

**TITLE 16. ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** No hearing scheduled/TBD

**Subject Matter of Proposed Regulations:** Continuing Education: Law and Ethics Requirement

**Sections Affected:** Amend Sections 1399.480,1399.489, and 1399.489.1 of Title 16 of the California Code of Regulations (CCR)<sup>1</sup>

**Background and Statement of the Problem:**

The California Acupuncture Board (Board) regulates the practice of acupuncture in California and is the sole issuer of acupuncture licenses in the state. The Board regulates over twelve thousand active licensed acupuncturists. The Board establishes and maintains standards of conduct within the acupuncture profession, primarily through its authority to license and enforce minimum standards for the protection of the public. (Acupuncture Licensure Act (Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code (BPC)) (Act).) The Board is authorized to establish necessary regulations for the enforcement of the Act and the laws subject to its jurisdiction. (Bus. & Prof. Code, § 4933.)

BPC section 4945 authorizes the Board to establish standards for continuing education (CE) for acupuncturists, requires the Board to mandate each acupuncturist complete 50 hours of CE every two years as a condition for renewal, requires a provider of CE to apply to the Board for approval to offer CE for acupuncturists, and authorizes the Board to review applications for approval containing the following:

- (1) Course content.
- (2) Test criteria.
- (3) Hours of continuing education credit requested for the course.
- (4) Experience and training of instructors.
- (5) Other information as required by the board.

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<sup>1</sup> Unless otherwise noted, all references to the CCR hereafter are to Title 16.

(6) That interpreters or bilingual instruction will be made available, when necessary.

Existing regulations at CCR sections 1399.480 and 1399.489 set forth the Board's requirements for approval of all CE courses and the Board's minimum standards for CE compliance for its licensees. Existing regulation does not mandate that active licensees obtain minimum hours of CE coursework in law and ethics as a condition of renewal or require inactive licensees seeking to restore their licenses to active status to complete specified hours in law and ethics coursework prior to restoration of their license to active status. Further, current regulations do not specify that in the event of license has been inactive less than one year that at least 22.5 hours of coursework must be obtained and approved as Category 1 (which is currently defined at CCR section 1399.483).

The regulatory proposal would establish such standards by requiring that, as a condition of renewal, a licensee on active status complete a minimum of four hours in law and ethics CE during the two years immediately preceding their license expiration date, unless a licensee is renewing an initial license that has been issued for less than two years (proposed section CCR section 1399.489(c)). The proposal would add a definition of ".5" or "One-half Hour" to CCR section 1399.480 to mean at least 25 minutes of participation in an organized learning experience.

The proposal also amends the existing requirement of 22 hours of Category 1 CE coursework to 22.5 hours for an inactive licensee seeking to restore a license if they have been inactive less than one year. The Board is also proposing to add "The licensee shall also have completed four (4) hours of continuing education in law and ethics as part of either the minimum 50 hours or 22.5 hours of continuing education required by this subsection," to CCR section 1399.489.1.

The proposal would also make other clarifying changes to specify how requirements in CCR section 1399.489 apply to certain licensees by adding the words "on active status" and "of the course", and to make minor, technical non-substantive changes to address the use of decimal numbering and grammar.

In 2012, the public voiced concerns to the Board that matters leading to discipline and complaint trends could be addressed by adding an ethics course requirement for licensees through their CE requirements. The Board recommended to institute a requirement that all practitioners, new and old, take a one-time CE course focusing on ethics pertaining to the practice and business of acupuncture. The Board also recommended requiring an additional course for practitioners on changes in practice law and updates to keep them up to date with changes in the law that may affect their practice.

The necessity of requiring four (4) hours of law and ethics as part of a licensee’s renewal requirements every two (2) years is to address the overarching theme of ethical violations observed in the Board’s enforcement trends. The Board’s “Top Ten Violations Leading to Enforcement Actions” published in March 2019, lists the following top 10 violations:

1. Convictions and arrests
2. Unlawful practice of acupuncture
3. Failure to register and address change
4. Unregistered practice location/display of license
5. Negligence/Incompetence
6. Malpractice settlements
7. Sexual misconduct
8. Failure to follow infection control
9. Discipline by public agency
10. Failure to notify board of false/assumed name

In the Board’s experience, the requirement of frequent and repeated exposure to relevant laws and ethics through CE will help prevent many of these violations. There are often changes in laws and ethics due to legislation, rulemaking, and other changes within the profession that require a licensee’s attention and compliance. Ethics help promote the basic tenets of the profession by codifying the fundamental beliefs of the profession and the common moral values the profession chooses to protect consumers and clients from harm in the professional relationship. Since failure to follow the law and comply with licensing requirements may also be seen as an ethical lapse in a given case, an educational course on the subjects of law and ethics is seen by the Board as one method to help prevent future violations.

This regulatory proposal’s minimum requirement to cover law and ethics every two years (for active licensees) or upon restoration of their license to active status (for inactive licensees) will ensure licensees stay current on relevant laws, regulations, and standards of practice, and enhances licensees’ compliance with professional practice and conduct which protects the public and consumers from harm.

The Board discussed the CE language at their March 26, 2021, meeting and voted to approve proposed language. Board staff thereafter recommended several clarifying changes to the proposed language. The Board approved the revised language at their June 23, 2023, meeting. Since then, Board staff has made non-substantive edits consistent with Board policy and under the Board’s delegated authority to the executive officer to make any non-substantive changes at the June 2023 meeting.

**Anticipated benefits from this regulatory action:**

The proposal aims to reduce violations by acupuncturists through mandated education, which will promote more ethical practice and improve public health and safety. The proposal will achieve this by setting a minimum CE requirement to include law and ethics, which places the Acupuncture Board in alignment with other healing arts boards. Finally, this proposal would benefit the health and welfare of California residents by ensuring that acupuncturists, as health care practitioners, are continuously informed of their legal and ethical obligations through establishment of directed and ongoing educational requirements in these areas.

This regulatory proposal benefits the health and welfare of California residents by ensuring licensee’s comprehension of the law and ethics, which helps to achieve more competent licensees and promotes consumer protection. This means that members of the public will benefit from having a more informed licensee as such education will help increase the likelihood that licensees will act ethically and in compliance with the law in the professional relationship.

**Specific purpose of, and rationale for, each adoption, amendment, or repeal:**

- 1. Amend section 1399.480 to add (a)(4) to define “.5” and “one-half Hour,” add BPC section 4970 in the reference note, and add “fifty” and put Arabic/decimal numeration in parenthesis.

**Purpose:**

A new proposed definition of “.5” and “One-half hour” being at least 25 minutes of participation in the context of CE is added to the definitions for this regulation section. The Board also proposes non-substantive additions of the word “fifty” before its Arabic/decimal numeration, and to add parentheses to the Arabic/decimal numerations.

**Rationale:**

This is necessary for licensees to understand their compliance obligations proposed to be amended in CCR section 1399.489.1 since an hour is established as being at least 50 minutes of participation in the Board’s regulations in CCR Section 1399.480(a)(3)), and the Board proposes to use new terms “.5” and “one-half hour” to mean half of the minutes required for a one hour CE course. The proposed definition of 25 minutes is therefore necessary to avoid licensee and staff confusion since an “hour” is commonly understood to mean 60 minutes and “half” of that “hour” usually means 30 minutes. Additionally, the Board proposes to update the category 1 CE hours required to restore

a license to active when a licensee has been inactive for less than a year under existing section 1399.489.1 (described more fully below). One half hour is added to the current 22 hours of category 1, to be in alignment with the Board’s definition of an hour of education, therefore, a definition of one-half hour (0.5 hours) is necessary given the change. Board staff commonly reviews and approves CE courses on the half-hour, which the Board has found is a common unit of measurement for CE providers and for state licensing agencies to therefore grant credit. In addition, Assembly Bill 3330 (Chapter 359, Statutes of 2020) (AB 3330) amended BPC section 4970 to prorate CE course fees in one-half hour increments. Providing a definition in regulation is necessary given the common occurrence and for consistency with that statute.

The addition of “fifty” before its Arabic/decimal numeration and parentheses to the Arabic/decimal numeration is to make the mention of numbers consistent with the following mentions of numbers in this article.

2. Amend section 1399.489(a) to add “on active status” and add “fifty” and “fifty percent” and put Arabic/decimal numeration in parenthesis.

Purpose: To add the terms “on active status” to existing text to more clearly specify that all licensees shall complete 50 hours of CE every two (2) years as a condition of renewal on active status and not for any other status type (e.g., inactive status). The Board also proposes non-substantive additions of the words “fifty” and “fifty percent” before their respective Arabic/decimal numerations, and to add parentheses to the Arabic/decimal numerations.

Rationale: Text is amended to modify subsection (a) by adding “on active status” to improve clarity. It also makes the requirements for the general population of licensees distinct from the requirements set out in the first part of subsection (a) which only address renewals in the initial licensure period for a licensee. It is necessary to explain that completion of CE is a condition to remain active and continue practicing to avoid licensee confusion about their CE requirements in CCR section 1399.489 and BPC section 4945, which currently do not specify that the CE requirements apply to renewal in active status after the initial renewal period.

The addition of “fifty” and “fifty percent” before their respective Arabic/decimal numerations, and parentheses to the Arabic/decimal numerations is to make the mention of numbers consistent with the other mentions of numbers in this article.

3. Amend section 1399.489 to add new subsection (c) to add new CE law and ethics requirements for licensees renewing on active status.

Purpose: To add a requirement that a licensee renewing on active status must complete a minimum of four (4) hours of CE in law and ethics during the 2 years immediately preceding their license expiration date unless otherwise provided in this subsection. This requirement is waived if the licensee is renewing an initial license that has been issued for less than two (2) years.

Rationale: For the reasons set forth above in the “Background and Statement of the Problem” and “Anticipated Benefits” sections, this is necessary to ensure licensees are up to date on changes in laws and ethics and to improve professional practice. In the Board’s experience, the Board’s proposal to set the minimum hours of law and ethics at four (4) hours in the two (2) years immediately preceding expiration date is sufficient to meet these public protection goals and ensure thorough understanding and notice of the current standards of the law and professional practice. The requirements to take law and ethic on renewal is also consistent with the public policies of other similar healing arts licensing boards, i.e. Board of Chiropractic Examiners and Physical Therapy Board (see e.g., CCR sections 361 and 1399.93).

The requirement would be waived for an active licensee renewing an initial license because the licensee has already recently completed their acupuncture education and training that includes law and ethics subject matter. These licensees have also been recently tested on their law and ethics competency as part of the licensing examination.

4. Amend section 1399.489 to re-letter subsections, strike “be required to” from subsection (f), and add “of the course” to the end of subsection (h).

Purpose: To update subsection letters after adding new subsection, strike the words “be required to” as redundant, and to add the words “of the course” to clarify that participants shall earn continuing education hours equal to the actual panel presentation time within the appropriate category of the course they taught.

Rationale: These amendments include general non-substantive clean-up to avoid confusion and help ensure licensees understand how much CE credit they can earn as an instructor for a CE course when they participate as a member on a panel. The addition “of the course” also makes it clearer which category of CE for which a presenting panel member shall receive credit. The amendment provides better specificity that reference to “category” is in respect to the category of the course instead of the panel presentation subject matter, for example.

5. Amend section 1399.489.1(b) to add “twenty-two and one-half” before “22” and “.5” after 22 hours and add “fifty” and “forty-five” and “twenty-five” and put Arabic/decimal numeration in parenthesis.

Purpose:

The Board is proposing to add the terms “twenty-two and one half hours” and “0.5”, to the 22 hours of category 1 CE required of licensees restoring their license to active when their license was inactive for less than a year. The Board also proposes non-substantive additions of the words “fifty” and “forty-five” and “twenty-five” before their respective Arabic/decimal numerations, and to add parentheses to the Arabic/decimal numerations.

Rationale:

This amendment is to address the 0.5 or half hour that is missing from the existing calculation that previously identified the minimum Category 1 CE as 22 hours. 22.5 hours is truly half of 45 hours, which is the minimum biennial CE requirement in Category 1 for licensees renewing on active status every two years that the Board believes should be required. Correcting this miscalculation addresses current issues with consistency with Board policy and also provides clarity regarding expectations for restoring a license. It is consistent with the Board’s CE policy to require no less than half of 45 hours of Category 1 CE to restore an inactive license to active status when that license has been inactive for less than one year.

The policy has been set at this amount since so little time has passed since being inactive and therefore, there is less risk of not having a current understanding of the standards for safe professional practice. This is also the minimum amount of education the Board believes is necessary to show continued competency after being out of practice for this limited amount of time. Leaving out the requirement of one additional half hour of Category 1 CE would be inconsistent with that current understanding and policy. In addition, especially with a licensee who has been inactive and out of practice, being short on Category 1 CE (which are those courses related to clinical matters or the actual provision of health care to patients, see CCR section 1399.483) could cause a more substantial deficiency in the licensee’s education, resulting in greater possible future violations in these areas. Addressing the missing half-hour provides better public protection by having a more well-informed licensee returning to active practice.

The addition of “fifty” and “forty-five” and “twenty-five” before their respective Arabic/decimal numerations, and parentheses to the Arabic/decimal numerations is to make the mention of numbers consistent with the mentions of numbers in this article.

6. Amend section 1399.489.1(b) to add a new last sentence requiring completion of at least 4 hours of CE in law and ethics as part of the required CE to restore a license to active status.

Purpose:

The Board is proposing to add “The licensee shall also have completed four (4) hours of continuing education in law and ethics as part of either the minimum 50 hours or 22.5 hours of continuing education required by this subsection.”

Rationale:

This is necessary to mandate the CE law and ethics requirement in the case of licensees restoring their license from inactive to active status. CCR section 1399.483 (b)(1) identifies courses in law and ethics as Category 1 CE coursework and, therefore, are part of the minimum 45 or 22.5 hours required in Category 1. There is no maximum number of hours of Category 1 CE coursework required on renewal, thus not making inactive licensees seeking to restore to their license to active status meet the 4-hour law and ethics requirement would be inconsistent with requirements for licensees already renewing in active status (see proposed amendments at CCR section 1399.489) and the Board’s policy goals of ensuring ethical (and safe) practice and a more informed licensee. Therefore, the law and ethics requirement for restoration to active status is set at the same number (four hours) as those already renewing in active status, regardless of the length of time spent inactive.

**Underlying Data / Materials Relied Upon**

Technical, theoretical or empirical studies, reports, or documents relied upon:

- A. Acupuncture Board’s Top Ten Violations published March 2019
- B. Acupuncture Board’s February 16, 2012 meeting minutes – Agenda Item 9b
- C. Acupuncture Board’s November 15, 2012 meeting minutes – Agenda Item 7
- D. Acupuncture Board’s Education Committee December 14, 2016 meeting minutes – Agenda Item 3
- E. Acupuncture Board’s October 25 – 26, 2018 meeting minutes – Agenda Item 8
- F. Acupuncture Board’s March 25 – 26, 2021 meeting minutes – Agenda Item 20
- G. Acupuncture Board March 25 – 26, 2021 Meeting materials of Item 20, Discussion on the Initiation of a Rulemaking to Amend Title 16, California Code of Regulations (CCR) secs. 1399.483 and 1399.489 – Continuing Education Ethics Requirement
- H. Acupuncture Board’s June 23, 2023 Agenda, meeting minutes and materials - Agenda Item 7



### **Business Impact:**

The Board has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The new CE requirement of four hours of law and ethics mandated by the amendments of subsection (c) of CCR section 1399.489 is expected to increase participation in these courses. However, because the regulations do not increase the total hourly requirement of 50 hours for license renewal, licensees are anticipated to take and complete the four hours of law and ethics coursework in lieu of four hours of other available CE courses. Additionally, law and ethics courses are already currently available. As a result, the regulations are not anticipated to result in additional costs or revenues to CE providers.

The amendments to CCR Section 1399.489 will also affect licensees renewing on active status each year. However, the new minimum CE requirement of four hours of law and ethics should not cause any economic impact to licensees since the overall total of CE hours has not increased. The new requirement only prescribes that a licensee's total 50 hours of CE must now consist of 4 hours of law and ethics. The price of law and ethics courses are not priced higher than the other kinds of CE courses.

### **Economic Impact Assessment:**

The Board has determined that this regulatory proposal will have the following effects:

- It will not eliminate jobs or create jobs within the State of California because the amendments do not increase the total number of CE hours required for license renewal. Additionally, CE providers are not required to provide law and ethics coursework, nor are there new prescribed CE requirements being established for providers; therefore, no economic impact is being reported.
- It will not create new business or eliminate existing businesses within the State of California because there are no proposed changes to the total CE hour requirement.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed changes only create minimum dedicated CE requirements within the existing 50 hours total of CE required for renewal.

- This regulatory proposal benefits the health and welfare of California residents by ensuring licensee’s comprehension of the law and ethics, which helps to achieve more competent licensees and promotes consumer protection. The proposal as a whole is aimed at reducing common violations observed by the Board through mandated education, resulting in increased safe practice experiences for consumers and thereby providing greater public protection.
- This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.
- This regulatory proposal does not affect the state’s environment because it has nothing to do with the environment.

**Specific Technologies or Equipment:**

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

**Consideration of Alternatives:**

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

No such alternatives have been proposed, however the Board welcomes comments from the public.

**Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:**

No such alternatives have been proposed, however the Board welcomes comments from the public.