

**CALIFORNIA ACUPUNCTURE BOARD  
FINAL STATEMENT OF REASONS**

**HEARING DATE:** June 30, 2014

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Consumer Protection Enforcement Initiative (CPEI)

**SECTION S AFFECTED:** Title 16, Division 13.7, California Code of Regulations (CCR), Sections 1399.405, 1399.419, 1399.469.1 and 1399.469.2.

**UPDATED INFORMATION:**

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The California Acupuncture Board (hereafter 'Board') currently regulates a total of 16,678 licensees, all of whom have been issued a license to practice Acupuncture in California. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, examination, school approval and disciplinary functions, as mandated by Business and Professions Code (hereafter "BPC") section 4928.1. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; administering the California Acupuncture Licensing Exam (CALE); investigating complaints against licensees and disciplining licensees for violating of the Acupuncture Licensure Act (hereinafter "ALA"); monitoring licensees whose license has been placed on probation; and overseeing approval of Acupuncture Schools and training programs. BPC section 4933 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the ALA.

There were no recommendations or comments received during the 45-day comment period and at the June 30, 2014 regulatory hearing. Therefore, the Board will adopt as its final text the original version which is available on the Board's website.

**Local Mandate:**

A mandate is not imposed on local agencies or school districts.

**Updated Business Impact:**

The Board has made a determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Board currently regulates a total of 16,678 licensees, all of whom have been issued a license to practice Acupuncture in California.

The main purpose of the proposed language is to provide the Board with the means to expedite the enforcement process by further defining unprofessional conduct, allowing the

Executive Officer to approve settlement agreements, requiring actions against registered sex offenders, and by permitting the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

The Board has determined that the following types of businesses may be affected by the proposal:

- Businesses owned by licensees of the Board who face disciplinary action due to sexual misconduct.
- Businesses that employ licensees of the Board who face disciplinary action due to sexual misconduct.

Licensees may incur a nominal fee for the copying and mailing of records requested by the Board. However, current statute requires licensees to comply with the Board's records request or they risk being fined. Since current statute previously required the copying and submission of records, there should be no additional fiscal impact to the licensee or their business as a result of this regulation. Licensees will be considered to have committed unprofessional conduct if they fail to provide records requested by the Board within 15 days to 30 days. As a result, licensees may face disciplinary action against their license.

Licensees may incur a nominal fee when reporting an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to the Board. This regulation does not specifically state the manner of how a licensee is to report to the Board. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their notification to the Board. Licensees will be considered to have committed unprofessional conduct if they fail to report an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to the Board within 30 days. As a result, licensees may face disciplinary action against their license.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Applicants required by the Board to be examined by a physician and surgeon or psychologists will not incur a fiscal impact. The Board is responsible for the full cost of the examination. Existing law, BPC Section 820, authorizes the Board to examine licensees for mental illness or

physical illness that may affect competency. Since licensees may already be subject to such an examination, the Board has determined that the proposed regulation will not have a significant statewide adverse economic impact on the businesses of the physicians and surgeons or psychologists designated to perform the examination. The physicians and surgeons or the psychologists designated to perform the examination have the necessary equipment to perform the examination and will not experience additional costs as a result of this regulation. However, the physician and surgeons or psychologist may incur more revenue as a result of this regulation, depending on how many applicants are required to be examined.

The Board currently regulates 16,678 licensees, all of whom have been issued a license to practice in California. Since the Board's inception in 1976, the Board has been compelled to examine one licensee as provided in BPC Section 820. Such an examination has cost the Board approximately \$2,500 each time. The Board averages approximately 540 applications for licensure a year, with 673 being issued in 2013. The Board does not maintain data regarding the number of applicants who have demonstrated physical or mental illnesses affecting competency, therefore it is difficult to estimate the number of applicants the Board may examine. Based upon the number of licensees examined pursuant to existing authority, the fiscal impact of the proposed regulatory action on State government would be minor and any additional expenditure would be absorbable by the Board.

### Benefits

The benefit from these proposed regulations will be to provide maximum protection to the California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to a mental or physical illness. These benefits are a direct result of the Board's statutorily mandated priority (BP code section 4928.1). The protection of the public is the highest priority of the Board in exercising licensing, regulatory, and disciplinary functions.

### Consideration of Alternatives

There are no alternatives to the regulation. The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. These proposed regulatory changes provide the Board with the means to expedite the enforcement process and provide better public protection.

Without this regulatory change, the Board would not be able to receive records or reports in a more expedited manner. Waiting for a licensee to renew their license to obtain conviction information would be less effective and could endanger patient safety.

Licensing an applicant who demonstrates mental or physical illness that may affect competency, but who successfully completes an examination and is subsequently licensed, has the potential to cause detrimental patient harm and would be less effective. This regulation gives the Board the ability to further examine applicants that demonstrate mental or physical illness that may affect competency, but who otherwise successfully complete an examination.

With this new authority, the Board would be able to deny the application, and provide better patient protection if the applicant is found to be unable to safely practice.

Objections or Recommendations/Responses:

The following recommendations were made regarding the proposed action:

N/A

Summary of Comments Received During the 45-Day Comment Period:

No comments were received during the 45-day comment period.