

Explanation of Change Without Regulatory Effect

Acupuncture Board
WRITTEN STATEMENT

SECTION 100 - CHANGES WITHOUT REGULATORY EFFECT

Title 16, California Code of Regulations

Subject Matter of Proposed

Regulatory Revisions: Amend Fee Regulations to Comply with Statute.

Sections Affected: Amend Sections 1399.460, 1399.461, and 1399.462;

Statutory Effective Date: January 1, 2021.

Pursuant to Title 1, Division 1, Chapter 1, Article 2, section 100(b)(3), of the California Code of Regulations (CCR), the Acupuncture Board (Board) submits this written statement explaining why the proposed amendments to the above listed sections of Article 6, of Division 13.7 of Title 16 of the CCR do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

The Board proposes the following non-substantive amendments due to changes required by Assembly Bill 3330 (Calderon, Chapter 359, Statutes of 2020) (AB 3330), Assembly Bill 779 (Low, Chapter 308, Statutes of 2019) (AB 779), and Senate Bill 1246 (Lieu, Chapter 397, Statutes of 2014) (SB 1246).

Per the legislation's language in AB 779, these amendments to the statute become effective on January 1, 2021, and SB 1246 took effect January 1, 2017. The amendments, noted below, are changes without regulatory effect because they make a regulation consistent with a changed California statute, as the current regulatory provision is inconsistent with and superseded by the changed statute. (1 CCR 100 (a)(6).)

Here, it is important to note that each of the relevant revisions to these regulations are mandated by statute. Because the Board shall charge each of these fees, the Board has no discretion but to charge at least the minimum amounts mandated in each statute for each fee. These regulatory revisions will comply with statute.

1. Amend section 1399.460 – Fees.

- Update fee amounts for consistency with the statutorily mandated fees established by AB 3330. Where the bill changes a fee, amend the corresponding subsection by raising the fee from the prior fee to the new statutorily mandated fee to align the regulation text with the minimum fee set by the statute. There is no discretion to set these fees to anything but these specific amounts, as the statute states these fees “shall” be set to specified amounts. Further, the statute states these fees “may” be increased to a specified maximum (or any between the minimum and maximum amount), although doing so will require the discretion of the Board to determine the proper amount of the increased fee and then Board action to set the fee to that amount.

Where the bill changes a fee within the Acupuncture Licensure Act (Act), the intention of the Legislature by using the word "shall" (for the minimum amount) sets these fees at the specific amount that the Legislature determined the Board will require to avoid insolvency through a change of fees in legislation. If the Board applied discretion in setting higher fees than the statutory minimums, a fee study would be required and relied upon, by the Board, and a standardized APA rulemaking would also be required. Conversely, there is no discretionary language in the relevant statute (AB 3330), which states these fees "may" be increased if the Board chose to set the fees higher than the minimum, but the amount cannot exceed the specified maximum set by the Legislature. Accordingly, the Board only seeks to implement the non-discretionary, statutorily mandated, minimum fees required by the statute to avoid insolvency, thus allowing the Board to utilize the section 100 rulemaking methodology sought herein.

- Amend subsection (a) by raising the application fee from \$75 to \$250 to align the regulation text with the minimum, mandatory, fee set by the statute. The legislative analysis prepared by the Assembly Committee on Business and Professions, dated August 9, 2020, for AB 3330 (hereafter B & P Committee Analysis) (See Attachment B), indicates that the bill increases the application fee from \$75 to \$250 in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount of \$350. The Board only seeks to implement the non-discretionary, statutorily mandated, minimum fee required in the statute by AB 3330.
- Amend subsection (b) and add an application fee for foreign applicants to align the regulation text with the non-discretionary, statutorily mandated, minimum foreign applicant fee established by AB 3330. The B & P Committee Analysis indicates that the bill establishes the foreign applicant fee at \$350, in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount of \$500. The Board only seeks to implement the non-discretionary, statutorily mandated, minimum fee mandated by the statute.
- Revise subsection letter and amend subsection (c) by raising the examination and reexamination fee from \$550 to \$800 to align the regulation text with the statutorily mandated fee set by the statute. The B & P Committee Analysis states that the bill sets the examination and reexamination fee at \$800 in absolute terms instead of the actual cost to the Board.
- Revise subsection lettering and amend subsection (d) to "renumber" the existing fee chart to make consistent with the new initial license fee that has been increased (by the Legislature) from \$325 to \$500, since all of the prorated fees within the chart are based upon the initial license fee. Through the implementation of the birthdate renewal program, as mandated by BPC section 4965, the initial license fee for a newly licensed acupuncturist will vary depending upon the applicant's birth month and the date of the license initial licensure.

Each fee specified in subsection (d) is prorated from the initial license fee, based upon the term of the initial license period. Inasmuch as the fees specified in subsection (c) of 16 CCR 1399.460 are required by Business and Professions Code (BPC) sections 152.5 and 152.6 to be prorated from the initial license fee, the proposed amendment of subsection (d) is a "renumbering" of an existing fee chart to make it consistent with existing statutes and regulations. Accordingly, no

requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision is being materially altered.

Of note, the revisions made to this subsection, in 1996, were made through the use of a section 100 revision, as is being sought herein. (See Attachment A to this Statement to review OAL file no. 96-0419-01, wherein the initial license fee chart was last updated.) Accordingly, just as the Board updated the fee amounts within the initial license fee chart in 1996, as part of a Section 100 - Changes without Regulatory Effect rulemaking process, the Board now proposes updating the fee chart in the same manner. In 1996, the fee chart was amended and "renumbered" to the current numbers or fees, in regulation, due to a provision of AB 3427 (Assembly Committee on Governmental Efficiency and Consumer Protection, Chapter 1393, Statutes of 1990), which took an annual renewal process to a biennial renewal process, effective January 1, 1996. The fee chart that was updated to conform to the change in the statute was approved by the Office of Administrative Law (OAL), on June 3, 1996. The statutory authority for the initial license prorated fee chart is found in BPC sections 152.5, 152.6, 4965, 4970, and 4972. The relevant subsections of these laws are the same, today, as they were in 1996, with the exception of the raised initial license fee sought herein, when OAL approved the Section 100 changes implemented in 1996. (Please refer to Attachment A, described above.)

Since the bill and statute both increase the initial license fee, in the same manner as the prior law provided, it is necessary to raise the amount in the current 16 CCR 1399.460 (c) for consistency.

This section provides an equation, based on the prior statutory fee, in which the amounts have been updated using the same mathematical equation, $(\$500/24)(n)$, that was used, previously, based upon the prior statutory amount: initial license fee (\$500) divided by 24 months (two-year term), which equals \$21.

This equation determines what the initial license fee is, per month, when broken out for the purposes of prorating the initial license fee based on the length of the licensee's initial license period. The monthly fee is \$21. Then, this \$21 is multiplied by (n) months, which is the number of months that an initial license is current until it expires (initial licensure period). An initial license period runs from 13 to 24 months.

This mathematical equation is also based upon BPC section 4965, subdivisions (a) and (b), which the Board followed to create the numbers in the prior table to implement a birthdate renewal program to comply with this statute.

Importantly, there are no substantive issues in renumbering the amounts in this table, since the new statutorily required base number is used and the chart automatically populates in the same manner as it did, previously; it only uses the new mandatory statutory base rate as a starting number for the equation and table. The statutorily mandated base rate and new numbers in the table are non-discretionary and, therefore, do not require a Board vote, as they are required to implement the new base number provided in the statute as a matter of law.

- Revise subsection letter and amend subsection (e) by raising the biennial renewal fee from \$325 to \$500 to align the regulation text with the statutorily mandated minimum fee set by the statute. The B & P Committee Analysis states

that the bill increases the renewal fee from \$325 to \$500 in absolute terms, and the law further authorizes the Board to permissibly increase the fee up to the maximum amount of \$775. The Board only seeks to implement the, statutorily mandated, non-discretionary minimum fee authorized by the statute.

- Revise subsection letter from (e) to (f).
- Revise subsection letter and amend subsection (g) by raising the delinquency fee from \$25 to \$150 to align the regulation text with the delinquency fee designated by BPC 163.5. BPC section 4970 (f) states “the delinquency fee shall be set in accordance with BPC section 163.5.” BPC section 163.5 states the delinquency fee shall be 50 percent of the renewal fee for the license. In this case, 50 percent of the new renewal fee is \$250. However, BPC section 163.5 goes on to further cap the delinquency fee at \$150 and sets the minimum amount to no lower than \$25. Since the delinquency fee cannot be set by the rule of 50 percent of the renewal fee, by default, requiring no discretion, the delinquency fee proposed in this regulation is following the maximum fee rule set by BPC section 163.5.
- Repeal subsection (g) and remove the application fee for the approval of a school or college, as statutorily mandated by SB 1246. The subsection (f) of BPC section 4970 related to this fee was made inoperative on January 1, 2017, by SB 1246.
- Add subsections (h) and (i) to add new fees for the wall license and wall license biennial renewal fees for consistency with the statutorily mandated fees established by AB 3330. Both of these fees are set at one single amount, therefore, the fees are being aligned with the statute in compliance with BPC section 4972, so that all fees are identified in one section for convenience and ready availability to licensees, as has been Board practice. New fees for the wall license and wall license biennial renewal were added by AB 779, effective January 1, 2021.
- Add subsection (j) to identify the delinquency fee for a wall license, at \$25, to align the regulation text with the delinquency fee designated by BPC section 163.5. BPC section 4970 (f) states “the delinquency fee shall be set in accordance with BPC section 163.5.” BPC section 163.5 states the delinquency fee shall be 50 percent of the renewal fee for the license. In this case, 50 percent of the renewal fee is \$25. BPC section 163.5 goes on to further cap the delinquency fee at \$150 and sets the minimum amount to no lower than \$25. Since the delinquency fee cannot be set any lower than \$25 and is 50 percent of the renewal fee, by default, allowing no discretion, the wall license delinquency fee shall be \$25, in accordance with the BPC section 163.5 mandates.
- Revise subsection letter and amend subsection (k) to remove the word “duplicate” for consistency with the terminology changed to “replacement” wall license fee imposed by AB 779. The Board has no discretion to use the term “duplicate,” since AB 779 repealed the term effective January 1, 2021.

On June 5, 2019, the Senate made amendments to AB 779, specifying that a replacement wall license will only be provided if the original is lost or destroyed. It is this version of the bill where subsection (g) of BPC section 4970 was repealed, which stated “The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.” The Senate amended subsection (j) to read “If a wall license is lost or destroyed, the wall license replacement fee

is fifteen dollars (\$15).” Prior to AB 779’s operative date, AB 3330 changed this fee to \$50.

The reason the Senate repealed the duplicate wall license fee and put a wall license replacement fee into effect, instead, is because of the provisions under BPC section 4961 (e)(1) and (2), amended by AB 779, which state a wall license is nontransferable, and any change to the registered location in connection with the wall license, such as moving, requires that a new wall license be issued, and the former wall license shall be returned to the board with a request for cancellation. Therefore, a duplicate wall license would be in conflict with these new provisions had it not been removed. Being that there is no statutory authority to continue to charge a duplicate wall license, the term from subsection (j) is being removed and changed to “replacement” to conform to these changes.

- Amend subsection (k) to remove the word “engraved” when referring to the wall license to make the language consistent with the terminology used in authorizing statutes BPC sections 4961 and 4970. The Board does not use the term engraved and the term does not appear anywhere in the Acupuncture Licensure Act. Deletion of the term does not alter the rights or obligations of licensees.
- Revise subsection letter and amend subsection (l) to remove the word “duplicate” and term “renewal receipt” to make the language consistent with the terminology used in authorizing statute BPC section 4970, changed by AB 779. These terms were repealed by AB 779, effective January 1, 2021 and the change in terminology conforms to statute and does not alter the rights or obligations of licensees.

BPC section 4970 (g) stated the duplicate renewal receipt fee was \$10. On April 25, 2019, AB 779 was amended and under subsection (g) of BPC section 4970 the word “receipt” was replaced with “pocket license” to align with the terminology of pocket license used in BPC section 4961. The Assembly B & P Committee Bill Analysis, dated April 23, 2019, indicates amendments to the bill to clear up the confusion between a wall license, a place of practice registration, and a pocket card license by eliminating redundancies in the terminology.

- Further amendments made on June 5, 2019, repealed the original duplicate renewal receipt fee, altogether, and instead established a replacement pocket license fee identified in subsection (h). Because the “renewal receipt” term was removed and a duplicate renewal receipt fee was repealed from BPC section 4970, as part of AB 779’s final bill language, this term no longer exists in the statute authorizing the use of these terms. Proposed language removes “renewal receipt” and “duplicate” to conform to these changes and does not alter the rights or obligations of licensees.
- Revise subsection letter and amend subsection (m) by raising the endorsement fee from \$10 to \$100 to align the regulation text with the statutorily mandated endorsement fee established by AB 3330. The B & P Committee Analysis indicates that the bill increases the endorsement fee from \$10 to \$100 in absolute terms, thereby removing any discretion from the Board. The endorsement fee is set at one single value in BPC section 4970, therefore, the fees are set in alignment with the statute in compliance with BPC section 4972 and so all fees are identified in one section for convenience and ready availability to licensees.

2. Amend section 1399.461 – Acupuncture Tutorials.

- Update fee amounts for consistency with the statutorily mandated fees established by AB 3330.
- Adding subsections (a) through (f) to set all Acupuncture Tutorial fees from BPC section 4971 into regulation to comply with BPC section 4972 and to set fee amounts consistently with the fees statutorily mandated by AB 3330, so all acupuncture tutorial fees are identified in one section for convenience and ready availability to licensees, as has been Board practice.
- All six (6) fees were previously set in statute by BPC section 4971. AB 3330 adjusted each of these fees. The B & P Committee Analysis indicates where a fee is decreased by the bill to the new minimum amount, such fee shall be the minimum amount, in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount. The Board only seeks to implement the non-discretionary minimum fee authorized by the statute.

Further, the B&P Committee Analysis states where an acupuncture tutorial fee is increased by the bill to the new minimum amount, such fee shall be the minimum amount, in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount, which would require the discretion of the Board. here, the Board only seeks to implement the non-discretionary minimum fee authorized by the statute.

The B & P Committee Analysis further specifies the delinquency fee for acupuncture tutorial supervisors is revised from being 50 percent of the renewal fee to being 50 percent of the renewal fee in effect at the date of the renewal of the license, but not less than \$25, or more than \$150. Without exercising discretion in setting the fee within the range of \$25 and \$150, the Board seeks to implement the non-discretionary 50 percent mandate in accordance with BPC section 163.5, as described in the B & P Committee Analysis.

The B & P Committee Analysis further specifies the delinquency fee for acupuncture tutorial trainees is revised from being 50 percent of the renewal fee to being \$100, and further notes that AB 3330 authorizes the Board to increase the fee to not more than \$200. The Board only seeks to implement the non-discretionary minimum \$100 fee authorized by the statute.

3. Amend section 1399.462 - Continuing Education Fees

- Pluralize “Fee” in title to reflect the additional fees added by AB 3330.
- Add subsection (a).
- Update fee amounts for consistency with the statutorily mandated fees established by AB 3330, as noted in the proposed regulation text. Amend subsection (a) by raising the approval fee for each provider of continuing education to \$500 to align the regulation text with the minimum fee amount set by the statute. The B & P Committee Analysis indicates that the bill establishes the approval fee for providers at \$500, in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount of \$700. The Board only seeks to implement the non-discretionary minimum fee mandatorily required by the statute.

- Add subsection (b) and add a continuing education provider biennial renewal approval fee to align the regulation text with the statutorily mandated new minimum fee established by AB 3330. The B & P Committee Analysis indicates that the bill establishes the biennial renewal fee for providers at \$500, in absolute terms, and the law further authorizes the Board to increase the fee up to the maximum amount of \$700. The Board only seeks to implement the statutorily mandated non-discretionary minimum fee authorized by the statute.

Attachment A: 1996 Section 100 Rulemaking File, OAL file no. 96-0419-01

Attachment B: Assembly Committee on Business and Professions Bill Analysis (AB 3330), dated August 9, 2020

Attachment C: Assembly Committee on Business and Professions Bill Analysis (AB 779), dated April 23, 2019

Reference Materials

Senate Bill No. 1246

CHAPTER 397

An act to amend Sections 4928, 4934, 4935, 4938, 4944, 4949, and 4970 of, to amend and repeal Section 4973 of, to amend, repeal, and add Section 4939 of, to add Section 4933.5 to, and to add and repeal Section 4927.5 of, the Business and Professions Code, relating to acupuncture.

[Approved by Governor September 17, 2014. Filed with Secretary of State September 17, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1246, Lieu. Acupuncture.

(1) Existing law, the Acupuncture Licensure Act, provides for the licensure and regulation of the practice of acupuncture by the Acupuncture Board, within the Department of Consumer Affairs. Existing law authorizes the board, with the approval of the Director of Consumer Affairs, to employ personnel necessary to administer the Acupuncture Licensure Act, including an executive officer who is exempt from civil service. Existing law repeals the provisions establishing the board and authority for it to employ personnel on January 1, 2015.

This bill would remove the repeal date with respect to the board's authority to employ personnel. The bill would also extend the operation of the board and the board's authority to appoint an executive officer exempt from civil service until January 1, 2017.

(2) Existing law requires the board to establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, as specified. Existing law requires a school or college approved by the board, within 3 years of board approval, to receive full institutional approval to operate from the Bureau for Private Postsecondary Education or comparable approval by a governmental authority outside of the state, as applicable. Existing law requires the board to issue a license to practice acupuncture to a person who files an application, pays a fee, and among other requirements, completes an educational and training program approved by the board.

This bill would delete the requirement that schools and colleges offering education and training in the practice of an acupuncturist obtain those approvals within 3 years of board approval. Commencing January 1, 2017, the bill would eliminate the requirement that the board approve those schools and colleges offering education and training in the practice of an acupuncturist and would instead define an "approved educational and training program," for purposes of licensure as an acupuncturist, as a school or college that: (A) offers curriculum that has been submitted to and approved by the board and 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; (B) is approved by the Bureau for Private Postsecondary Education or is the appropriate out-of-state governmental educational authority; and (C) is accredited or granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine, or has submitted a letter of intent to pursue accreditation to that commission, as specified.

This bill would require the board, within 30 days of receiving curriculum submitted by a school or college pursuant to these provisions, to review the curriculum, determine whether the curriculum satisfies the board's requirements, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, and the Bureau for Private Postsecondary Education of whether the board has approved the curriculum. The bill would authorize the board to review and evaluate the educational training and clinical experience of a school or college that has submitted a letter of intent to pursue accreditation to, or was granted candidacy status by, the commission, but was subsequently denied candidacy status or accreditation, respectively, by the commission, to determine whether to waive the requirement that an applicant who attended that program complete an approved educational and training program.

This bill would also require the board to establish standards for the approval of educational training and clinical experience received outside the United States and Canada, and would make related conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 4927.5 is added to the Business and Professions Code, to read:

4927.5. (a) For purposes of this chapter, "approved educational and training program" means a program approved by the board pursuant to Section 4939.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 2. Section 4927.5 is added to the Business and Professions Code, to read:

4927.5. (a) For purposes of this chapter, "approved educational and training program" means a school or college offering education and training in the practice of an acupuncturist that meets all of the following requirements:

(1) 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 board approval of the curriculum.

(2) Has received full institutional approval under Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the

Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code.

(3) Meets any of the following:

(A) Is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine.

(B) Has been granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine.

(C) Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Oriental Medicine within 30 days of receiving full institutional approval pursuant to paragraph (2), and is granted candidacy status within three years of the date that letter was submitted.

(b) Within 30 days after receiving curriculum pursuant to paragraph (1), the board shall review the curriculum, determine whether the curriculum satisfies the requirements established by the board, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, and Bureau of Private and Postsecondary Education of whether the board has approved the curriculum.

(c) This section shall become operative on January 1, 2017.

SEC. 3. Section 4928 of the Business and Professions Code is amended to read:

4928. (a) The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 4. Section 4933.5 is added to the Business and Professions Code, to read:

4933.5. The board, by and with the approval of the director, may employ personnel necessary for the administration of this chapter.

SEC. 5. Section 4934 of the Business and Professions Code is amended to read:

4934. (a) The board, by and with the approval of the director, may appoint an executive officer who is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 6. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "Asian medicine," "oriental medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of an approved educational and training program and participating in a postgraduate review course that does not exceed one year in duration at an approved educational and training program.

SEC. 7. Section 4938 of the Business and Professions Code is amended to read:

4938. The board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

(a) Is at least 18 years of age.

(b) Furnishes satisfactory evidence of completion of one of the following:

(1) (A) An approved educational and training program.

(B) If an applicant began his or her educational and training program at a school or college that submitted a letter of intent to pursue accreditation to, or attained candidacy status from, the Accreditation Commission for Acupuncture and Oriental Medicine, but the commission subsequently denied the school or college candidacy status or accreditation, respectively, the board may review and evaluate the educational training and clinical

experience to determine whether to waive the requirements set forth in this subdivision with respect to that applicant.

(2) Satisfactory completion of a tutorial program in the practice of an acupuncturist which is approved by the board.

(3) In the case of an applicant who has completed education and training outside the United States and Canada, documented educational training and clinical experience that meets the standards established pursuant to Sections 4939 and 4941.

(c) Passes a written examination administered by the board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Professional Examination Services of the Department of Consumer Affairs.

(d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(e) Completes a clinical internship training program approved by the board. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state, which is an approved educational and training program. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. On and after January 1, 1987, individuals with 800 or more hours of documented clinical training shall be deemed to have met this requirement. The purpose of the clinical internship training program shall be to ensure a minimum level of clinical competence.

Each applicant who qualifies for a license shall pay, as a condition precedent to its issuance and in addition to other fees required, the initial licensure fee.

SEC. 8. Section 4939 of the Business and Professions Code is amended to read:

4939. (a) The board shall establish standards for the approval of schools and colleges offering education and training in the practice of an acupuncturist, including standards for the faculty in those schools and colleges, completion of which will satisfy the requirements of Section 4938.

(b) Standards for the approval of schools and colleges described in subdivision (a) shall include a minimum of 3,000 hours of study in curriculum pertaining to the practice of an acupuncturist. This subdivision shall apply to all students entering programs on or after January 1, 2005.

(c) Each school or college approved by the board shall receive full institutional approval under Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code, or the board's approval of the program shall automatically lapse.

(d) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 9. Section 4939 is added to the Business and Professions Code, to read:

4939. (a) The board shall establish standards for the approval of educational training and clinical experience received outside the United States and Canada.

(b) This section shall become operative on January 1, 2017.

SEC. 10. Section 4944 of the Business and Professions Code is amended to read:

4944. (a) The board shall have the authority to investigate and evaluate each and every applicant applying for a license to practice acupuncture and to make the final determination of the admission of the applicant to the examination, or for the issuance of a license, in conformance with the provisions of this chapter.

(b) The board shall investigate and evaluate each school or college applying for approval under Section 4939 and may utilize and contract with consultants to evaluate those training programs. This subdivision shall become inoperative on January 1, 2017.

(c) The board may delegate to the executive officer or other official of the board its authority under this section in routine matters.

SEC. 11. Section 4949 of the Business and Professions Code is amended to read:

4949. The provisions of this chapter shall not prohibit an acupuncturist from another state or country, who is not a licensed acupuncturist in this state, who is the invited guest of a professional acupuncture association or scientific acupuncture foundation, an approved educational and training program, or a continuing education provider that is approved under Section 4945, solely from engaging in professional education through lectures, clinics, or demonstrations. The guest acupuncturist may engage in the practice of acupuncture in conjunction with these lectures, clinics, or demonstrations for a maximum of six months, but may not open an office or appoint a place to meet patients or receive calls from patients or otherwise engage in the practice of acupuncture.

SEC. 12. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for licensed acupuncturists shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section 4972:

(a) The application fee shall be seventy-five dollars (\$75).

(b) The examination and reexamination fees shall be the actual cost to the Acupuncture Board for the development and writing of, grading, and administering of each examination.

(c) The initial license fee shall be three hundred twenty-five dollars (\$325), except that if the license will expire less than one year after its

issuance, then the initial license fee shall be an amount equal to 50 percent of the initial license fee.

(d) The renewal fee shall be three hundred twenty-five dollars (\$325) and in the event a lower fee is fixed by the board, shall be an amount sufficient to support the functions of the board in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the board shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars (\$3,000). This subdivision shall become inoperative on January 1, 2017.

(g) The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.

(h) The duplicate renewal receipt fee is ten dollars (\$10).

(i) The endorsement fee is ten dollars (\$10).

(j) The fee for a duplicate license for an additional office location as required under Section 4961 shall be fifteen dollars (\$15).

SEC. 13. Section 4973 of the Business and Professions Code is amended to read:

4973. (a) A fee for the inspection or reinspection of a school or college of acupuncture for purposes of approval or continued approval shall be charged at an amount to recover the direct costs incurred by the board in conducting that inspection and evaluation of the school or college.

(b) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

NONSUBSTANTIVE

(See Instructions on reverse)

For use by County of State only

STD. 400 (REV. 7-90)

OAL FILE NUMBER	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
		96 0419 01 H		

RECEIVED

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For use by Office of Administrative Law (OAL) only

45 days
6/3

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OFFICE OF ADMINISTRATIVE LAW

AGENCY	REGULATIONS	AGENCY FILE NUMBER (if any)
ACUPUNCTURE COMMITTEE		

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTIONS AFFECTED	ADOPT
	AMEND 1399.460(c)
TITLE(S) 16	REPEAL

2. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346)
 Resubmittal
 Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 Emergency (Gov. Code, § 11346.1(b))
 Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.
 Print Only
 Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

N/A

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11348.2)

Effective 30th day after filing with Secretary of State
 Effective on filing with Secretary of State
 Effective other (Specify)

5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify)

6. CONTACT PERSON	TELEPHONE NUMBER
MARY HOWARD, Administrative Coordinator	263-2682

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
<i>Marilyn Nielsen</i>	4/17/96
TYPED NAME AND TITLE OF SIGNATORY	
MARILYN NIELSEN, Executive Officer	

SPECIFIC LANGUAGE

1. Amend Section 1399.460 as follows.

1399.460. Fees.

(a) The application fee shall be seventy-five dollars (\$75).

(b) The examination and reexamination fee shall be two hundred dollars (\$200), plus the applicable fingerprint processing fee in effect at the time the application is submitted.

(c) In order to establish and administer a birthdate renewal program, the initial license fee for an acupuncture license will be based on the date the license is issued and the birthmonth of the applicant. No license will be issued for less than ~~six (6)~~ twelve (12) months. The fee for an initial license shall be in accordance with the following schedule:

← Month Fee Received →

Birth Month	September	October	November	December	January	February	March	April	May	June	July	August
January	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488
February	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190
March	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217
April	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244
May	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271
June	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298
July	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325
August	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352
September	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379
October	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406
November	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433
December	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460

→ Month Fee Received →

Birth Month	January	February	March	April	May	June	July	August	September	October	November	December
January	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190
February	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203
March	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217
April	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230
May	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244
June	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257
July	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271
August	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285
September	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298
October	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312
November	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325
December	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176

(d) Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325).

(e) An expired license may be renewed at any time within three years after its expiration. The licensee will be required to pay all accrued and unpaid renewal fees, plus any delinquency fee.

(f) The delinquency fee is twenty-five dollars (\$25).

(g) The application fee for the approval of a school or college shall be one thousand and five hundred dollars (\$1,500).

(h) The fee for a duplicate or replacement engraved wall license shall be fifteen dollars (\$15).

(i) The fee for a duplicate or replacement renewal receipt/pocket license shall be ten dollars (\$10).

(j) The fee for a letter of endorsement shall be ten dollars (\$10).

NOTE: Authority cited: Section 4933, Business and Professions Code. Reference: Section 4961, 4965, 4966, 4970 and 4972, Business and Professions Code.

JUSTIFICATION FOR SECTION 100
"Changes Without Regulatory Effect"

Under the authority given in the California Code of Regulations, Title 1, Article 2, Section 100, the Acupuncture Committee is requesting approval to revise Section 1399.460(c) of Title 16 of the California Code of Regulations. The revision makes technical changes to existing language and revises a fee chart to conform with recent statutory and regulatory changes.

In 1991 legislation was implemented that changed from biennial to annual, the renewal cycle for an acupuncturist license. The legislation stipulated that this provision would be effective only until January 1, 1996. Consequently, on January 1, 1996 the renewal cycle reverted back to biennial.

To conform with this provision, the committee recently amended C.C.R., Title 16, Section 1399.460(d) as follows: "Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325)". The Office of Administrative Law approved this regulatory action on March 19, 1996.

The committee subsequently realized that subsection (c) of Section 1399.460 also needed to be amended to conform with recent changes to the statute and regulation. Subsection (c) establishes the license fee for persons receiving their initial license. As a birthdate renewal license system, the initial license fee for a newly licensed acupuncturist will vary depending upon his or her birthmonth and the date of his or her initial licensure. Each fee specified in subsection (c) is prorated from the initial license fee based upon the term of the initial license period. Currently, the fees specified in subsection (c) are prorated based upon an annual renewal fee rather than the biennial renewal fee which is now required by Business and Professions Code sections 4965 and 4970(c) and regulation section 1399.460(d). Inasmuch as the fees specified in subsection (c) of section 1399.460 are required by Business and Professions Code section 152.5 to be prorated from the initial license fee, the proposed amendment of subsection (c) is a "renumbering" of an existing fee chart to make it consistent with existing statutes and regulations, i.e., an annual license fee. Accordingly, no requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision is being materially altered.

Below is existing statutory and regulatory language to justify this Section 100 request:

Business and Professions Code Sections 4965, 4970(c)&(d) and 4972

4965. (a) Certificates issued pursuant to this chapter shall expire on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.

(b) The committee shall establish and administer a birth date renewal program.

(c) To renew an unexpired certificate, the holder shall apply for renewal on a form provided by the committee and pay the renewal fee fixed by the committee.

(d) This section shall become operative January 1, 1996.

4970. (c) The initial certification fee shall be three hundred twenty-five dollars (\$325), except that if the certificate will expire less than one year after its issuance, then the initial certification fee shall be an amount equal to 50 percent of the initial certification fee.

(d) The renewal fee shall be three hundred twenty-five dollars (\$325) and in the event a lower fee is fixed by the committee, shall be an amount sufficient to support the functions of the board and committee in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the committee shall assess the renewal fee biennially.

4972. Fees fixed by the committee shall be set forth in regulations duly adopted by the committee.

California Code of Regulations, Title 16, Section 1399.460(d)

1399.460(d) Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325).

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by County of State only

STD. 400 (REV. 7-80)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
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For use by Office of Administrative Law (OAL) only

AGENCY	AGENCY FILE NUMBER (if any)
ACUPUNCTURE COMMITTEE	

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTIONS AFFECTED	ADOPT
	AMEND 1399.460(c)
	REPEAL
TITLE(S) 16	

2. TYPE OF FILING

Regular Rulemaking (Gov. Code, § 11346)
 Resubmittal
 Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)
 Emergency (Gov. Code, § 11346.1(b))

Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.

Print Only
 Other (specify)

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

N/A

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11348.2)

Effective 30th day after filing with Secretary of State
 Effective on filing with Secretary of State
 Effective other (Specify)

5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify)

6. CONTACT PERSON

MARY HOWARD, Administrative Coordinator

TELEPHONE NUMBER: 263-2682

7. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

Marilyn Nielsen

DATE: 4/17/96

TYPED NAME AND TITLE OF SIGNATORY

MARILYN NIELSEN, Executive Officer

SPECIFIC LANGUAGE

1. Amend Section 1399.460 as follows.

1399.460. Fees.

- (a) The application fee shall be seventy-five dollars (\$75).
- (b) The examination and reexamination fee shall be two hundred dollars (\$200), plus the applicable fingerprint processing fee in effect at the time the application is submitted.
- (c) In order to establish and administer a birthdate renewal program, the initial license fee for an acupuncture license will be based on the date the license is issued and the birthmonth of the applicant. No license will be issued for less than six (6) twelve (12) months. The fee for an initial license shall be in accordance with the following schedule:

← Birth Month →	← Month Fee Received →											
	September	October	November	December	January	February	March	April	May	June	July	August
January	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$468
February	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190
March	\$190	\$468	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217
April	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244
May	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298	\$271
June	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325	\$298
July	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352	\$325
August	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379	\$352
September	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406	\$379
October	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433	\$406
November	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460	\$433
December	\$433	\$406	\$379	\$352	\$325	\$298	\$271	\$244	\$217	\$190	\$488	\$460

→ Month Fee Received →

Birth Month	January	February	March	April	May	June	July	August	September	October	November	December
January	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190
February	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203
March	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217
April	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230
May	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257	\$244
June	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271	\$257
July	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285	\$271
August	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298	\$285
September	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312	\$298
October	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325	\$312
November	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176	\$325
December	\$325	\$312	\$298	\$285	\$271	\$257	\$244	\$230	\$217	\$203	\$190	\$176

(d) Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325).

(e) An expired license may be renewed at any time within three years after its expiration. The licensee will be required to pay all accrued and unpaid renewal fees, plus any delinquency fee.

(f) The delinquency fee is twenty-five dollars (\$25).

(g) The application fee for the approval of a school or college shall be one thousand and five hundred dollars (\$1,500).

(h) The fee for a duplicate or replacement engraved wall license shall be fifteen dollars (\$15).

(i) The fee for a duplicate or replacement renewal receipt/pocket license shall be ten dollars (\$10).

(j) The fee for a letter of endorsement shall be ten dollars (\$10).

NOTE: Authority cited: Section 4933, Business and Professions Code. Reference: Section 4961, 4965, 4966, 4970 and 4972, Business and Professions Code.

JUSTIFICATION FOR SECTION 100
"Changes Without Regulatory Effect"

Under the authority given in the California Code of Regulations, Title 1, Article 2, Section 100, the Acupuncture Committee is requesting approval to revise Section 1399.460(c) of Title 16 of the California Code of Regulations. The revision makes technical changes to existing language and revises a fee chart to conform with recent statutory and regulatory changes.

In 1991 legislation was implemented that changed from biennial to annual, the renewal cycle for an acupuncturist license. The legislation stipulated that this provision would be effective only until January 1, 1996. Consequently, on January 1, 1996 the renewal cycle reverted back to biennial.

To conform with this provision, the committee recently amended C.C.R., Title 16, Section 1399.460(d) as follows: "Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325)". The Office of Administrative Law approved this regulatory action on March 19, 1996.

The committee subsequently realized that subsection (c) of Section 1399.460 also needed to be amended to conform with recent changes to the statute and regulation. Subsection (c) establishes the license fee for persons receiving their initial license. As a birthdate renewal license system, the initial license fee for a newly licensed acupuncturist will vary depending upon his or her birthmonth and the date of his or her initial licensure. Each fee specified in subsection (c) is prorated from the initial license fee based upon the term of the initial license period. Currently, the fees specified in subsection (c) are prorated based upon an annual renewal fee rather than the biennial renewal fee which is now required by Business and Professions Code sections 4965 and 4970(c) and regulation section 1399.460(d). Inasmuch as the fees specified in subsection (c) of section 1399.460 are required by Business and Professions Code section 152.5 to be prorated from the initial license fee, the proposed amendment of subsection (c) is a "renumbering" of an existing fee chart to make it consistent with existing statutes and regulations, i.e., an annual license fee. Accordingly, no requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision is being materially altered.

Below is existing statutory and regulatory language to justify this Section 100 request:

Business and Professions Code Sections 4965, 4970(c)&(d) and 4972

4965. (a) Certificates issued pursuant to this chapter shall expire on the last day of the birth month of the licensee during the second year of a two-year term, if not renewed.
(b) The committee shall establish and administer a birth date renewal program.

(c) To renew an unexpired certificate, the holder shall apply for renewal on a form provided by the committee and pay the renewal fee fixed by the committee.

(d) This section shall become operative January 1, 1996.

4970. (c) The initial certification fee shall be three hundred twenty-five dollars (\$325), except that if the certificate will expire less than one year after its issuance, then the initial certification fee shall be an amount equal to 50 percent of the initial certification fee.

(d) The renewal fee shall be three hundred twenty-five dollars (\$325) and in the event a lower fee is fixed by the committee, shall be an amount sufficient to support the functions of the board and committee in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the committee shall assess the renewal fee biennially.

4972. Fees fixed by the committee shall be set forth in regulations duly adopted by the committee.

California Code of Regulations, Title 16, Section 1399.460(d)

1399.460(d) Effective January 1, 1996, the biennial renewal fee for a licensed acupuncturist shall be three hundred twenty-five dollars (\$325).

**Section 100. Publication of
"Changes Without Regulatory
Effect."**

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:

(1) renumbering, reordering, or relocating a regulatory provision;

(2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;

(3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;

(4) revising structure, syntax, cross-reference, grammar, or punctuation;

(5) changing an "authority" or "reference" citation for a regulation; and,

(6) making a regulatory provision consistent with a

changed California statute if both of the following conditions are met:

(A) the regulatory provision is inconsistent with and superseded by the changed statute, and

(B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

(1) submit seven copies of the regulation with an addition shown in underline or italics and a deletion shown in strike-out; and

(2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and

(3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11342(g), 11343.8, 11344.6 and 11346, Government Code; California Constitution Article III, section 3.5

HISTORY:

1. New section filed 1-2-86; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 86, No. 1).

2. Change without regulatory effect pursuant to Section 100, Title 1,

Date of Hearing: August 10, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 3330 (Calderon) – As Amended August 3, 2020

SUBJECT: Department of Consumer Affairs: boards: licensees: regulatory fees.

SUMMARY: Increases licensing and regulatory fees for the Podiatric Medical Board, the California Acupuncture Board, and the Board of Behavioral Sciences and increases a fee charged to licensees authorized to utilize the state's prescription drug monitoring program (PDMP), Controlled Substance Utilization Review and Evaluation System (CURES).

EXISTING LAW:

- 1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency, and establishes boards to oversee private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (Business and Professions Code (BPC) §§ 100-144.5)
- 2) Establishes the Podiatric Medical Board to regulate and license the practice of podiatric medicine. (Business and Professions Code (BPC) §§ 2460-2529.6)
- 3) Establishes the California Acupuncture Board to regulate and license the practice of acupuncture and administer the Acupuncture Licensing Act. (BPC § 4928- 4979)
- 4) Establishes the Board of Behavioral Sciences to regulate and license marriage and family therapists under the Licensed Marriage and Family Therapist Act; licensed educational psychologists under the Educational Psychologist Practice Act; clinical social workers under the Clinical Social Worker Practice Act, and professional clinical counselors under the Licensed Professional Clinical Counselor Act. (Business and Professions Code (BPC) §§ 4990-49990.26, 4980-4989, 4989.10-4989.70, 4991-4998.5, 4999.10-4999.129)
- 5) Prohibits any person other than an authorized physician, dentist, podiatrist, veterinarian, naturopathic doctor, pharmacist, registered nurse, certified nurse-midwife, nurse practitioner, physician assistant, optometrist, or out-of-state prescriber to write or issue a prescription. (Health and Safety Code (HSC) § 11150)
- 6) Establishes CURES, a PDMP maintained by the California Department of Justice (DOJ) for the purposes of collecting records of dispensed controlled substances for review by licensed prescribers and dispensers, regulatory investigators, law enforcement, and statistical researchers. (HSC § 11165)
- 7) Assesses a \$6 fee annually to licensees authorized to write or issue a prescription to pay the reasonable costs associated with operating and maintaining CURES for the purpose of regulating those licensees, as specified. (BPC § 208)

THIS BILL:

Makes the following regulatory fee changes, beginning January 1, 2021:

- 1) Increases the fee associated with the Controlled Substance Utilization Review and Evaluation System (CURES) from \$6 to \$14 dollars.
- 2) Increases the biennial renewal fee for a podiatric medical license from \$1,100 to \$1,318.
- 3) Makes the following changes to fees under the Acupuncture Licensing Act:
 - a) Increases the license application fee from \$75 to \$250 and authorizes the Acupuncture Board to increase the fee up to \$350.
 - b) Establishes a foreign applicant fee at \$350 dollars and authorizes the board to increase the fee up to \$500.
 - c) Sets the examination and reexamination fee at \$800 instead of the actual cost to the board.
 - d) Increases the initial license and renewal fee from \$325 to \$500 each, as specified, and authorizes the board to increase the fee up to \$775.
 - e) Increases the wall license fee and renewal fee from \$15 to \$50.
 - f) Increases the pocket license replacement fee from \$10 to \$50.
 - g) Increases the endorsement fee from \$10 to \$100.
 - h) Increases the wall license replacement cost from \$15 to \$50.
 - i) Establishes a \$500 approval and biennial renewal fee for providers and authorizes the board to increase the fees to \$700.
 - j) Establishes a per course fee on continuing education providers at \$10 per hour offered, up to \$20 per hour, allows up to 50 hours to be approved per application, prorates fees for course hours in half-hour increments, and allows approved courses to be offered for a period of one year.
 - k) Decreases the application and registration fee for supervising an acupuncture trainee from \$200 to \$100 and instead authorizes the board to increase the fee up to \$200.
 - l) Increases the annual renewal fee for approval to supervise an acupuncture trainee from \$50 to \$200 and authorizes the board to increase the fee up to \$500.
 - m) Increases the application fee for an acupuncture trainee from \$25 to \$1,000 and authorizes the board to increase the fee up to \$2,500.

- n) Increases the renewal fee for an acupuncture trainee from \$10 to \$500 and authorizes the board to increase the fee up to \$600.
 - o) Revises the delinquency fee for a supervisor from being 50% of the renewal fee to being 50% of the renewal fee in effect at the date of the renewal of the license, but not less than \$25 nor more than \$150.
 - p) Revises the delinquency fee for an acupuncture trainee from being 50% of the renewal fee to being \$100 and authorizes the board to increase the fee to not more than \$200.
- 4) Makes the following changes to the fees under the Board of Behavioral Sciences:
- a) For a licensed marriage and family therapist or applicant:
 - i) Increases the application fee for an associate registration from \$75 to \$150 and authorizes the board to increase the fee up to a maximum of \$300.
 - ii) Increases the renewal fee for an associate registration from \$75 to \$150 and authorizes the board to increase the fee up to a maximum of \$300.
 - iii) Increases the application for licensure fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.
 - iv) Increases the clinical examination fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.
 - v) Increases the California law and ethics examination fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.
 - vi) Increases both the initial license fee and the renewal fee from \$180 to \$200 and authorizes the board to increase this fee up to a maximum of \$400.
 - vii) Changes the renewal delinquency fee from \$90 to one-half of the fee for license renewal.
 - b) For licensed educational psychologists and applicants:
 - i) Increases the application fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.
 - ii) Increases the issuance of an initial license fee from \$150 to \$200 and authorizes the board to increase this fee up to a maximum of \$400.
 - iii) Increases the license renewal fee from \$150 to \$200 and authorizes the board to increase this fee up to a maximum of \$400.
 - iv) Increases the written examination fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.

- v) Changes the delinquency fee from \$75 to one-half of the fee for license renewal.
- c) For licensed clinical social workers and applicants:
- i) Increases the associate clinical social worker registration fee from \$75 to \$150 and authorizes the board to increase this fee up to a maximum of \$300.
 - ii) Increases the associate clinical social worker renewal fee from \$75 to \$150 and authorizes the board to increase this fee up to a maximum of \$300.
 - iii) Increases the application for licensure fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$400.
 - iv) Increases the clinical examination fee from \$100 to \$250 and authorizes the board to increase this fee up to a maximum of \$500.
 - v) Increases the California law and ethics examination from \$100 to \$150 and authorizes the board to increase this fee up to a maximum of \$300.
 - vi) Increases the issuance of an initial license fee from \$155 to \$200 and authorize the board to increase this fee up to a maximum of \$400.
 - vii) Increases the license renewal fee from \$155 to \$200 and authorizes the board to increase this fee up to a maximum of \$400.
 - viii) Deletes the \$77.50 inactive license renewal fee.
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- ix) Changes the renewal delinquency fee from \$75 to one-half of the fee for license renewal.
- d) For licensed professional clinical counselors and applicants:
- i) Increases the application for licensure fee to \$250 and authorizes the board to increase the fee up to \$500.
 - ii) Increases the application fee for associate registration to \$150 and authorizes the board to increase the fee up to \$300.
 - iii) Increases the clinical examination fee to \$250 and authorizes the board to increase the fee up to \$500.
 - iv) Increases the California ethics exam fee to \$150 and authorizes the board to increase the fee up to \$300.
 - v) Increases the issuance of a license fee to \$200 and authorizes the board to increase the fee up to \$400.
 - vi) Increases the renewal of associate registration fee to \$150 and authorizes the board to increase the fee up to \$300.

vii) Increases the license renewal fee to \$200 and authorizes the board to increase the fee up to \$400.

viii) Sets the renewal delinquency fee at one-half of the fee for license renewal.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, “The Department of Consumer Affairs states, without a statutory fee change, the Boards of Acupuncture, Behavioral Sciences, and Podiatric Medicine risk financial insolvency, compromising public safety and creating significant licensing backlogs. The Department of Justice indicates an increase in the CURES fees is necessitated to address the revenue shortfall and implementation of recently passed legislation affecting the maintenance and operation of CURES.”

Background. The Department of Consumer Affairs is a department within the Business, Consumer Services, and Housing Agency. The Department consists of 37 boards and bureaus that regulate over 3.9 million licenses in more than 250 various professions and occupations, from architects and barbers to veterinarians and vocational nurses.

Licensing boards are funded through special funds, meaning they only receive revenue from licensing and other regulatory fees charged to applicants and licensees or through cost recovery. They typically receive no general fund support. As a result, if licensing fees are set too low, the boards will not have sufficient funds to carry out their consumer protection duties. This includes paying staff and funding investigations and hearings.

To ensure the fee revenues match the actual cost to administer the programs, licensing and other regulatory fees are statutorily capped and require legislation to change. Due to complications in the legislative process resulting from the COVID-19 pandemic, the Legislature was unable to follow the normal process for introducing and reviewing bills that request an increase in fees, a portion of which is the Sunset Review Process jointly performed by this Committee and the Senate Committee on Business, Professions and Economic Development.

Instead, the Administration, including the Department of Consumer Affairs, the Business, Consumer Services, and Housing Agency, the Department of Finance, and the Governor’s Office, identified the boards for which a fee increase was essential to pass this year. Fee increase requests by boards who were not at imminent risk of insolvency were delayed. This bill contains the boards and programs identified by the Administration as essential fee increases.

CURES Database. CURES is the state's PDMP, allowing health professionals, regulators, and law enforcement to conduct web-based searches of the system to inform prescribing practices and support investigations. Every dispenser of controlled substances and every health practitioner authorized by the DEA to prescribe controlled substances is required to obtain a login for access to CURES. For each dispensed Schedule II, III, or IV drug, pharmacists are required to report basic information about the patient and their prescription within seven days. This information is then made available to other system users in a variety of possible contexts.

The CURES database is administered by the Department of Justice (DOJ). At the end of 2019-20, the DOJ was estimated to have spent a total of \$11.6 million on CURES, and the DCA has collected \$10.5 million in revenue. As a result, the DCA requested a fee increase from \$6 to \$14 due to a revenue shortfall combined with costs from a 2019-20 Budget Change Proposal to implement legislation.

Podiatric Medical Board. The Podiatric Medical Board of California (PMBC) is one of many licensing entities under the DCA. The PMBC regulates the practice of podiatric medicine and administers the laws and licensing program for doctors of podiatric medicine (DPMs). The PMBC licenses approximately 2,500 DPMs. In fiscal year 2018/19, the PMBC issued 176 new licenses and renewed 1,192 licenses.

As of October 11, 2019, the PMBC had 3.8 months in reserve funds and was operating at a structural imbalance of over \$200,000. All fees except the current permanent DPM biennial renewal fee are at their statutory limit. Effective January 1, 2019, the PMBC temporarily raised the biennial license renewal fee to \$1,100 for two years through December 31, 2020. That fee was last increased to \$900 in 2004. Permanent DPM renewal fees and statutory limits will change back to \$900 on January 1, 2021.

Consistent with the findings of an audit of the PMBC's fees and fund condition completed November 1, 2019, this bill would make the temporary increase to \$1,000 permanent and adds an additional \$218 for the biennial renewal fee only.

Acupuncture Board. The California Acupuncture Board (CAB) is one of many licensing entities within the DCA. The CAB's purpose is to protect consumers from incompetent and fraudulent acupuncture practice through licensing and regulation of acupuncturists. The CAB and the laws relating to the practice of acupuncture are established under the Acupuncture Licensure Act.

As noted during the CAB's 2018 Sunset Review, since FY 2014/15, the CAB's spending has exceeded its revenues, despite spending less than its authorized budget. The CAB is projected to have a fund balance of approximately \$270,000, or 0.6 months in reserve, by the end of 2020-21. The CAB has not raised the majority of its fees since 1985.

The CAB initially held off on a fee increase due to its healthy fund reserve and a pending \$1 million loan repayment from the General Fund in FY 2019/20. Following the CAB's fee audit completed in May of 2019, the CAB proposed several fee increases and changes that the Administration and CAB have proposed in this bill.

Among the fees, per the CAB's 2018 Sunset Review recommendation and the 2019 fee audit, this bill institutes a new continuing education course fee. The providers of continuing education (CE) must meet the CAB's standards and apply for approval. CE course providers pay a \$150 fee and are approved for two years, after which they may renew for an additional two years.

Approved providers must also apply for course approval, but there is currently no fee. CAB staff notes that several CE providers have a disproportionately large number of courses, offering hundreds of courses, including pre-recorded and distance learning courses. Because the course review takes time, the smaller CE course providers and licensees may be subsidizing the larger CE course providers. The CAB approved roughly 3100 CE courses in the last fiscal year.

This bill would establish a new CE fee. The 2019 fee audit captured a workload cost per unit per CE, processed at \$197.00. The increase to \$500 for provider approval and renewal would be insufficient to cover the cost. At approximately \$150,000 annually, the fee, if applied to the workload needed to process 3100 CE courses and ignoring the workload for provider approval, would cover \$48 per course. To meet the cost, the CAB would need to cover the remaining \$149. To address this deficit, this bill would implement a new fee, which is calculated on a per hour basis to account for variations in the amount of work per course.

This bill also prorates the fees by half hour increments and establishes a one-year approval date. The length of CE approval is not currently specified in statute. Currently, CE courses are approved for a specific set of dates. This bill would instead allow the course to be approved and taught for a period of one year, reducing the frequency of applications and increasing flexibility in when courses can be offered. While most boards defer CE approval to private entities, the CAB notes that the one-year approval date was selected based on the boards that currently do approve CE.

Board of Behavioral Sciences. The BBS is one of many licensing entities under the DCA and is responsible for licensing and regulating Licensed Clinical Social Workers, Licensed Marriage and Family Therapists, Licensed Educational Psychologists, and Licensed Professional Clinical Counselors. The BBS' mission is to protect Californians by setting and enforcing standards that ensure the safe and competent practice of mental health services. To that end, the BBS develops and administers licensing examinations and ensures that applicants meet the minimum standards for licensing as set in statutes and regulations. The BBS also has authority to discipline licensees by investigating consumer complaints and criminal convictions, and take appropriate action in case of violations, such as suspending or revoking a license.

In order to obtain a license from the BBS, applicants must meet all the established requirements, including education, experience, examinations, as well as pay all applicable fees. These fees include application fees, examination fees, and a fee for the initial issuance of a license. Individuals who are already licensed also have to pay an annual or biennial license renewal fee. In addition, certain fees are levied for certain circumstances, such as renewing a license that has expired – also known as a delinquency fee. As a special funded entity, licensing fees fund all of the BBS' operations, including its administration, licensing, and enforcement functions. The BBS does not receive monies from the state's general fund.

The BBS is seeking to increase these various fees in order to address a fiscal structural deficit. In 2019, the BBS commissioned an audit conducted by a third-party, which determined that BBS' licensing fees were no longer sufficient to recover operating costs, and that the Board needed to increase its licensing, registration and examination fees in order to stay solvent. According to the audit, "overall revenue has not kept up with expenditures [and] beginning FY 2020-21 and moving forward, revenue and expense projections indicate that BBS will have insufficient revenue to cover operational costs and maintain an acceptable 3 to 6-month fund reserve."

Several factors have contributed to the need for fee increases. First, as noted by the audit, the fees associated with LMFT, LCSW, and LEP licenses have not increased for over 20 years. The LPCC program, established in FY 2011-12, has also not increased its fees since. As a result, current fee levels have not kept pace with inflation and a general increase in cost-of-living. Second, the BBS experienced larger expenditures as a result of unforeseen increases in rates for

services provided by the Office of the Attorney General (AG): in 2019, the AG notified licensing boards of an increase in billing rates for client services, including a 30% increase in attorney services and 71% increase in paralegal services. Third, the BBS has experienced and overall, steady increase in application volume and licensee population. For example, the BBS reports that its total active licensee population in FY 2015-16 was 105,649—a figure that has grown to 116,922 in FY 2018-19. This continuous increase in active licensees has generated a need for additional resources to maintain adequate licensing and enforcement activities.

Prior Related Legislation. AB 528 (Low), Chapter 677, Statutes of 2019, changed the timeframe in which pharmacists must report dispensed prescriptions to CURES from seven days to the following working day; authorized licensed physicians and surgeons who do not possess a federal Drug Enforcement Agency (DEA) registration to register for access to CURES; required pharmacists to report Schedule V drugs to CURES; expanded the authority for a prescriber's licensed delegate to retrieve data from CURES; and made other technical and clarifying changes.

ARGUMENTS IN SUPPORT:

None on file.

ARGUMENTS IN OPPOSITION:

A coalition of CURES providers (listed under registered opposition below), write in opposition, "In 2013, Senate Bill 809 passed requiring, healthcare professionals who are authorized to prescribe or fill prescriptions for controlled substances to pay \$6 annually to build and support the CURES/PDMP. CMA and others supported the proposal, as it was intended to build, essentially, a brand new CURES system, CURES 2.0. In 2018, DOJ certified that CURES was ready for statewide use. It should be noted that the \$6 CURES fee was still being assessed on licensees after 2018 when the system was certified to be ready for use, with the assumption that costs would be incurred to maintain the system and support users. There is very little information about how revenue from the \$6 fee was directed toward system support after the initial system overhaul was completed.

While there might be a cost to make the necessary technical changes to the CURES database to expand access, the proposed \$8 increase in the CURES fee seems excessive since it means that DOJ projects that the cost for the technical changes to the CURES database would be more than the entire cost of the system overhaul completed in 2018.

To approve an \$8 fee increase — from \$6 to \$14 — as proposed, the Legislature would need detailed information about the proposed system changes, the costs for implementing the technical changes, and why DOJ is unable to upgrade the system within the existing resources funded by the original \$6 CURES fee. Multiple inquiries to DOJ and DCA have not resulted in responses that provide this information. Furthermore, it is unclear which state agency has ultimate budgetary control, accounting oversight, and expenditure authority for the revenue generated by the CURES fee. Until this information is provided to the Legislature and stakeholders, no action should be taken to approve the CURES fee increase.

The proposed CURES fee increase will be levied across multiple health care licensees. During the current pandemic emergency, health care providers have been at the frontlines of providing

care often at the cost of their own health and the financial viability for their own practices. Health care providers will be facing incredible challenges during the next few years to keep medical practices and health facilities open and providing care to an increased number of low-income patients. Any additional cost and burden placed on health care providers should be carefully reviewed to determine if it is justified and cannot be otherwise implemented within existing budgetary resources.”

POLICY ISSUE:

Administration of CURES by the DOJ. In California, earlier versions of prescription tracking and reporting systems, including CURES, were primarily used for investigatory searches of prescription records to identify potential fraud or diversion of controlled substances. At the recommendation of the Controlled Substances Prescription Advisory Council, Assembly Bill 3042 (Takasugi), Chapter 738, Statutes of 1996, required the DOJ to develop the first version of CURES, a “technologically sophisticated data monitoring system to collect as much data as is needed and provide easy access to the data collected for educational, law enforcement, regulatory, and research purposes.”

According to Assemblymember Takasugi, the reason behind AB 3042 at the time was that “information captured on the [existing] system is not complete and therefore not useful in identifying and investigating those suspected of abusing the prescribing and dispensing process. Almost 100 percent of all Schedule II prescriptions are already entered into automated databases by pharmacies for their own business reasons (i.e., billing to Medi-Cal). By integrating existing systems, virtually 100 percent of the data could be captured at the point of sale, and the information made accessible to law enforcement.”

As a tool for law enforcement, CURES was not initially designed for easy access to providers. However, as the growing numbers of prescription drug deaths became a public health crisis, other states began using web-based solutions to promote safer prescribing practices. While the early versions of CURES allowed prescribers to request patient activity reports through mail or fax, many states launched searchable prescription drug monitoring program databases (PDMPs) to enable health professionals to more easily access their patients’ prescription histories. In 2004, Kentucky became the first state to implement a PDMP with the release of its eKASPER program, and many other states soon followed suit.

Although plagued by budget and implementation challenges, CURES was eventually upgraded into a searchable, client-facing PDMP to make it easier for providers to track patient prescriptions. Although CURES remains at the DOJ, law enforcement use of CURES is a relatively small percentage of total activity on the database. As the primary role of CURES continues to shift away from law enforcement towards the protection of public health, the location of the database may merit reconsideration in a future Legislative Session.

As of 2019, 49 states and U.S. territories administer PDMPs through a health department or licensing agency. The split is roughly half, although some state licensing programs are also within health departments. Of those that use a licensing agency, the majority use their pharmacy licensing boards. California is 1 of 4 states that still use a law enforcement agency. The other 3 are Hawaii, New Jersey, and Oklahoma.

IMPLEMENTATION ISSUE:

Acupuncture CE Course Fee. Initially, the fees proposed under this bill included a per course fee for CE courses with a floor of \$100 and a cap of \$400. However, the CAB subsequently submit the current language under the bill establishing per course fee assessed a floor of \$10 per hour up to a maximum of \$20 per hour to correlate to the workload involved. It also prorates the fees by half hour increments and establishes a one-year approval date. These provisions are the subject of ongoing review and may be amended for technical reasons or amended back to the flat fee.

AMENDMENTS:

CURES Fee. This bill would increase the fee for CURES by \$14 in anticipation of additional costs related to the implementation of CURES legislation cited in the DOJ's approved 2019-20 Budget Change Proposal (BCP) and a proposed BCP for the implementation of AB 528 (Low), Chapter 677, Statutes of 2019. Based on fund condition statements and projections provided by the DCA and the Department of Finance, the \$14 dollar fee initially proposed is too high. The DCA recently reported that "[t]he 2018-19 revenue data is inflated due to a change in the way DCA processes the CURES assessment, which changed it from being reported to FISCAL as revenue collected in advance to being reported in the year in which it was collected."

After reviewing the updated fund conditions and going over additional scenarios, the DCA found that "a \$14 increase would bring in too much revenue, increasing the fund beyond 24 months in reserve by 2024-25." Instead, the DCA projects that a \$12 fee would be sufficient to maintain fund solvency during the implementation of legislation. The DCA also notes that, while an \$11 dollar fee may also be sufficient, an extension of "the limited-term resources from DOJ's 2019-20 proposal would result in a structural fund imbalance, and could require an additional fee increase in the out-years."

The DCA also noted that after two budget cycles (by the 2023-24 budget year), initial implementation workload and fiscal impact will decrease by close to \$1 million. Therefore, assuming there are no other cost pressures in the out-years beyond implementation, the DCA believes a \$9 fee for the 2023-24 BY and ongoing would be sufficient.

While negotiations on the proper number are still occurring between the Assembly, Senate, and the Administration, the DCA has acknowledged that \$14 is too high. Therefore, the bill should be amended to reduce the fee. Based on information currently available, the author may wish to amend the bill to instead increase the fee to \$12 for the next two budget years and \$9 ongoing as follows:

- 1) Set the \$6 fee to expire March 31, 2021, aligning with March/April license renewal cycle.
- 2) Increase the fee to \$12, effective April 1, 2021, allowing an increased fee for BY 21-22 and BY 22-23.
- 3) Set the \$12 to expire March 31, 2023.
- 4) Decrease the fee to \$9, effective April 1, 2023, to meet the July 1 effective date for BY 23-24.

REGISTERED SUPPORT:

None on file

REGISTERED OPPOSITION:

Coalition of CURES Providers:

- American College of Cardiology
- American College of Obstetricians and Gynecologists
- California Medical Association
- California Occupational Medicine Physicians
- California Pharmacists Association
- California Podiatric Medical Association
- California Rheumatology Alliance
- California Society of Anesthesiologists
- California Society of Plastic Surgeons
- Osteopathic Physicians and Surgeons of California

Analysis Prepared by: Vincent Chee / Danielle Sires / Patrick Le / B. & P. / (916) 319-3301

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 779 (Low) – As Amended April 22, 2019

SUBJECT: Acupuncture: place of practice.

SUMMARY: Clarifies that an acupuncture licensee must register new places of practice and establishes a new wall license that is unique to each practice location.

EXISTING LAW:

- 1) Provides for the licensure and regulation of the practice of acupuncture under the Acupuncture Licensure Act. (Business and Professions Code (BPC) §§ 4925-4934.2)
- 2) Establishes the California Acupuncture Board within the Department of Consumer Affairs, to administer and enforce the Acupuncture Licensure Act until January 1, 2023. (BPC § 4928)
- 3) Requires a licensed acupuncturist to register the licensee's place of practice within 30 days of licensure by the Board. If the licensee has more than one place of practice, the licensee must register all places of practice. If the licensee has no place of practice, the licensee must notify the Board that the licensee has no place of practice. (BPC § 4961(a))
- 4) Requires licensed acupuncturists to post their wall license in a conspicuous location in the acupuncturist's place of practice at all times. If a licensed acupuncturist has more than one place of practice, the licensee is required to obtain from the Board a duplicate wall license for each additional location and post the duplicate wall license at each location. (BPC § 4961(b))
- 5) Requires a licensee that changes the location of a place of practice to register each change within 30 days of making that change. An applicant for renewal of licensure must also specify in the renewal application whether or not there has been a change in the location of the licensee's place of practice and, if so, the date of that change. (BPC § 4961(c))

THIS BILL:

- 1) Requires a licensee to post a wall license in the licensee's primary place of practice, as defined.
- 2) Requires a licensee to obtain a place of practice certificate for each place of practice maintained by the licensee.
- 3) Requires a licensee to renew a place of practice certificate biennially.
- 4) Establishes a \$50 fee for a place of practice certificate and a fee of \$30 for renewal of a place of practice certificate.
- 5) Provides that a licensee assumes legal responsibility and liability for the acupuncture and Asian massage services rendered in each place of practice maintained by the acupuncturist.
- 6) Makes other nonsubstantive changes.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "this bill would close a loophole in the place-of-practice registration requirements under the acupuncture practice act. It would require an acupuncture licensee that opens a new place of practice to register the new place of practice in the same manner as a change in the location of a licensee's place of practice. In addition, this bill will clear up the confusion between a wall license, a place of practice registration, and a pocket card license by eliminating redundancies in the terminology and specify that each place of practice requires a clear indication of active licensure in a conspicuous location."

Background. The California Acupuncture Board is a state licensing board under the Department of Consumer Affairs. The Board and the laws relating to the practice of acupuncture are established under the Acupuncture Licensure Act. The Board's purpose is to protect consumers from incompetent or fraudulent acupuncture practice through licensing and regulation of acupuncture practitioners. The Board accomplishes its consumer protection mission in a number of ways, one of which is by ensuring licensees notify the Board of practice locations.

According to the Board, having a clear record of practice locations allows the Board to track instances of consumer harm and tie them to a potential licensee that may have practiced there. However, state law only requires licensees to register new places of practice at the time of initial licensure. The only ongoing requirement for licensees is to notify the Board of changes to practice locations, and to verify those changes at the time of renewal.

As a result, the Board is currently unable to discipline licensees who fail to register a new practice location. While failure to register a practice location is not an issue on its own, there have been instances where wall licenses have been rented out to establishments purporting to be acupuncture establishments. Because the wall license was not tied to the license number or expiration date, it was unclear to consumers that the location had no licensed acupuncturist onsite. Further, the lack of a prohibition against this practice defeats the deterrent aspect of practice location registration.

The concept of renting licenses is not unique to acupuncture. For example, AB 1874 (Wood), Chapter 181, Statutes of 2016, was aimed at addressing a similar issue in the structural pest control industry. The sponsor of AB 1874 noted that the lack of a physical tie to a specific location and lack of requirements for direct supervision resulted in a loophole where licensed operators were renting their licenses to registered companies and the operators were not required to be physically present.

Without the tie between the license and the location or a requirement that a licensee is physically present, it is difficult to ensure that a licensee is accepting liability over a practice location. For example, under the Acupuncture Licensure Law, if a licensee continues to maintain a license but is no longer practicing, there is no requirement that the licensee cancel or otherwise keep track of the licensee's wall license. If the wall license is placed or left in another location, there is no violation of the Acupuncture Licensure Act. This bill would clarify that a licensee is required to register all practice locations, is required to display a wall license, and remains liable for every location providing acupuncture services under the licensee's license.

ARGUMENTS IN SUPPORT:

According to the California Acupuncture and Traditional Medicine Association, “[this bill] is an important approach to improving public safety through public notifications by our state’s licensed acupuncturists who practice at multiple locations. It will require licensees to display notice to patients that their place of practice is registered with the California Acupuncture Board and allow [the board] to pursue remedies for those providers that fail to comply with these procedures. It offers important clarifications which are currently unclear in existing regulations. We support [this bill] for its elevation of standards of our profession, which we believe will improve the quality and safety of acupuncture services provided to Californians.”

ARGUMENTS IN OPPOSITION:

None on file

AMENDMENTS:

- 1) *Clarify Place of Practice Certificate.* Based on feedback from stakeholders, the new categories of “primary place of practice” and “place of practice” may be confusing. Therefore, the author should amend the bill to delete references to the “primary place of practice” distinction. Further, the author should amend the bill to replace references to the “place of practice certificate” with the existing “wall license” title.
- 2) *Clarify New Wall License Properties.* The intent of the new wall license category is to ensure that a wall license has a unique identifying number tied a specific address. Therefore, the author should amend the bill to define “wall license.”

Page 4, lines 20-22:

~~(2) “Primary place of practice” refers to when a licensee only operates one single acupuncture office where any act of acupuncture is practiced. “Wall license” means an official document that is issued by the board upon application for a place of practice and has a unique identification number that is specific to the location provided by the licensee in the application.~~

- 3) *Clarify Instances Fees Are Required.* Based on feedback from stakeholders, the new fees may be too burdensome for those with a single place of practice. Therefore, the author should amend the bill to only require fees for those who apply for a place of practice outside of initial licensure, to grandfather in those with prior wall licenses, and to reduce fees from \$50 and \$30 to \$15, which is the current cost for similar processes to the amount currently required.

Page 2, lines 3-18:

~~4961. (a) (1) Every person who is licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, board, which may include the applications for an initial license or renewal of a license, the licensee’s each place of practice and apply to the board to obtain a place of practice certificate wall license for each place of practice.~~

(2) A place of practice certificate shall be renewed biennially, coinciding with the license renewal date. *A licensee with a wall license issued before January 1, 2020, shall not be required to apply for a new wall license until the licensee's next license renewal date.*

(3) If the licensee has no place of practice, the licensee shall notify the board of that fact on a form prescribed by the board. ~~A display of license or place of practice certificate wall license~~ is not required to be posted when a licensee performs acupuncture treatments at a patient's residence.

Page 5, lines 9-20:

(f) The ~~duplicate~~ wall license fee ~~is shall be fifteen (15\$). There shall be no fee if the application for a place of practice is made at the time of initial license. an amount equal to the cost to the board for the issuance of the duplicate license.~~

(h) The duplicate renewal ~~receipt~~ pocket license fee is ten dollars (\$10).

(i) The endorsement fee is ten dollars (\$10).

(j) The ~~fee for a duplicate wall license fee for an additional office location~~ shall be fifteen dollars (\$15).

(k) ~~The place of practice certificate fee shall be fifty dollars (\$50).~~

- 4) *Clarify Notice Requirements for an Acupuncturist without a Place of Practice.* To ensure that licensees who practice outside of a practice location or who have no practice location provide consumer disclosures, the author should amend the bill to clarify that the licensees must provide a notice as specified under BPC § 138.

Page 2, lines 20-22, after (4), insert:

(4) A licensee practicing acupuncture at any location shall provide a notice to each patient that the acupuncturist is licensed and regulated by the board and shall include, at a minimum, the licensee's license number and the contact information for board, including the phone number and mailing address.

- 5) *Renewal Fee.* Given the fact that a fee study is in progress and the Board is not at imminent risk of insolvency, the author may wish to reduce the wall license renewal fee, but maintain the fee to cover the cost of the new physical certificate updated with dates tied to the licensee's license dates.

Page 5, lines 21-22:

~~(4) The renewal fee for the place of practice certificate wall license renewal fee shall be thirty dollars fifteen (\$3015).~~

REGISTERED SUPPORT:

California Acupuncture And Traditional Medicine Association

California Acupuncture Board

REGISTERED OPPOSITION:

None on file

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