similar to the extension request under paragraph (2).

Subsection (c) is amended to specify that an application submitted after the abandonment of a former application for licensure will require the applicant to not just take and pass the exam again, but also qualify for the exam since it is treated as a new application.

The proposed addition of subsection (d) establishes the criteria and documentation requirements for establishing what constitutes “good cause” when an applicant requests the extension of their examination eligibility. It is necessary to provide the Board with criteria for making determinations in evaluating eligibility extensions. This creates standards for this process so decisions are not made arbitrarily. The reasons for good cause that are included under this subsection are based upon common reasons the Board has a history of receiving and other reasons recognized by other boards and bureaus during similar waiver and extension requests. Proper documentation of each reason is identified to reduce any false or fraudulent requests. Documentation is not required for natural disasters, however, as these would be verifiable by Board staff.

1399.419. Review and Processing of Licensing Examination Applications; Requirements for Licensure.

This regulatory proposal amends section title to better describe its purpose.

Existing subsection (a) contains some technical cleanup for better understanding. The

terms “approved” is used in place of “accepted for filing” as this better describes the action the Board is taking in this context.

Existing subsection (b) identifies the timeframe in which the Board notifies applicants if their application for examination is complete and are eligible to take the examination (within 45 days of receipt of an application or completed application). The subsection is amended to specify the timeframe for notice for domestic trained applicants and provide technical cleanup of these provisions for better readability.

A proposed newly added subsection (c) establishes a new timeframe in which the Board notifies foreign-trained applicants of their examination eligibility, which is within 90 days of receipt of a completed application. The process time is doubled for evaluation of foreign-trained applicants versus domestic-trained applicants given the complexity in verifying education taken outside of approved educational and training programs.

Current subsection (c) is renumbered to subsection (d), which provides the timeframe in which the Board notifies applicants of their results of the examination. In addition to the Board providing notice of an applicant’s results, “or its designee” was added to include notice received from a contracted service that administers the licensing exam on behalf of the Board.

The requirements from BPC section 4938 for obtaining a license after passing the exam are identified and reorganized into separate paragraphs for clarity and readability.

These proposed amendments remove the current subsection (d)’s minimum, median, and maximum notification timeframes for notification of examination results as those processing times have been discontinued with the onset of computer-based testing.

In current subsection (e), the existing authority allowing the Board to deny applications for applicants deemed not physically or mentally fit to safely practice acupuncture has been edited slightly for clarity.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

- Assembly Bill 2190, Chapter 667, Statutes of 2016.
- Meeting materials and Minutes of the Acupuncture Board’s August 26, 2021 meeting.

Business Impact

These regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/ documents/ testimony:

The Board presently works with approximately six National Association of Credential Evaluation Services (NACES) approved credential evaluation services who would likely

be directly affected by this proposal if they apply for Board approval. However, there are currently 19 NACES recognized credential evaluation services open to apply for Board approval. It is estimated that the Board will receive, on average, one new credential evaluation service applicant in any given year. It is anticipated the approved services will remain static year to year after the initial application period. Entities that provide credential evaluation services would not experience a significant financial burden in completing the application and complying with the proposed regulations, CCR sections 1399.411, 1399.416.3 and 1399.416.4, since service applicants are only required to comply with NACES standards, Board requirements that mostly correspond with industry standards, and complete a Board application that does not require a fee. Costs associated with the service evaluation reports complying with the Board's requirements, including a single disclaimer, provided to acupuncture license candidates and statistical reporting should not increase costs for the organizations. Any potential adverse economic impact would only occur if a credential evaluation service failed or refused to meet minimum standards and their approval was withdrawn. Given the anticipated low volume of credential evaluation services to apply and the level and number of the changes proposed, no "significant" adverse impact is expected.

The amendments to CCR sections 1399.409, 1399.413, 1399.414, 1399.416, 1399.417, and 1399.419 would affect exam applicants. In fiscal year 2019 – 2020 the Board received 296 exam applications. In fiscal year 2020 – 2021 the Board received 319 exam applications. On average, annually these regulations will affect this population of 300 individuals, including domestic and foreign-trained applicants. The Board also receives on average 65 applications for re-examination annually, those of which will be affected by the amendments to CCR section 1399.413 specific to the application for re-examination. CCR section 1399.416.2 strictly affects foreign-trained applicants, which on average the Board receives 11 applications annually from foreign-trained applicants. However, the standards are the same for each of these regulations that the Board has been using for all licensee applicants who began their education and training since 2005; therefore, this will have the same impact that it currently has on examination applicants. Additionally, the amendments to these regulatory sections are achieving clarity in the procedures and policies more so than creating new standards. The Board currently follows these procedures and communicates these requirements to applicants.

The amendments to CCR Section 1399.411 would also affect an approved educational and training program; however, no business impact is forecasted based upon the documentation requirements being the same as what has been in practice for the Board. The amendments are providing clear and transparent protocols for the submission of documentation of required education and training for applicants organized by domestic-trained and foreign-trained applicants.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It is estimated that it will not create or eliminate jobs within the State of California because the proposed changes to CCR sections 1399.411, 1399.416.3 and 1399.416.4 affect approximately six credential evaluation services with whom the Board currently works, which are not sufficient to create or eliminate jobs or businesses.
- CCR section 1399.411 also affects Board approved educational and training programs. However, it is estimated that it will not create or eliminate jobs within the State of California for these programs as the regulation is simply providing clarity on the documentation process and requirements when submitting proof of education and training to the Board. The requirements are already being met by Board approved educational and training programs. These amendments will also not create new business or eliminate existing businesses, nor will they affect the expansion of businesses for all of the same reasons mentioned above.
- It is estimated that it will not create or eliminate jobs within the State of California because the proposed changes to CCR sections 1399.409, 1399.413, 1399.414, 1399.416, 1399.417, and 1399.419 only establish clarity with the exam application process and requirements, and are, therefore, not creating any new procedures or policy. Examination applicants are already following the processes and requirements that are being added for clarity and consistency purposes. The regulatory amendments to these sections are also not estimated to create new business or eliminate existing businesses within the State of California, nor will they affect the expansion of businesses for the same reasons mentioned above.
- It will not create new businesses or eliminate existing businesses within the State of California because the proposed changes will not be of sufficient magnitude to have the effect of creating or eliminating businesses. The additions or amendments to sections 1399.416.3 and 1399.416.4 only affect a limited number of credential evaluation services in this State and will have no adverse impact to a service who provides truthful, accurate, complete, and timely information to the Board.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed changes will not be of sufficient magnitude to have the effect of creating or eliminating businesses.
- This regulatory proposal benefits the health and welfare of California residents because it will help ensure that the Board's minimum standards for education

and training are met by foreign-trained acupuncture candidates. The Board will be better able to meet its obligation to protect the consumers of California as a result of these proposed regulations since only a credential evaluation service who meets these new minimum standards will be authorized to provide evaluation reports for consideration of an acupuncture candidate's eligibility by the Board. Setting minimum standards for licensure helps protect the public by helping ensure that only qualified applicants practice acupuncture.

- The other portions of this regulatory proposal affecting domestic-trained applicants and Board approved educational and training programs benefits the health and welfare of California residents. It achieves this by creating clear, consistent, and standardized processes and requirements for the examination application process and documentation submission to the Board. By having clear and stringent requirements, all applicants and schools are held to a single standard that reduces fraudulent activity and ensures that only qualified applicants practice acupuncture.
- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The Board has initially determined that no reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulations in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

- The only alternative considered was to maintain the status quo. The Board rejected this alternative because not putting forth regulations would put the Board out of compliance with BPC section 4939. Additionally, it would not improve the ability of the Board to maintain sufficient oversight on the credential evaluation

services to ensure improved protection of California consumers.