

# LAWS AND REGULATIONS RELATING TO THE PRACTICE OF ACUPUNCTURE

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## CALIFORNIA ACUPUNCTURE BOARD

Issued by:

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**\*\*Please note: The Board does not provide legal advice or interpretations of the laws and regulations\*\***

# BUSINESS AND PROFESSIONS CODE – ACUPUNCTURE LICENSE ACT

## Division 2. Healing Arts [§ 500 - § 4999.129]

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## **Article 1. Administration and General Provisions**

*(Article 1 added by Stats. 1980 ch. 1313, § 11.5.)*

### **§ 4925. Citation of chapter; References in chapter**

(a) This chapter constitutes the chapter on acupuncture of the Business and Professions Code. This chapter shall be known and may be cited as the Acupuncture Licensure Act. Whenever a reference is made to the Acupuncture Licensure Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

(b) Any reference in this chapter, or to the regulations pertaining thereto, to "certificate" or "certification" shall hereafter mean "license" or "licensure." Any reference to the term "certifying" means "licensing," and the term "certificate holder" means "licensee." Any reference to the "Acupuncture Committee" or "committee" means the "Acupuncture Board" or "board."

*(Amended by Stats. 1998, Ch. 991, Sec. 15. Effective January 1, 1999.)*

### **§ 4926. Legislative intent**

In its concern with the need to eliminate the fundamental causes of illness, not simply to remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of Asian medicine through acupuncture. The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health and to remove the existing legal constraints which are an unnecessary hindrance to the more effective provision of health care services. Also, as it effects the public health, safety, and welfare, there is a necessity that individuals practicing acupuncture be subject to regulation and control as a primary health care profession.

*(Amended by Stats. 2005, Ch. 649, Sec. 4. Effective January 1, 2006.)*

### **§ 4927. Definitions**

As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Acupuncture "Board".

(b) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.

(c) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked.

(d) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

*(Amended by Stats. 1999, Ch. 655, Sec. 56. Effective January 1, 2000.)*

### **§ 4927.5. "Approved educational and training program"**

(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. Any school or college offering education and training in the practice of acupuncture that was approved by the board prior to January 1, 2017, has not had its approval revoked, and has not changed its curriculum since receiving board approval, is deemed to have had its curriculum approved by the board for the purposes of this section.

(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 preaccreditation 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 preaccreditation 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 the Bureau for Private and Postsecondary Education of whether the board has approved the curriculum. *(Amended by Stats. 2018, Ch. 596, Sec. 1. (AB 3142) Effective January 1, 2019.)*

#### **§ 4928. Acupuncture Board (Repealed January 1, 2019)**

(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, 2023, and as of that date is repealed.

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

*(Amended by Stats. 2018, Ch. 596, Sec. 2. (AB 3142) Effective January 1, 2019. Repealed as of January 1, 2023, by its own provisions.)*

#### **§ 4928.1. Priority of the board; Protection of the public**

Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

*(Added by Stats. 2002, Ch. 107, Sec. 20. Effective January 1, 2003.)*

#### **§ 4929. Members**

Three members of the board shall be acupuncturists with at least five years of experience in acupuncture and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist. The acupuncturist members shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession.

The Governor shall appoint the three acupuncturist members and two of the public members. All members appointed to the board by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. Any member of the board may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

*(Amended by Stats. 2005, Ch. 659, Sec. 6. Effective January 1, 2006.)*

#### **§ 4929.5 [Section repealed 2006]**

#### **§ 4930. Term of office**

Each member of the board shall be appointed for a term of four years.

*(Amended by Stats. 1999, Ch. 655, Sec. 59. Effective January 1, 2000.)*

#### **§ 4931. Compensation**

Each member of the board shall receive per diem and expenses as provided in Section 103.

*(Amended by Stats. 1999, Ch. 655, Sec. 60. Effective January 1, 2000.)*

#### **§ 4933. Administration**

(a) The board shall administer this chapter.

(b) The board may adopt, amend, or repeal, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations as may be necessary to enable it to carry into effect the provisions of law relating to the practice of acupuncture.

(c) Four members of the board, including at least one acupuncturist, shall constitute a quorum to conduct business.

(d) It shall require an affirmative vote of a majority of those present at a meeting of the board to take any action or pass any motion.

*(Amended by Stats. 2009, Ch. 307, Sec. 47. Effective January 1, 2010.)*

#### **§ 4933.5 Employment of personnel**

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

*(Added by Stats. 2014, Ch. 397, Sec. 4. Effective January 1, 2015.)*

**§ 4934. Personnel; Executive Officer (Repealed January 1, 2019)**

(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, 2023, and as of that date is repealed.

*(Amended by Stats. 2018, Ch. 596, Sec. 3. (AB 3142) Effective January 1, 2019. Repealed as of January 1, 2023, by its own provisions.)*

**§ 4934.1 Comprehensive analysis of scope of practice, educational requirements, testing and accreditation of acupuncturists.**

(a) The Legislature requests the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy to conduct a comprehensive analysis consisting of the following reviews and evaluations and shall report their findings and recommendations to the Legislature by September 1, 2004:

- (1) Review and make recommendations on the scope of practice for acupuncturists.
- (2) Review and make recommendations on the educational requirements for acupuncturists.
- (3) Evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and make recommendations as to whether or not the national examination should be offered in California in lieu of, or as part of, the state examination.
- (4) Evaluate and make recommendations on the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine, the approval process of the Bureau for Private Postsecondary Education, and the board's approval process.

(b) The board shall pay for all of the costs associated with the comprehensive analysis. An amount to pay for all of the costs associated with the comprehensive analysis, up to two hundred fifty thousand dollars (\$250,000), is hereby appropriated to the board from the Acupuncture Fund.

*(Added by Stats. 2002, Ch. 714, Sec. 5. Effective January 1, 2003.)*

**§ 4934.2 Studies and reviews to be conducted by board.**

The board shall conduct the following studies and reviews, and shall report its findings and recommendations to the department and the Joint Committee on Boards, Commissions, and Consumer Protection no later than September 1, 2004:

(a) The board shall conduct a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants.

(b) The board shall study and recommend ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses.

*(Amended by Stats. 2004, Ch. 33, Sec. 20. Effective April 13, 2004.)*

**Article 2. Certification Requirements**

*(Article 2 added by Stats. 1980 ch. 1313, § 11.5)*

**§ 4935. Unlawful practice of acupuncture**

(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 advertise or otherwise represent that he or she is 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 advertises or otherwise represents that he or she is practicing or 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, an expert, or otherwise qualified to practice in the field of acupuncture, Asian medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup, including Chinese medicine, Japanese medicine, or Korean medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if the person is either of the following:

(1) Engaged in a course or tutorial program in acupuncture, as provided in this chapter.

(2) 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.

*(Amended by Stats. 2018, Ch. 596, Sec. 4. (AB 3142) Effective January 1, 2019.)*

#### **§ 4936. Use of "Doctor" or "Dr."**

(a) It is unprofessional conduct for an acupuncturist to use the title "Doctor" or the abbreviation "Dr." in connection with the practice of acupuncture unless he or she possesses a license that authorizes the use or possesses an earned doctorate degree from an accredited, approved, or authorized educational institution as set forth under Chapter 8 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code, which is in acupuncture, oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937.

(b) The use of the title "Doctor" or the abbreviation "Dr." by an acupuncturist as authorized in subdivision (a) without further indicating the type of license or degree which authorizes that use shall constitute unprofessional conduct.

*(Added by Stats. 2012, Ch. 326, Sec. 1. Effective January 1, 2013.)*

#### **§ 4937. Use of techniques and modalities afforded by licensure; Definitions**

An acupuncturist's license authorizes the holder thereof:

(a) To engage in the practice of acupuncture.

(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

(c) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(e) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2(commencing with Section 11053) of Division 10 of the Health and Safety Code.

*(Amended by Stats. 2005, Ch. 649, Sec. 6. Effective January 1, 2006.)*

#### **§ 4938. License requirements**

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

(1) Is at least 18 years of age.

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

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

(ii) 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.

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

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

(3) 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.

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

(5) 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 that 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.

(b) 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.

*(Amended by Stats. 2016, Ch. 667, Sec. 4. Effective January 1, 2017.)*

#### **§ 4938.1. [Section repealed 2000.]**

#### **§ 4939. Applicants who complete education outside of the United States; Application process, criteria, and procedures for approval of credential evaluation services**

(a) For purposes of this chapter, "approved credential evaluation service" means an agency or organization that is approved by the board to evaluate education completed outside the United States and identify the equivalency of that education to education completed within the United States.

(b) If an applicant completes education outside of the United States, the applicant shall do both of the following:

(1) Submit documentation of his or her education to a board-approved credential evaluation service for evaluation.

(2) Have the results of the evaluation sent directly from the credential evaluation service to the board.

(c) If the board receives the results of an applicant's evaluation pursuant to subdivision (b), the board shall examine the results and determine whether the applicant meets requirements for licensure. If the evaluated education is not sufficient to meet the requirements for licensure, the board may offer the applicant additional education, training, or standardized testing to satisfy the educational requirements. The board shall not require the applicant to complete education, training, or testing that is not otherwise required of applicants who complete education or training within the United States.

(d) The board shall establish, by regulation, an application process, criteria, and procedures for approval of credential evaluation services. The regulations shall, at a minimum, require the credential evaluation service to meet all of the following requirements:

(1) Furnish evaluations written in English directly to the board.

(2) Be a member of a nationally recognized foreign credential evaluation association, such as, but not limited to, the American Association of Collegiate Registrars and Admissions Officers or the National Association of Credential Evaluation Services.

(3) Undergo reevaluation by the board every five years.

(4) Certify to the board that the credential evaluation service maintains a complete set of reference materials as determined by the board.

(5) Base evaluations only upon verified authentic, official transcripts, and degrees.

(6) Have a written procedure for identifying fraudulent transcripts.

(7) Include in an evaluation report submitted to the board the specific method or methods of authentication for the transcripts, certification, degrees, and other education evaluated for the purposes of the report.

(8) Include in the evaluation report, for each degree held by the applicant, the equivalent degree offered in the United States, the date the degree was granted, the institution granting the degree, an English translation of the course titles, and the semester unit equivalence for each course.

- (9) Have an appeal procedure for applicants.
- (10) Provide information concerning the credential evaluation service to the board that includes, but is not limited to, resumes or curriculum vitae for each evaluator and translator, which includes biographical information, three letters of references from public or private agencies, statistical information on the number of applications processed annually for the past five years, and any other information the board may require to determine whether the credential evaluation service meets the standards under this subdivision and the board's regulations.
- (11) Provide to the board all information required by the board, including, but not limited to, the following:
  - (A) Its credential evaluation policy.
  - (B) A complete list of terminology and evaluation terms used in producing its credential evaluations.
  - (C) A detailed description of the specific methods utilized for credential authentication.

*(Repealed and added by Stats. 2016, Ch. 667, Sec. 6. Effective January 1, 2017.)*

**§ 4940. Approval of tutorial program; Approval of supervising acupuncturist**

(a) The board shall establish standards for the approval of tutorial programs for education and training in the practice of acupuncture that satisfy the requirements of Section 4938. The board shall also establish standards for the approved supervising acupuncturists.

(b) An acupuncturist shall be approved to supervise a trainee, provided the supervisor meets the following conditions:

- (1) Is licensed to practice acupuncture in this state and that license is current, valid, and has not been suspended or revoked or otherwise subject to disciplinary action.
- (2) Has filed an application with the board.
- (3) Files with the board the name of each trainee to be trained or employed and a training program satisfactory to the board.
- (4) Does not train or employ more than two acupuncture trainees at any one time.
- (5) Has at least 10 years of experience practicing as an acupuncturist and has been licensed in this state for at least five years.
- (6) Is found by the board to have the knowledge necessary to educate and train the trainee in the practice of an acupuncturist.

The amendments made to this section at the 1993 portion of the 1993-94 Regular Session of the Legislature shall not affect the approval of any supervising acupuncturist which has been issued prior to the effective date of those amendments.

*(Amended by Stats. 1999, Ch. 655, Sec. 64. Effective January 1, 2000.)*

**§ 4940.1. [Section repealed 1996.]**

**§ 4940.2. [Section repealed 1996.]**

**§ 4940.3. [Section repealed 1996.]**

**§ 4941. Credit for prior training and experience.**

In reviewing applications for licensure based upon the completion of a tutorial program in acupuncture, the board may provide that credit is granted for relevant prior training and experience when that training or experience otherwise meets the standards set by the board.

*(Amended by Stats. 1999, Ch. 655, Sec. 65. Effective January 1, 2000.)*

**§ 4942, § 4943. [No sections of these numbers.]**

**§ 4944. Investigation; Delegation of authority**

(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.

*(Amended by Stats. 2014, Ch. 397, Sec. 10. Effective January 1, 2015.)*



**§ 4945. Continuing education**

(a) The board shall establish standards for continuing education for acupuncturists.

(b) The board shall require each acupuncturist to complete 50 hours of continuing education every two years as a condition for renewal of his or her license. No more than five hours of continuing education in each two-year period may be spent on issues unrelated to clinical matters or the actual provision of health care to patients. A provider of continuing education shall apply to the board for approval to offer continuing education courses for credit toward this requirement on a form developed by the board, shall pay a fee covering the cost of approval and for the monitoring of the provider by the board and shall set forth the following information on the application:

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

(c) Licensees residing out of state or out of the country shall comply with the continuing education requirements.

(d) Providers of continuing education shall be monitored by the board as determined by the board.

(e) If the board determines that any acupuncturist has not obtained the required number of hours of continuing education, it may renew the acupuncturist's license and require that the deficient hours of continuing education be made up during the following renewal period in addition to the current continuing education required for that period. If any acupuncturist fails to make up the deficient hours and complete the current requirement of hours of continuing education during the subsequent renewal period, then his or her license to practice acupuncture shall not be renewed until all the required hours are completed and documented to the board.

*(Amended (as amended by Stats. 2000, Ch. 568) by Stats. 2005, Ch. 648, Sec. 1. Effective January 1, 2006.)*

**§ 4945.5 [Section repealed 1994.]**

**§ 4946 [Section repealed 2002.]**

**§ 4946.5 [Section repealed 1986.]**

**§ 4947. Authority of other licensees to practice acupuncture**

(a) Nothing in this chapter shall be construed to prevent the practice of acupuncture by a person licensed as a dentist or a podiatrist, within the scope of their respective licenses, if the licensee has received a course of instruction in acupuncture. This course material shall be approved by the licensing board having jurisdiction over the licensee. The board shall assist the licensing boards in providing information as requested by the individual licensing boards.

(b) The course requirement set forth in subdivision (a) shall not apply to a podiatrist or dentist who has completed a course in acupuncture, including a continuing education course, and has utilized acupuncture prior to July 1, 1982.

*(Amended by Stats. 1999, Ch. 655, Sec. 68. Effective January 1, 2000.)*

**§ 4948. Research Activities**

The provisions of this chapter shall not be construed to make unlawful the activities of persons involved in research pursuant to Section 2075.

*(Repealed and added by Stats. 1980, Ch. 1313, Sec. 11.5. Section operative July 1, 1982, pursuant to former Section 4974.5.)*

**§ 4949. Guest Acupuncturists**

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.

*(Amended by Stats. 2014, Ch. 397, Sec. 11. Effective January 1, 2015.)*

### **Article 3. [No article of this number]**

#### **Article 4. Enforcement**

*(Article 4 added by Stats. 1980, Ch. 1313, Sec. 11.5.)*

##### **§ 4955. Disciplinary action for unprofessional conduct**

The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist who is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to any other person, or to the public, and to an extent that the use impairs the acupuncturist's ability to engage in the practice of acupuncture with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with healing arts boards within this division, including, but not limited to, the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which the licensee is licensed as an individual to practice acupuncture.

*(Amended by Stats. 2018, Ch. 596, Sec. 6. (AB 3142) Effective January 1, 2019.)*

##### **§ 4955.1. Disciplinary Action for fraudulent act**

The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients.

*(Added by Stats. 2002, Ch. 714, Sec. 9. Effective January 1, 2003.)*

#### **§ 4955.2. Disciplinary action for negligence or incompetence**

The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following:

(a) Gross negligence.

(b) Repeated negligent acts.

(c) Incompetence.

*(Added by Stats. 2002, Ch. 714, Sec. 10. Effective January 1, 2003.)*

#### **§ 4956. Equivalents of conviction; Time after conviction for discipline**

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter.

The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

*(Amended by Stats. 1999, Ch. 655, Sec. 70. Effective January 1, 2000.)*

#### **§ 4957, § 4958. [No section for these numbers.]**

#### **§4959. Assessments of cost; Enforcement of order**

(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case.

(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Acupuncture Fund.

*(Amended by Stats. 1999, Ch. 655, Sec. 71. Effective January 1, 2000.)*

#### **§ 4960. Conduct of proceedings**

Disciplinary proceedings under this article shall be conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

*(Repealed and added by Stats. 1980, Ch. 1313, Sec. 11.5. Section operative July 1, 1982, pursuant to former Section 4974.5.)*

#### **§ 4960.2 Certification of revocation of license**

The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

*(Added by Stats. 2002, Ch. 714, Sec. 11. Effective January 1, 2003.)*

**§ 4960.5. Petition for reinstatement or modification of penalty**

(a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

- (1) At least three years for reinstatement of a license revoked or surrendered.
- (2) At least two years for early termination of probation of three years or more.
- (3) At least two years for modification of a condition of probation.
- (4) At least one year for early termination of probation of less than three years.

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

*(Amended by Stats. 1999, Ch. 655, Sec. 72. Effective January 1, 2000.)*

**§ 4961. Acupuncture: place of practice: wall license.**

(a) (1) Every person who is licensed to practice acupuncture in this state shall register, on forms prescribed by the board that may include an application for an initial license or for renewal of a license, each place of practice and apply to the board to obtain a wall license for each place of practice.

(2) A wall license shall be renewed biennially, coinciding with the license renewal date. A licensee with a wall license issued before January 1, 2021, 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 wall license is not required to be posted when a licensee performs acupuncture treatments outside of the licensee's place of practice. However, the licensee shall carry a pocket license during treatments outside of the licensee's place of practice and make the pocket license available upon request.

(4) A licensee shall register each place of practice within 30 days after the date of the licensee being licensed by the board or the establishment of a new place of practice, whichever occurs first.

(b) (1) An acupuncturist licensee shall post a wall license issued by the board to the licensee in a conspicuous location in each place of practice at all times.

(2) If an acupuncturist licensee has more than one place of practice, the licensee shall obtain from the board a separate wall license for each additional location and post the assigned wall license at each location.

(c) A licensed acupuncturist shall not display any acupuncture wall license that is not currently active and valid.

(d) (1) If a licensee changes the location of a place of practice, the licensee shall apply for the change of location within 30 days of changing the licensee's place of practice on forms prescribed by the board.

(2) If a licensee fails to apply for a new wall license with the board due to a change of location within the time prescribed by this subdivision, the board may deny renewal of the license.

(e) (1) A wall license is nontransferable.

(2) Any change to the registered location in connection with the wall license, such as moving, requires a new wall license, and the former wall license shall be returned to the board with a request for cancellation.

(3) The licensee shall apply to the board to obtain a new wall license using the forms prescribed by the board for the new wall license or change of location.

(f) (1) An acupuncturist shall be responsible for the acupuncture, Asian massage services, or any other practice specified under Section 4937 rendered pursuant to the license of the acupuncturist in each place of practice maintained by the acupuncturist.

(2) An acupuncturist maintaining more than one place of practice shall ensure that each place of practice is in compliance with the standards of practice requirements of this chapter.

(g) As used in this section:

(1) "Place of practice" means an acupuncture office where any act of acupuncture is practiced and includes a place of practice in which the applicant holds a proprietary interest of any nature whatsoever or in which the licensee holds any right to participate in the management or control thereof.

(2) "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.

(h) This section shall become operative on January 1, 2021.

*(Repealed (in Sec. 1) and added by Stats. 2019, Ch. 308, Sec. 2. (AB 779) Effective January 1, 2020. Section operative January 1, 2021, by its own provisions.)*

#### **§ 4962. Probation status: disclosure**

(a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) A violation of this section shall not be punishable as a crime.

*(Added by Stats. 2018, Ch. 570, Sec. 7. (SB 1448) Effective January 1, 2019.)*

#### **§ 4963. Injunction or restraining order**

Whenever any person has engaged in an act or practice which constitutes an offense against this chapter, a superior court of a county on application of the board may issue an injunction or other appropriate order restraining that conduct. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. The board may commence action in such superior court under the provisions of this section on its own motion and no undertaking shall be required in any action commenced by the board.

*(Amended by Stats. 1999, Ch. 655, Sec. 74. Effective January 1, 2000.)*

#### **§ 4964. Construction of Article**

The provisions of this article insofar as they are substantially the same as provisions relating to the same subject matter of any previous acupuncture licensure law shall be construed as a restatement and continuation thereof, and not as a new enactment.

*(Amended by Stats. 1999, Ch. 655, Sec. 75. Effective January 1, 2000.)*

## **Article 5. Renewal**

*(Article 5 added by Stats. 1980, Ch. 1313, Sec. 11.5.)*

**§ 4965. Expiration of License; Renewal**

(a) Licenses 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 board shall establish and administer a birth date renewal program.

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

*(Amended (as added by Stats. 1991, Ch. 983, Sec. 19) by Stats. 1999, Ch. 655, Sec. 77. Effective January 1, 2000.)*

**§ 4966. Period for renewal**

Except as provided in Section 4969, a license that has expired may be renewed at any time within three years after its expiration by filing of an application for renewal on a form provided by the board, paying all accrued and unpaid renewal fees, and providing proof of completing continuing education requirements. If the license is not renewed prior to its expiration, the acupuncturist, as a condition precedent to renewal, shall also pay the prescribed delinquency fee. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date the delinquency fee is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in Section 4965, after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

*(Amended by Stats. 1999, Ch. 655, Sec. 78. Effective January 1, 2000.)*

**§ 4967. Effect of failure to renew license**

A person who fails to renew his or her license within three years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter, but that person may apply for and obtain a new license if he or she meets all of the following requirements:

(a) Has not committed any acts or crimes constituting grounds for denial of licensure under Division 1.5 (commencing with Section 475).

(b) Takes and passes the examination, if any, which would be required of him or her if an initial application for licensure was being made, or otherwise establishes to the satisfaction of the board that, with due regard for the public interest, he or she is qualified to practice as an acupuncturist.

(c) Pays all of the fees that would be required if an initial application for licensure was being made. The board may provide for the waiver or refund of all or any part of an examination fee in those cases in which a license is issued without an examination pursuant to this section.

*(Amended by Stats. 1999, Ch. 655, Sec. 79. Effective January 1, 2000.)*

**§ 4968. [No section for this number.]**

**§ 4969. Suspended license; Revoked license**

(a) A suspended license is subject to expiration and shall be renewed as provided in this article, but the renewal does not entitle the acupuncturist, while the license remains suspended, and until it is reinstated, to engage in the practice of acupuncture, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(b) A revoked license is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the former licensee, as a condition to reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the license was reinstated, plus the delinquency fee, if any, accrued at the time of its expiration.

*(Amended by Stats. 1994, Ch. 26, Sec. 181. Effective March 30, 1994.)*

**Article 6. Revenue**

*(Article 6 added by Stats. 1980, Ch. 1313, Sec. 11.5.)*

**§ 4970. Fees**

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 two hundred fifty dollars (\$250) and may be increased to not more than three hundred fifty dollars (\$350).

(b) The application fee for foreign applicants shall be three hundred fifty dollars (\$350) and may be increased to not more than five hundred dollars (\$500).

(c) The examination and reexamination fees shall be eight hundred dollars (\$800).

(d) The initial license fee shall be five hundred dollars (\$500), 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. The initial license fee shall include one wall license registration if a place of practice is specified in the application.

(e) The renewal fee shall be five hundred dollars (\$500) and may be increased to not more than seven hundred seventy-five dollars (\$775) and, if 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 board shall assess the renewal fee biennially.

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

(g) The wall license fee shall be fifty dollars (\$50).

(h) The wall license renewal fee shall be fifty dollars (\$50).

(i) If a pocket license is lost or destroyed, the pocket license replacement fee is fifty dollars (\$50).

(j) The endorsement fee is one hundred dollars (\$100).

(k) If a wall license is lost or destroyed, the wall license replacement fee is fifty dollars (\$50).

(l) The approval fee for each provider of continuing education shall be five hundred dollars (\$500) and may be increased to not more than seven hundred dollars (\$700).

(m) The biennial renewal approval fee for each provider of continuing education shall be five hundred dollars (\$500) and may be increased to not more than seven hundred dollars (\$700).

(n) (1) Fees for continuing education course applications shall be assessed to the continuing education provider at a floor of ten dollars (\$10) per hour of continuing education requested to offer, and a cap of twenty dollars (\$20) per hour of continuing education requested to offer, allowing up to a maximum of 50 hours to be approved per course application.

(2) Fees for course hours shall be prorated in one-half hour increments.

(3) An approved course may be offered for a period of one year from the date of board course approval.

(o) This section shall become operative on January 1, 2021.

*(Amended by Stats. 2020, Ch. 359, Sec. 5. Effective January 1, 2020.)*

#### **§ 4971. Tutorial Program Fees**

(a) The amount of fees prescribed for acupuncture tutorial programs shall be as follows:

(1) The application and registration fee to supervise an acupuncture trainee shall be one hundred dollars (\$100) and may be increased to not more than two hundred dollars (\$200).

(2) The annual renewal fee for approval to supervise an acupuncture trainee shall be two hundred (\$200) and may be increased to not more than five hundred dollars (\$500).

(3) The application fee for an acupuncture trainee shall be one thousand dollars (\$1,000) and may be increased to not more than two thousand five hundred dollars (\$2,500).

(4) The annual renewal fee for an acupuncture trainee shall be five hundred dollars (\$500) and may be increased to not more than six hundred dollars (\$600).

(5) The delinquency fee for a supervisor shall be set in accordance with Section 163.5.

(6) The delinquency fee for an acupuncture trainee shall be one hundred dollars (\$100) and may be increased to not more than two hundred dollars (\$200).

(b) This section shall become operative on January 1, 2021.

*(Amended by Stats. 2020, Ch. 359, Sec. 7. Effective July 1, 2020.)*

#### **§ 4972. Regulations Fixing Fees**

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

*(Amended by Stats. 1999, Ch. 655, Sec. 80. Effective January 1, 2000.)*

#### **§ 4973. Inspection fees [Section repealed.]**

#### **§ 4974. Reports; Acupuncture Fund**

The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit in the Acupuncture Fund, which fund is created to carry out the provisions of this chapter, upon appropriation by the Legislature.

*(Amended by Stats. 2016, Ch. 667, Sec. 7. Effective January 1, 2017.)*

#### **§ 4974.5 [Section repealed 1983.]**

## **Article 7. Acupuncture Corporations**

*(Article 7 repealed (by Sec. 19) and added by Stats. 1980, Ch. 1314, Sec. 2.2.)*

**§ 4975. Definition**

An acupuncture corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act, this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

With respect to an acupuncture corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Acupuncture Board.

*(Amended by Stats. 1999, Ch. 655, Sec. 82. Effective January 1, 2000.)*

**§ 4976. Violation as unprofessional conduct**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

*(Repealed and added by Stats. 1980, Ch. 1314, Sec. 2.2. Operative July 1, 1982, by Sec. 19 of Ch. 1314.)*

**§ 4977. Conduct of Practice**

An acupuncture corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under Article 4 (commencing with Section 4955). In the conduct of its practice, it shall observe and be bound by statutes and regulations to the same extent as a person holding a license under this chapter.

*(Amended by Stats. 1999, Ch. 655, Sec. 83. Effective January 1, 2000.)*

**§ 4977.1 Accrual of income to shareholder while disqualified**

The income of an acupuncture corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in Section 13401 of the Corporations Code) shall not in any manner accrue to the benefit of such shareholder or his or her shares in the acupuncture corporation.

*(Repealed and added by Stats. 1980, Ch. 1314, Sec. 2.2. Operative July 1, 1982, by Sec. 19 of Ch. 1314.)*

**§ 4977.2 Directors, shareholders, and officers to be licensees**

Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of an acupuncture corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined by Section 13401 of the Corporations Code.

*(Amended by Stats. 2002, Ch. 714, Sec. 12. Effective January 1, 2003.)*

**§ 4978. Name**

The name of an acupuncture corporation and any name or names under which it may render professional services shall contain words "acupuncture" or "acupuncturist" and wording or abbreviations denoting corporate existence.

*(Repealed and added by Stats. 1980, Ch. 1314, Sec. 2.2. Operative July 1, 1982, by Sec. 19 of Ch. 1314.)*

**§ 4979. Regulations**

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including, but not limited to, regulations requiring (a) that the bylaws of an acupuncture corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time the regulations may provide, and (b) that an acupuncture corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

*(Amended by Stats. 1999, Ch. 655, Sec. 84. Effective January 1, 2000.)*



# ACUPUNCTURE REGULATIONS

(Title 16, Professional and Vocational Regulations)

## Division 13.7. Acupuncture Examining Committee of the Board of Medical Quality Assurance

<b>Article 1.</b>	<b>General Provisions</b>
<b>Article 1.5</b>	<b>Sponsored Free Health Care Events – Requirements for Exemption</b>
<b>Article 2.</b>	<b>Applications Generally</b>
<b>Article 2.5</b>	<b>Renewal of Licenses</b>
<b>Article 3.</b>	<b>Acupuncture Tutorials</b>
<b>Article 3.5.</b>	<b>Acupuncture Training Programs</b>
<b>Article 4.</b>	<b>Examinations and Demonstrations of Competency</b>
<b>Article 5.</b>	<b>Standards of Practice</b>
<b>Article 6.</b>	<b>Miscellaneous Provisions</b>
<b>Article 7.</b>	<b>Acupuncture Corporations</b>
<b>Article 8.</b>	<b>Continuing Education</b>

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## **Article 1. General Provisions**

### **§ 1399.400. Citation**

This chapter may be cited and referred to as the "Acupuncture Regulations."

### **§ 1399.403. Definitions**

For the purpose of the regulations contained in this chapter, the terms

- (a) "Board" shall mean the Acupuncture Board.
- (b) "Code" shall mean the Business and Professions Code.

### **§ 1399.405. Delegation of functions**

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act Section 11500, et seq. of the Government Code, the board delegates and confers upon the executive officer of the board, or in his or her absence, the designee of the executive officer, all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board, including, but not limited to, the ability to approve settlement agreements for the revocation, surrender or interim suspension of a license.

### **§ 1399.406. Filing of Addresses**

Each person holding a license, registration, approval or any other authority issued under this chapter shall file his or her proper and current mailing address with the board, and shall notify the board, in writing, within thirty (30) days of any and all changes of mailing address, giving both the old and new address.

## **Article 1.5. Sponsored Free Health Care Events—Requirements for Exemption**

### **§ 1399.407. Definitions**

- (a) For the purposes of section 901 of the Code:
  - (1) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.
  - (2) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of acupuncture but who holds a current valid license or certificate in good standing in another state, district, or territory of the United States to practice acupuncture.
  - (3) "In good standing" means the person:
    - (A) Has not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency; and
    - (B) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant's professional conduct or practice, including any voluntary surrender of license; and
    - (C) Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the board determines constitutes evidence of a pattern of negligence or incompetence.

### **§ 1399.407.1. Sponsoring entity registration and recordkeeping requirements**

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed "Registration of Sponsoring Entity Under Business & Professions Code Section 901" Form 901-A (DCA/2016 - revised), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 901-A on behalf of the board. The board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form 901-A in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records

for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board.

(d) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the board.

(e) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

- (1) The date(s) of the sponsored event;
- (2) The location(s) of the sponsored event;
- (3) The type(s) and general description of all health care services provided at the sponsored event; and
- (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

### **§ 1399.407.2. Out-of-state practitioner authorization to participate in sponsored events**

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. An applicant shall request authorization by submitting to the board a completed "Request For Authorization To Practice Without a California License at a Registered Free Health Care Event" Form 901-B (CAB/2016), which is hereby incorporated by reference, accompanied by a non-refundable processing fee of \$25. The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

- (1) The board shall deny a request for authorization to participate if:
  - (A) The submitted Form 901-B is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information; or
  - (B) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the board; or
  - (C) The applicant does not possess a current valid license in good standing as defined in Section 1399.407.
- (2) The board may deny a request for authorization to participate if:
  - (A) The request is received less than 20 calendar days before the date on which the sponsored event will begin; or
  - (B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event; or
  - (C) The applicant has previously had an authorization to participate in a sponsored event terminated by the board; or
  - (D) The applicant has already participated in four (4) or more sponsored events during the 12 month period immediately preceding the date the current request for authorization is received by the board.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1399.407.3.

### **§ 1399.407.3. Termination of authorization and appeal**

(a) Grounds for Termination. The board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

- (1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.
- (2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.
- (3) The board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The board shall provide both the sponsoring entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination. Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act pursuant to the provisions of Chapter 4.5 (commencing with Section 11445.10) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the Executive Officer regarding the reasons for the termination of authorization to participate. The Executive Officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the Executive Officer may affirm or dismiss the termination of authorization to participate. The Executive Officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference. If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

## **Article 2. Applications Generally**

### **§ 1399.410. Verification**

All statements submitted by or on behalf of an applicant shall be made under penalty of perjury.

### **§ 1399.411. Certification of documentation**

Documentation submitted by or on behalf of the applicant shall be certified by the appropriate official or governmental seal or authority. The board in its discretion may waive this requirement when it is determined that it cannot be obtained through the exercise of due diligence.

### **§ 1399.412. Translation required**

All documentation submitted in a language other than English shall be accompanied by a translation into English certified by a translator other than the applicant who shall attest to the accuracy of such translation under penalty of perjury.

### **§ 1399.413. Application deadline**

(a) All new applications for examination shall be submitted on a form provided by the board, accompanied by such statements and documents as required. All such applications shall be received in the board's Sacramento office at least 120 calendar days prior to the date of the examination for which the application is made.

(b) All applications for re-examination shall be submitted on a form provided by the board ("Application Update for Examination/Licensure", revised 3/96), accompanied by such statements and documents as required. All such applications shall be received in the board's office at least 30 calendar days prior to the date of the examination for which the application is made.

(c) All transcripts and supporting documents from qualifying education institutions or tutorial supervisors shall be received in the board's office at least 30 calendar days prior to the date of examination for which an application was made.

(d) The board may waive the foregoing filing dates if there are difficulties with the administration of the examination or other circumstances warrant.

### **§ 1399.414. Denial of applications**

(a) Any applicant whose application is denied, may submit within fifteen (15) calendar days from the date of rejection, a request in writing that his or her application be presented to the board for further evaluation.

(b) If the board determines that an applicant has met the requirements for acupuncture licensure, it shall schedule the applicant for examination.

(c) Nothing in this section shall be constructed to deprive an applicant of his or her rights of appeal as afforded by other provisions of law.

**§ 1399.415. Documentation of training**

(a) Each applicant shall have completed the education or tutorial requirements set forth in these regulations as documented by the registrar of each school from which the applicant attended or from the applicant's tutor, in the case of a tutorial program.

(b)(1) All applicants for examination who are enrolled in an approved acupuncture and Oriental Medicine educational training program prior to January 1, 2005, shall have completed the coursework and training set forth in Section 1399.436.

(2) All applicants for examination who are enrolled in an approved acupuncture and Oriental medicine educational training program on or after January 1, 2005, shall have completed the coursework and training set forth in Section 1399.434.

(c) All applicants applying for examination shall meet the minimum educational or tutorial requirements set forth in these regulations at least thirty (30) days prior to the date of the examination for which the application has been made.

**§ 1399.416. Equivalent training and clinical experience qualifying for licensure**

In order for documented educational training and clinical experience to qualify for licensure under Section 4938, subdivision (b)(3) of the Code, the applicant shall document that such education and experience meets the requirements of Section 1399.436, subsections (a), (b), and (c) or, if applicable, Section 1399.434. All foreign trained applicants shall submit documentation of his or her education to a credentials evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc. for review and a report to the board. This report shall be filed by the applicant with his or her application for examination.

**§ 1399.417. Abandonment of applications**

(a) An application for examination shall be deemed to have been abandoned and the applicant's fee forfeited in any of the following circumstances:

1. The applicant fails to complete his or her application within 180 calendar days after it has been filed. An application shall be deemed complete when all documents and information required to determine eligibility for examination have been submitted to the board.
2. The applicant fails to take the licensing examination within two years after the date that he or she is notified by the board of his/her eligibility to take the examination, unless prior to the application being deemed abandoned, the applicant submits a written explanation to the board, of his or her inability to appear for the examination. The board may extend the applicant's eligibility to take the examination for two more consecutive administrations of the examination.
3. The applicant, after failing the examination, fails to take a re-examination within two years after the date the applicant was notified of such failure, unless prior to the application being deemed abandoned, the applicant submits a written explanation to the board, of his or her inability to appear for the examination. The board may extend the applicant's eligibility to take the examination for two more consecutive administrations of the examination.

(b) An application submitted after the abandonment of a former application for examination shall be treated as a new application.

(c) An applicant who, after passing the examination, fails to submit a complete application for licensure within three years after the date he or she is notified of his or her eligibility for licensure shall be deemed to have abandoned his or her application for licensure. An application submitted after the abandonment for a former application for licensure shall be treated as a new application and the applicant shall take and pass the examination, if any, which would be required of him or her if an initial application for licensure was being made.

**§ 1399.419. Review and processing of exam applications**

(a) Within forty-five (45) calendar days after receipt of an application for examination, the board shall inform the applicant whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) Within forty-five (45) calendar days of receipt of a completed application, the applicant will be notified as to his/her eligibility for the written examination.

(c) Within thirty (30) calendar days from the date the written examination is administered, candidates will be notified of their results, and if passed, will be offered, upon payment of the specified fee, a license to practice acupuncture.

(d) The minimum, median and maximum processing times for examination results from the time of receipt of a complete application until the board makes a decision is set forth below.

- Minimum -- 130 calendar days
- Median -- 155 calendar days
- Maximum -- 180 calendar days

These processing times apply to those candidates who take and pass the first available examination and who submit a complete application by the first available application deadline.

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to perform as an acupuncturist safely because the applicant's ability to perform may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

The report of the evaluation shall be made available to the applicant.

## **Article 2.5. Renewal of Licenses**

### **§ 1399.419.1. Response to board inquiry**

If the board or its designee asks a licensee to provide criminal history information, a licensee shall respond to that request within 30 days. The licensee shall make available all documents and other records requested and shall respond with accurate information.

### **§ 1399.419.2. Fingerprint and disclosure requirements for renewal of license**

(a) As a condition of renewal for a license that expires on or after January 1, 2011, a licensee who was initially licensed prior to January 1, 2001, or for whom an electronic record of the submission of fingerprints no longer exists, shall furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

(1) The licensee shall pay any costs for furnishing the fingerprints and conducting the searches.

(2) A licensee shall certify when applying for renewal whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.

(3) This requirement is waived if the licensee is renewed in an inactive status, or is actively serving in the military outside the United States.

(4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the Department of Justice or a receipt evidencing that the licensee's fingerprints were taken.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law of this or any other state, the United States, or other country, omitting traffic infractions under §300 not involving alcohol, dangerous drugs as defined in Section 4022 of the Code, or controlled substances.

(c) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(d) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license may not be renewed until the licensee demonstrates compliance with all requirements.

(e) Failure to furnish a full set of fingerprints to the Department of Justice as required by this section on or before the date required for renewal of a license is grounds for discipline by the Board.

(f) Before a license in inactive status may be activated, the licensee shall comply with this section. A licensee who is serving in the military outside of the United States shall immediately comply with this section upon his or her return to the United States unless the return is for less than thirty days.

## **Article 3. Acupuncture Tutorials**

### **§ 1399.420. Citation and reference**

This article shall be cited and referred to as the "Acupuncture Tutorial Regulations."

### **§ 1399.421. Definitions**

As used in these regulations:

(a) "Acupuncture tutorial" means an acupuncture tutorial program which is approved by the board pursuant to Sections 4939 and 4940 of the code which when successfully completed meets the requirements of Section 4938 of the code for licensure as an acupuncturist.

(b) "Supervising acupuncturist" or "supervisor" means a licensed acupuncturist who is approved by the board to provide an acupuncture tutorial to a trainee who is registered with the board pursuant to Section 4940 of the code and these regulations. Pursuant to Section 4940 no physician, podiatrist or dentist may be a supervising acupuncturist unless he or she is a licensed acupuncturist.

(c) "Trainee" means a person who is registered with the board in order to participate in an acupuncture tutorial under a supervising acupuncturist.

**§ 1399.422. Prior approval to practice as an acupuncture trainee**

No person shall practice acupuncture in tutorial without the prior approval of the board.

**§ 1399.423. Prior approval to supervise an acupuncture trainee**

No acupuncturist shall supervise any person in an acupuncture tutorial without the prior approval of the board.

**§ 1399.424. Filing of applications; Credit for prior training**

(a) Applications for approval as an acupuncture trainee shall be filed on a form provided by the board at its Sacramento office and accompanied by the application fee required in Section 1399.461.

(b) Applications for approval to supervise an acupuncture trainee shall be filed on a form provided by the board at its Sacramento office and accompanied by any necessary documents, including the training agreement, and the application fee required in Section 1399.461.

(c) Any prior training and experience already obtained within ten (10) years of the date of the application by the trainee, which meets the standards of the board may be considered when developing a training plan between a supervisor and trainee, and specifically the required hours of theoretical and clinical training may be reduced on account of such prior training and experience. Evidence of such prior training and experience should be submitted to the board for its review with the applications for registration of the supervising acupuncturist and trainee.

**§ 1399.425. Requirements for approval of an acupuncture tutorial**

(a) An acupuncture tutorial shall provide a trainee with a structured learning experience in all the basic skills and knowledge necessary for the independent practice of acupuncture.

(b) An acupuncture tutorial which is in the nature of on-the-job training may be a full time or part time employment relationship, however, the training plan and proposed supervision shall be contained in a written agreement between the supervisor and trainee. There shall be no tuition fees charged to the trainee by the supervising acupuncturist.

(c) An acupuncture tutorial shall provide formal clinical training with supplemental theoretical and didactic instruction. The theoretical and didactic training required in subsections (e)(8) through (e)(20) shall be obtained in an approved acupuncture school or another postsecondary educational institution which is accredited or approved under Article 7 (commencing with section 94900) of Chapter 7 Part 59 of the Education Code or is accredited by a regional accrediting agency authorized by the U.S. Department of Education.

(d) The clinical training shall consist of a minimum of 2250 hours in the following areas:

- (1) Practice observation
- (2) History and physical examination
- (3) Therapeutic treatment planning
- (4) Preparation of the patient
- (5) Sterilization, use and maintenance of equipment
- (6) Moxibustion
- (7) Electroacupuncture (AC and DC voltages)
- (8) Body and auricular acupuncture
- (9) Treatment of emergencies, including cardiopulmonary resuscitation
- (10) Pre- and post-treatment instructions to the patient
- (11) Contraindications and precautions

(e) The theoretical and didactic training shall consist of a minimum of 1548 hours (approximately 100 semester units) in the following areas: (Minimum Class Hours)

- (1) Traditional Oriental Medicine - a survey of the theory and practice of traditional diagnostic and therapeutic procedures.
- (2) Acupuncture anatomy and physiology - fundamentals of acupuncture, including the meridian system, special and extra loci, and auriculotherapy.
- (3) Acupuncture techniques - instruction in the use of needling techniques, moxibustion, electroacupuncture, including contraindications and complications. Tutorial trainees shall either (1) successfully complete, at a board approved acupuncture school, a course which requires a student to pass an examination in clean needle technique that uses as its primary reference the most current edition of the "Clean Needle Technique Manual", published by the National Acupuncture Foundation, or (2) successfully complete a Clean Needle Technique course administered by the Council of Colleges of Acupuncture and Oriental Medicine.
- (4) Acupressure.
- (5) Breathing techniques - introductory course in Qi Gong.



- (6) Traditional Oriental exercise - introductory course in Tai Chi Chuan. (660 hours)
- (7) Traditional Oriental herbology including botany. (300 hours)
- (8) Practice management - instruction in the legal and ethical aspects of maintaining a professional practice, including record keeping, professional liability, patient accounts, and referral procedures.
- (9) Ethics relating to the practice of acupuncture. (30 hours)
- (10) Clinical medicine - a survey of the clinical practice of medicine, osteopathy, dentistry, psychology, nursing, chiropractic, podiatry, and homeopathy to familiarize practitioners with the practices of other health care practitioners.
- (11) History of medicine - a survey of medical history, including transcultural healing practices.
- (12) Medical terminology - fundamentals of English language medical terminology.
- (13) General sciences - a survey of or courses in general biology, chemistry, and physics.
- (14) Anatomy - a survey of microscopic and gross anatomy and neuroanatomy.
- (15) General Psychology - including counseling skills.
- (16) Physiology - a survey of basic physiology, including neurophysiology, endocrinology, and neurochemistry.
- (17) Pathology - a survey of the nature of disease and illness, including microbiology, immunology, psychopathology, and epidemiology.
- (18) Clinical sciences - a review of internal medicine, pharmacology, neurology, surgery, obstetrics/gynecology, urology, radiology, nutrition, vitamins, and public health.
- (19) Western pharmacology. 558
- (20) A minimum of eight (8) hours in a certified course offering first-aid and adult/child cardiopulmonary resuscitation (CPR). Such course shall be taken from the American Red Cross, American Heart Association or other organization with an equivalent course work approved by the board.

(f) The course work specified in this section shall extend over a minimum period of four (4) academic years, eight (8) semesters, twelve (12) quarters, nine (9) trimesters, or thirty-six (36) months. No more than 1500 hours of clinical training and/or theoretical and didactic training is to be completed per twelve (12) month period.

(g) The acupuncture services provided by the trainee shall be done so in a manner which does not endanger the health and welfare of patients receiving such services. No trainee shall render acupuncture services to any patient unless the patient has been informed that such services will be rendered by that trainee. The patient on each occasion of treatment shall be informed of the procedure to be performed by the trainee under the supervision of the supervising acupuncturist and have consented in writing prior to performance to permit such rendering of the acupuncture procedure by the trainee. The foregoing requirements shall also be applied to those instances wherein the trainee is to assist the supervisor in the rendering of acupuncture services.

(h) The acupuncture tutorial training program shall be set forth in a written agreement signed by the supervisor and trainee which sets forth, but is not limited to, the training plan, length of training time, the method for providing the theoretical and didactic training and guidelines for supervision of the acupuncture services rendered by the trainee. A copy of such written agreement shall be submitted with the application for approval.

(i) As a condition of approval, or continued approval, all tutorial programs are subject to an on-site visit by representatives of the board to review and evaluate the status of the program. It will be the responsibility of the trainee and supervisor to reimburse the board for direct costs incurred in conducting such review and evaluation.

(j) Acupuncture trainees shall have met the following prerequisites prior to the approval of the tutorial program:

- (1) Be at least 18 years of age.
- (2) Successful completion of an approved high school course of study or have passed a standard equivalency test.

(k) An acupuncture tutorial shall be made available regardless of sex, race, religion, creed, color or physical handicap.

(l) The requirements of this section shall not apply to persons who commenced a tutorial and registered with the board as provided in Section 1399.424 prior to January 1, 1999. Such persons shall meet the curriculum and clinical training requirements in effect at the time that their application for a tutorial program was approved by the board.

#### **§ 1399.426. Supervising acupuncturist's responsibilities**

Each supervising acupuncturist shall have the following duties and responsibilities:

(a) A supervisor shall at all times be responsible for and provide supervision of the work performed by the trainee as required in these regulations.

(b) The supervisor shall only assign those patient treatments which can be safely and effectively performed by the trainee and which are consistent with the level of training received by the trainee. The supervisor shall provide continuous direction and immediate supervision of the trainee when patient services are provided. The supervisor

shall be in the same facility as and in proximity to the location where the trainee is rendering services and shall be readily available at all times to provide advice, instruction and assistance to the trainee.

(c) The supervisor shall insure that patient informed consent is obtained when necessary.

(d) The supervisor shall insure that the objectives of the training plan submitted are provided and met by the trainee, and that the required theoretical training is obtained in accordance with subsection (c) of Section 1399.425.

(e) The supervisor shall insure that the trainee complies with the standards of practice in Article 5 of the Acupuncture Regulations.

(f) The supervisor shall file quarterly with the board a progress report on a form provided by the board which sets forth the schedules for theoretic and didactic training and for clinical training of the trainee.

(g) The supervisor shall insure that when rendering services or otherwise engaging in professional activity the trainee always identifies himself or herself as an "acupuncture trainee" and wears at such times the identification badge required in Section 1399.427.

(h) There shall be no separate billing by the trainee.

(i) The supervisor shall comply with the provisions of the acupuncture law, the Acupuncture Regulations and applicable laws and regulations governing wages and compensation paid to employees or apprentices, maximum hours and working conditions. Any overtime worked by the trainee shall not interfere with or impair the training program and shall not be detrimental to the health and safety of the trainee or patients.

#### **§ 1399.427. Trainee's responsibilities**

Each acupuncture trainee shall have the following duties and responsibilities:

(a) The trainee shall not provide acupuncture services without the required supervision or autonomously, and shall not provide any services for which he or she is not trained or competent to perform.

(b) The trainee shall satisfactorily meet the objectives of the training plan submitted to the board, including the necessary theoretical training.

(c) The trainee shall comply with the standards of practice in Article 5 of the Acupuncture Regulations.

(d) The trainee shall always identify himself or herself as an acupuncture trainee when rendering services or otherwise engaging in professional activity and shall wear at such times an identification badge on an outer garment and in plain view which states the trainee's name and the title "Acupuncture Trainee."

(e) The trainee shall report to the board any delay, interruption or termination of the acupuncture tutorial not reported by the supervisor.

(f) The trainee shall maintain a written log of the patients whom he or she has seen during the clinical training. The log shall contain the date and time of the patient visit and a description of the acupuncture services provided by the trainee to the patient. The log shall be made available to the board upon request.

#### **§ 1399.428. Termination or modification of tutorial**

(a) The board shall be notified in writing within ten (10) calendar days of the termination of any acupuncture tutorial for any reason. At the time of such notification the registration of both the supervisor and trainee shall be cancelled. If the supervisor or trainee subsequently participate in an acupuncture tutorial, a new application for registration shall be filed with the board as set forth in Section 1399.424.

(b) If the training plan of the acupuncture tutorial is substantially modified then a report of such modifications shall be filed with the board. There shall be no charge for filing such a report.

#### **§ 1399.429. Application for examination**

At the completion of the tutorial the trainee may file an application for examination.

#### **§ 1399.430. Denial, suspension or revocation of registration as a supervisor**

The board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a registration to supervise a trainee in an acupuncture tutorial for the following causes:

(a) Failure to comply with the provisions of Section 4940 of the code or the Acupuncture Tutorial Regulations for approval of an acupuncture tutorial.

(b) Violation of the Acupuncture Licensure Act or the Acupuncture Regulations.

(c) The supervisor is the subject of a successful disciplinary action or has had charges in a disciplinary action filed against him or her.

(d) The registration was obtained by fraud or misrepresentation or false or misleading information was presented to the division with respect to an acupuncture tutorial.

(e) Failure of the supervisor or the trainee to comply with the regulations relating to supervision, patient care or informed consent.

(f) The trainee has rendered acupuncture services in violation of this act within the setting of the acupuncture tutorial regardless of whether the supervising acupuncturist has knowledge of the acts performed.

**§ 1399.431. Denial, suspension or revocation of registration as a trainee**

The board may deny, issue, subject to terms and conditions, suspend, revoke or place on probation a registration as a trainee in an acupuncture tutorial for the following causes:

- (a) Failure to comply with the Acupuncture Tutorial Regulations for approval and registration as a trainee.
- (b) Violation of the Acupuncture Licensure Act or the Acupuncture Regulations.
- (c) The registration was obtained by fraud or misrepresentation or false or misleading information was presented to the division with respect to the acupuncture tutorial.
- (d) Failure to comply with the regulations relating to supervision, patient care or informed consent.
- (e) The rendering of acupuncture services outside the approved acupuncture tutorial.
- (f) Failure to identify oneself as an acupuncture trainee or failure to wear an appropriate identification badge when rendering acupuncture services.
- (g) Rendering acupuncture services under a supervising acupuncturist who is not approved as a supervisor by the board or whose registration as a supervisor has been disciplined under Section 1399.430.

**§ 1399.432. Proceedings**

Any proceedings to suspend or revoke the registration of a supervising acupuncturist or trainee or to deny such registration on grounds of unprofessional conduct shall be conducted pursuant to the Administrative Procedure Act (Section 11500 et seq. of the Government Code).

**Article 3.5. Acupuncture Training Programs**

**§ 1399.434. Criteria for approval of acupuncture and oriental medicine curriculum**

To be approved by the Board, an acupuncture and Oriental medicine educational and training curriculum shall consist of at least 2,050 hours of didactic and laboratory training and at least 950 hours of supervised clinical instruction. The curriculum shall include the following coursework that contains the following criteria:

- (a) Basic Sciences.....350 hours

The curriculum in basic sciences shall prepare students to enter postsecondary upper division biomedical and clinical science courses and shall consist of at least 350 hours of didactic and laboratory instruction in the following basic science courses:

- (1) General biology;
- (2) Chemistry, including organic and biochemistry;
- (3) General physics, including a general survey of biophysics;
- (4) General psychology, including counseling skills;
- (5) Anatomy-- a survey of microscopic, gross anatomy and neuroanatomy;
- (6) Physiology-- a survey of basic physiology, including neurophysiology, endocrinology, and neurochemistry;
- (7) Pathology and Pathophysiology-- a survey of the nature of disease and illness, including microbiology, immunology, psychopathology, and epidemiology;
- (8) Nutrition and vitamins;

- (b) Acupuncture and Oriental Medicine Principles, Theories and Treatment.....1,255 hours

The curriculum in acupuncture and Oriental medicine principles, theories and treatment shall consist of at least 1,255 hours of didactic instruction in the following principles, theories, prescription, and treatment procedures of acupuncture and Oriental medicine:

- (1) Acupuncture and Oriental Medicine Principles and Theories
  - (A) Oriental Medicine Principles and Theory;
  - (B) Acupuncture Principles and Theory;
  - (C) Oriental Massage (e.g., Tui Na or Shiatsu) Principles and Theory;
  - (D) Chinese Herbal Medicine Principles and Theory, including relevant botany concepts (This subject area shall consist of at least 450 hours of instruction);
  - (E) Acupuncture and Oriental Medicine Diagnosis;
  - (F) Acupuncture and Oriental Medicine Specialties, including dermatology, gynecology, pediatrics, ophthalmology, orthopedics, internal medicine, geriatrics, family medicine, traumatology, and emergency care;
  - (G) Classical acupuncture and Oriental medicine literature, including Jin Gui, Wen Bing/Shang Han, Nei Jing;
  - (H) Modern acupuncture and Oriental medicine literature.
- (2) Acupuncture and Oriental Medicine Treatment
  - (A) Integrated acupuncture and Oriental medicine diagnostic and treatment procedures;
  - (B) Acupuncture techniques and treatment procedures, including electroacupuncture;

- (C) Oriental massage (e.g., Tui Na or Shiatsu), acupressure, and other techniques utilizing manual therapy and mechanical devices;
- (D) Exercise therapy, including breathing, qi gong and taiji quan;
- (E) Herbal prescription, counseling and preparation;
- (F) Oriental and Western clinical and medical nutrition, dietary and supplement prescription and counseling;
- (G) Cold and heat therapy, including moxibustion and ultrasound;
- (H) Lifestyle counseling, and self-care recommendations;
- (I) Adjunctive acupuncture procedures, including bleeding, cupping, gua sha, and dermal tacks;
- (J) Acupuncture micro therapies, including auricular and scalp therapy;
- (K) Hygienic standards, including clean needle techniques. The clean needle technique portion of this subject shall use the "Clean Needle Technique Manual 7th edition" (rev. January 2016), published by the Council of Colleges of Acupuncture and Oriental Medicine, which is hereby incorporated by reference. Students shall successfully complete the clean needle technique portion of the hygienic standards subject prior to performing any needling techniques on human beings;
- (L) Equipment maintenance and safety;
- (M) Adjunctive acupoint stimulation devices, including magnets and beads.

(c) Clinical Medicine, Patient Assessment and Diagnosis.....240 hours

The curriculum in clinical medicine, patient assessment and diagnosis shall consist of at least 240 hours of didactic instruction and shall prepare the student to possess the knowledge, skills and abilities necessary to utilize standard physical examinations, laboratory and imaging studies, and International Classification of Diseases (ICD) diagnostic principles to improve treatment efficacy, patient safety, referral, and continuity of care; to improve communication and collaboration of care with all other medical providers; to assist in the evaluation and documentation of patient progress; and to improve the acupuncturists understanding of biochemical etiology and pathology. Clinical medicine, patient assessment, and diagnostic skills curriculum shall include the following:

- (1) Comprehensive history taking;
- (2) Standard physical examination and assessment, including neuromusculoskeletal, orthopedic, neurological, abdominal, and ear, nose and throat examinations, and functional assessment;
- (3) Pharmacological assessment, emphasizing side-effects and herb-drug interactions;
- (4) Patient/practitioner rapport, communication skills, including multicultural sensitivity;
- (5) Procedures for ordering diagnostic imaging, radiological, and laboratory tests and incorporating the resulting data and reports;
- (6) Clinical reasoning and problem solving;
- (7) Clinical impressions and the formation of a working diagnosis, including acupuncture and Oriental medicine diagnoses, and the World Health Organization's International Classification of Diseases (ICD-910);
- (8) Awareness of at-risk populations, including gender, age, indigent, and disease specific patients;
- (9) Standard medical terminology;
- (10) Clinical sciences--a review of internal medicine, pharmacology, neurology, surgery, obstetrics/gynecology, urology, radiology, nutrition and public health;
- (11) Clinical medicine--a survey of the clinical practice of medicine, osteopathy, dentistry, psychology, nursing, chiropractic, podiatry, naturopathy, and homeopathy to familiarize practitioners with the practices of other health care practitioners.

(d) Case Management.....90 hours

The curriculum in case management shall consist of at least 90 hours of didactic instruction and shall prepare the student to manage patient care as a primary health care professional, and shall include instruction in the following subjects:

- (1) Primary care responsibilities;
- (2) Secondary and specialty care responsibilities;
- (3) Psychosocial assessment;
- (4) Treatment contraindications and complications, including drug and herb interactions;
- (5) Treatment planning, continuity of care, referral, and collaboration;
- (6) Follow-up care, final review, and functional outcome measurements;
- (7) Prognosis and future medical care;
- (8) Case management for injured workers and socialized medicine patients, including a knowledge of workers compensation/labor codes and procedures and qualified medical evaluations;
- (9) Coding procedures for current procedural and diagnostic codes, including Current Procedural Terminology (CPT) and International Classification of Disease ICD-10 diagnostic codes;
- (10) Medical-legal report writing, expert medical testimony, and independent medical review;

- (11) Special care/seriously ill patients;
- 12) Emergency procedures.

(e) Practice Management.....45 hours

The curriculum in practice management shall consist of at least 45 hours of didactic instruction and shall include the following subjects:

- (1) Record keeping, insurance billing and collection;
- (2) Business written communication;
- (3) Knowledge of regulatory compliance and jurisprudence (municipal, California, and federal laws, including OSHA, Labor Code, Health Insurance Portability and Accountability Act of 1996 (HIPAA));
- (4) Front office procedures;
- (5) Planning and establishing a professional office;
- (6) Practice growth and development;
- (7) Ability to practice in interdisciplinary medical settings including hospitals;
- (8) Risk management and insurance issues;
- (9) Ethics and peer review.

(f) Public Health.....40 hours

The curriculum in public health shall consist of at least 40 hours of didactic instruction and shall include training in the principles of public health, including the following subjects:

- (1) Public and community health and disease prevention;
- (2) Public health education;
- (3) A minimum of eight (8) hours in first-aid and adult/child cardiopulmonary resuscitation (CPR) from the American Red Cross, American Heart Association or other organization with an equivalent course approved by the board;
- (4) Treatment of chemical dependency;
- (5) Communicable disease, public health alerts, and epidemiology.

(g) Professional Development.....30 hours

The curriculum in professional development shall consist of at least 30 hours of didactic instruction and shall prepare the student with the skills to continue to expand their knowledge, including instruction in the following subjects:

- (1) Research and evidence based medicine;
- (2) Knowledge of academic peer review process;
- (3) Knowledge and critique of research methods;
- (4) History of medicine.

(h) Clinical Practice.....950 hours

The curriculum in clinical practice shall consist of at least 950 hours in clinical instruction, 75% of which shall be in a clinic owned and operated by the school, which includes direct patient contact where appropriate in the following:

- (1) Practice Observation (minimum 150 hours)--supervised observation of the clinical practice of acupuncture and Oriental medicine with case presentations and discussion;
- (2) Diagnosis and evaluation (minimum 275 hours)--the application of Eastern and Western diagnostic procedures in evaluating patients;
- (3) Supervised practice (minimum 275 hours)--the clinical treatment of patients with acupuncture and oriental medicine treatment modalities listed in the Business and Professions Code Section 4927(d) and 4937(b).
- (4) During the initial 275 hours of diagnosis, evaluation and clinical practice, the clinic supervisor shall be physically present at all times during the diagnosis and treatment of the patient. Thereafter, for a second period of 275 hours the clinic supervisor shall be physically present at the needling of the patient. The clinic supervisor shall otherwise be in close proximity to the location at which the patient is being treated during the clinical instruction. The student shall also consult with the clinic supervisor before and after each treatment.

**§ 1399.435. Criteria for acupuncture and oriental medicine training programs**

An acupuncture and Oriental medicine training program approved by the board shall adopt the following procedures for its program effective January 1, 2005:

- (a) Candidates for admission shall have successfully completed at least two (2) academic years (60 semester credits / 90 quarter credits) of education at the baccalaureate level that is appropriate preparation for graduate level work, or the equivalent from an institution accredited by an agency recognized by the U.S. Secretary of Education
- (b) The training program should be located in an educational institution approved under Article 4 (commencing with Section 94770) of Chapter 7 of Part 59 of the Education Code, or in the case of training programs located

outside California, in an institution which is approved by the appropriate governmental accrediting authority or an accrediting agency recognized by the U.S. Department of Education.

(c) The training program shall develop self-study evaluation process to determine the effectiveness of its theoretical and clinical program.

(d) Coursework shall carry academic credit.

(e) The director and supervisor(s) of the clinical portion of the training program shall be a licensed acupuncturist in the state where the educational institution is located and with at least 5 years of licensed clinical experience in the practice of acupuncture and Oriental medicine.

(f) All instructors shall be competent to teach their designated courses by virtue of their education, training and experience. All faculty credentials shall be equivalent to the course and degree level being taught.

(g) Each training program shall develop policies and procedures to evaluate and award transfer credit to students for coursework and experience which is equivalent to current coursework and clinical instruction required. Such policies and procedures shall be defined in the school's catalog and shall include the following:

(1) Credit shall only be awarded for actual coursework.

(2) Where the coursework and clinical instruction were completed at an acupuncture school not approved by the board, the evaluation shall include an examination administered and retained by the school in the subject area(s) in which transfer credit may be awarded.

(3) Up to 100% transfer credit may be awarded for coursework and clinical instruction completed successfully at another acupuncture school or college which is approved by the board.

(4) Up to 100% transfer credit may be awarded for courses completed successfully in basic sciences, clinical medicine, case management, practice management, public health, and professional development at a school which is approved under Article 4 (commencing with Section 94770) of Chapter 7 of Part 59 of the Education Code or by an accrediting agency recognized by the U.S. Department of Education.

(5) Up to fifty percent (50%) credit, by transfer or challenge exam, for clinical practice coursework and instruction in acupuncture and Oriental medicine principles, theories and treatment procedures completed successfully at a school which is not approved by the board may be awarded by a school approved by the board, provided that at least 50% of the course hours in individual subjects are completed successfully at a school approved by the board.

(6) The entire record of the evaluation and award of the student's transfer credit shall be included in the student's academic file and shall be made an official part of the student's transcript which shall be filed with the board upon request.

(7) All students shall receive upon matriculation a copy of the school's policies and procedures for evaluating and awarding transfer credit.

#### **§ 1399.436. [Repealed 2017.]**

#### **§ 1399.437. Requirements for board approval of curriculum**

(a) Each educational and training program seeking board approval of its curriculum shall submit an "Application for Board Approval of Curriculum" (rev 4/15), hereby incorporated by reference. The application shall be accompanied by the following information and documentation:

(1) Educational and training program legal name, current address, phone number, website, contact person, and program(s) requested for board curriculum approval;

(2) A completed course-by-course list for each course that meets the board required coursework with course number, clock hour, and course unit to document that the curriculum meets the requirements for Section 1399.434;

(3) A list of all courses in the program requested for board approval of curriculum with course hours, course units, course number and course title;

(4) A copy of all course syllabi for program(s) requested for board curriculum approval; and

(5) A copy of the current course catalog.

All information and documentation submitted under this section shall be in English.

(b) An "Application for Board Approval of Curriculum" shall be deemed received and complete pursuant to Business and Professions Code Section 4927.5, subdivision (b), when the board has received a complete application, including the form and all information and documentation, as defined in subdivision (a) of this regulation.

(c) An educational and training program whose "Application for Board Approval of Curriculum" is incomplete shall be notified, in writing, that the application is incomplete, and of the reasons the application is incomplete and instructions for how to address the incomplete application. An educational and training program's incomplete application shall be deemed abandoned if the educational and training program does not submit a complete application to the board within 30 days of the mailing of the written notification that the application is incomplete.

(d) An "Application for Board Approval of Curriculum" submitted subsequent to the abandonment of a prior application shall be treated as a new application.

(e) Any changes to coursework as listed in Section 1399.434 after Board approval constitutes a new curriculum and requires Board approval pursuant to Business and Professions Code Section 4927.5. The approval shall be attained prior to implementing the new curriculum.

**§ 1399.438. Suspension or revocation of approval.**

The board may deny, place on probation, suspend or revoke the approval granted to any acupuncture training program for any failure to comply with the regulations in this article, the Acupuncture Regulations or the Acupuncture Licensure Act.

**§ 1399.439. School monitoring; Records; Reporting.**

(a) Every approved acupuncture school shall be required to submit to the board within sixty (60) days after the close of the school's fiscal year a current course catalog with a letter outlining the following: 1) any courses added/deleted or significantly changed from the previous year's curriculum; 2) any changes in faculty, administration, or governing body; 3) any major changes in the school facility; and 4) a statement regarding the school's financial condition, which enables the board to evaluate whether the school has sufficient resources to ensure the capability of the program for enrolled students.

(b) If determined necessary an on-site visit by representatives of the board will be made to the school to review and evaluate the status of the school. The school will be required to reimburse the board for direct costs incurred in conducting such review and evaluation.

(c) All student records shall be maintained in at least English.

(d) Each approved acupuncture school shall report to the board within 30 days any substantial changes to the facility and/or clinic(s), and curriculum required in this section.

## **Article 4. Examinations and Demonstrations of Competency**

**§ 1399.440. Location**

Examinations shall be administered at times and locations to be determined by the board. If the same examination is administered in more than one location, it shall be administered concurrently in each location.

**§ 1399.441. Languages**

Examinations shall be administered in English, Chinese, and Korean. An applicant shall notify the board of the desired language where provided for in the Application for Examination/Licensure. Translations and translators, when necessary for other languages, shall be provided in any language for which a translation is formally requested as provided above by a minimum of five percent (5) of the total number of approved applications. Otherwise, such applicants shall take the examination in one of the languages listed above.

**§ 1399.443. Examination content**

(a) The examination shall test the applicant's knowledge and competency in the practice of oriental medicine through acupuncture.

(b) In order to pass an examination an applicant shall be required to obtain a passing score as determined by a criterion-referenced method of establishing the passing point on each part of the examination.

**§ 1399.444. Lapsed licenses; Examination**

Any acupuncturist whose license has been expired for more than three years and who is applying for a new license under Section 4967 of the code shall be required to take and pass the written examination before a new license may be issued.

## **Article 5. Standards of Practice**

**§ 1399.450. Condition of office**

(a) Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have a readily accessible bathroom facility in accordance with Title 24, Part 2, Building Standards Code Sections 494A.1 and 1994 Uniform Building Code Section 2902.3.

**§ 1399.451. Treatment procedures**

In treating a patient, an acupuncturist shall adhere to the following procedures:

(a) The acupuncturist's hands shall be brush-scrubbed with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients.

(b) All instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.

(c) Acupuncture points, where needles are to be inserted, shall be cleaned with an appropriate antiseptic before insertion of the needle.

(d) In the event an acupuncture needle inserted in a patient breaks subcutaneously, the treating acupuncturist shall immediately consult a physician. An acupuncturist shall not sever or penetrate the tissues in order to excise such a needle.

(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.

(f) Acupuncture shall not be performed using hypodermic needles.

(g) All instruments to be discarded shall be disposed of safely.

(h) Needles shall be disposed of by placing them in a sealed, unbreakable container marked "Hazardous Waste" and disposed of in accordance with state and local law.

#### **§ 1399.452. Treatments outside the office**

(a) Any acupuncturist who provides acupuncture treatment outside the office shall carry the required sterile needles and other instruments in a sterile airtight container.

(b) All standards of practice applicable to treatment outside the office shall be adhered to by the acupuncturist providing such treatment.

#### **§ 1399.453. Record keeping**

An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments.

#### **§ 1399.454. Single use needles**

An acupuncturist shall use needles labeled for single use only that meet the requirements of federal regulations 21 CFR Part 880.5580 (61 FR 64617, December 6, 1996). It shall constitute unprofessional conduct for an acupuncturist to use a needle more than once.

#### **§ 1399.455. Advertising**

(a) A licensed acupuncturist may advertise the provision of any acupuncture services authorized to be provided by such licensure in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

(b) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising which represents in any manner that the acupuncturist can cure any type of disease, condition or symptom.

(c) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising of a practice, technique or procedure which is not within the scope of the practice of acupuncture as defined in Section 4927 and 4937 of the code and which is the unlawful practice of medicine.

#### **§ 1399.456. Use of the title "Doctor"**

It is unprofessional conduct for an acupuncturist to use the title "Doctor" or the abbreviation "Dr." in connection with the practice of acupuncture unless he or she possesses a license or certificate which authorizes such use or possesses an earned doctorate degree from an accredited, approved or authorized educational institution as set forth under Article 4 (commencing with section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937 of the Code.

The use of the title "Doctor" or the abbreviation "Dr." by an acupuncturist as authorized above without further indicating the type of license, certificate or degree which authorizes such use, constitutes unprofessional conduct.

## **Article 6. Miscellaneous Provisions**

#### **§ 1399.460. Fees**

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

(b) The examination and reexamination fee shall be five hundred, fifty dollars (\$550), plus the applicable fingerprint processing fee in effect at the time the application is submitted.



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

Birth Month	Month Fee Received											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
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).

**§ 1399.461. Acupuncture tutorials**

The annual renewal fees shall be due within 30 days of completion of one (1) year of an approved acupuncture tutorial.

**§ 1399.462. Continuing education fee**

The approval fee for each provider of continuing education shall be \$150.00.

**§ 1399.463. Authority to issue citations and fines**

(a) The executive officer of the board is authorized to issue a citation which may contain an order of abatement or an administrative fine for violations by a licensee of the statutes contained in the Acupuncture Licensure Act (commencing with Business and Professions Code Section 4925 et seq.) or the regulations adopted by the board. For purposes of this Section and Sections 1399.464, 1399.466, 1399.467, and 1399.468, the term "licensee" refers to either a California licensed acupuncturist or a board approved continuing education provider.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulation alleged to have been violated. The citation shall be served upon the licensee personally or by certified mail.

#### **§ 1399.464. Exceptions**

A citation shall not be issued in any of the following circumstances:

(a) The violation is of such a nature and/or severity that revocation of the license or restrictions on the license are necessary in order to ensure consumer protection.

(b) The licensee's conduct displayed a disregard for the patient and/or patient's rights. This includes, but is not limited to, physical abuse, neglect; abandonment; fiduciary abuse (as defined in Welfare and Institution Code Section 15610).

(c) The licensee failed to comply with any requirement of any previous citation, including any order of abatement or fine.

(d) The violation involves unprofessional conduct related to controlled substances or dangerous drugs.

(e) The violation involves unprofessional conduct related to sexual abuse, misconduct or relations with a patient.

(f) The licensee was convicted of an offense substantially related to the qualifications, functions and duties of an acupuncturist and there is insufficient evidence of rehabilitation.

#### **§ 1399.465. Citation; Assessment of fine**

(a) The amount of any administrative fine to be levied by the executive officer shall be no less than \$100 nor more than \$2500. In assessing the amount of the fine, the executive officer will consider the following factors in determining the amount of the fine:

(1) Gravity of the violation.

(2) The good or bad faith exhibited by the cited person.

(3) Evidence that the violation was willful.

(4) The extent to which the cited person cooperated with the board's investigation.

(5) Such other factors as justice may require.

(b) Notwithstanding the administrative fine amounts specified in subsection (a), a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

(1) The citation involves a violation that has an immediate relationship to the health and safety of another person.

(2) The cited person has a history of two or more prior citations of the same or similar violations.

(3) The citation involves multiple violations that demonstrate a willful disregard of the law.

(4) The citation involves a violation or violations perpetrated against a senior citizen or person with disabilities.

#### **§ 1399.466. Compliance with orders of abatement**

(a) If a cited person who has been issued an order of abatement is unable to complete the abatement within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the executive officer in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged in the citation within the time allowed shall constitute a violation and failure to comply with the order of abatement. Such failure may result in disciplinary action being taken by the board or other appropriate judicial relief being taken against the person cited.

#### **§ 1399.467. Citations for unlicensed practice**

The executive officer of the board is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons who are performing or who have performed services for which license as an acupuncturist is required under the Acupuncture Licensure Act. Each citation issued for unlicensed activity shall contain either an order of abatement, or, where appropriate, the executive officer shall levy a fine for such unlicensed activity in accordance with section 1399.465 of these regulations. The provisions of sections 1399.463, 1399.465, 1399.466, and 1399.468 apply to the issuance of citations for unlicensed activity under this section. The citation issued under this section shall be separate from and in addition to any other civil or criminal remedies.

**§ 1399.468. Contest of citations.**

(a) In addition to requesting a hearing provided for in subdivision (b)(4) of section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the executive officer in writing of his or her request for an informal conference with the executive officer regarding the acts charged in the citation.

(b) The executive officer shall hold, within 60 days from the receipt of the request, an informal conference with the person cited. At the conclusion of the informal conference, the executive officer may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The executive officer shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of section 1399.463, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the executive officer. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b)(4) of section 125.9.

**§ 1399.469. Disciplinary guidelines**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled "Department of Consumer Affairs, Acupuncture Board 'Disciplinary Guidelines' 1996" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the Acupuncture Board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

**§ 1399.469.1. Required actions against sex offenders**

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

- (1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.
- (3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

- (1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
- (2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.
- (3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

**§ 1399.469.2. Unprofessional Conduct**

In addition to the conduct described in Section 4955 of the Business and Professions Code, "unprofessional conduct" also includes but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

- (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
- (2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide

the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

### **§ 1399.469.3. Notice to Consumers of Licensure by the Acupuncture Board.**

(a) A licensed acupuncturist engaged in the practice of acupuncture shall provide notice to each patient of the fact that the acupuncturist is licensed and regulated by the California Acupuncture Board. This notice must be posted at each of the practice locations the licensee provides services.

The notice shall include the following statement and information:

"NOTICE TO CONSUMERS  
Acupuncturists are licensed and regulated by the California Acupuncture Board  
(916) 515-5200  
<http://www.acupuncture.ca.gov/>"

(b) The notice required by this section shall be provided by prominently posting the notice in a conspicuous location accessible to public view on the premises where the acupuncturist provides the licensed services, in which case the notice shall be at least 48-point type font.

## **Article 7. Acupuncture Corporations**

### **§ 1399.470. Citation and authority**

These regulations may be cited and referred to as the "Acupuncture Corporation Regulations".

### **§ 1399.475. Requirements for acupuncture corporations**

An acupuncture corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code.

(b) Each shareholder, director, and officer (except as provided in Section 13403 of the Corporations Code and Section 4977.2 of the code) holds a valid acupuncture certificate. An acupuncturist may be a shareholder in more than one acupuncture corporation.

(c) Each professional employee of the corporation who will practice acupuncture, whether or not a director, officer, or shareholder, holds a valid acupuncture certificate.

### **§ 1399.476. Namestyle**

The name of the corporation and any name or names under which it may render professional services shall include words or abbreviations denoting corporate existence limited to the following: "Professional Corporation", "Prof. Corp.", "Corporation", "Corp.", "Incorporated", or "Inc."

### **§ 1399.477. Shares: ownership and transfer**

(a) Where there are two or more shareholders in an acupuncture corporation and one of the shareholders:

(1) Dies or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code, his or her shares shall be sold and transferred to the corporation, its shareholders, or other eligible licensed persons on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date the shareholder becomes a disqualified person. The requirements of this subsection shall be set forth in the acupuncture corporation's articles of incorporation or bylaws.

(b) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again becomes an eligible shareholder.

(c) The share certificates of an acupuncture corporation shall contain an appropriate legend setting forth the restrictions of subsection (a).

(d) Nothing in these regulations shall be construed to prohibit an acupuncture corporation from owning shares in a nonprofessional corporation.

#### **§ 1399.478. Trusts**

The restrictions on the ownership of the shares of professional corporations shall apply to both the legal and equitable title to such shares.

#### **§ 1399.479. Corporate Activities**

(a) An acupuncture corporation may perform any act authorized in its articles of incorporation or bylaws so long as that act is not in conflict with or prohibited by these regulations, the Acupuncture Certification Act or the regulations adopted pursuant thereto.

(b) An acupuncture corporation may enter into partnership agreements with other acupuncturists practicing individually or in a group or with other acupuncture corporations.

### **Article 8. Continuing Education**

#### **§ 1399.480. Definitions**

(a) For purposes of this article:

(1) "Provider" means those persons or organizations approved by the board to offer continuing education.

(2) "Course" means a systematic learning experience, at least one hour in length, which deals with and is designed for the acquisition of knowledge, skills and information relevant to the practice of acupuncture.

(3) "Hour" means at least fifty (50) minutes of participation in an organized learning experience.

#### **§ 1399.481. Criteria for provider approval.**

(a) In order to be a provider, those persons, organizations, schools or other entities seeking approval shall submit to the board a Continuing Education Provider Application, (Rev.5/08), that is hereby incorporated by reference, accompanied by the fee set forth in Section 1399.462. All provider applications and documentation submitted to the board shall be typewritten and in English.

(b) The approval of the provider shall expire two (2) years after it is issued by the board and may be renewed upon the filing of the required application and fee.

#### **§ 1399.482. Approved providers.**

(a) For the purpose of this Article, the title "provider" can only be used when a person or organization has submitted a provider application, remitted the appropriate fee, received approval by the board and has been issued a provider number.

(b) A person or organization may be issued only one provider number. When two or more providers co-sponsor a course, the course shall be identified by only one provider number and that provider shall assume responsibility for recordkeeping, advertising, issuance of certificates, instructor(s) qualifications, and any other requirements.

(c) A provider shall keep the following records for a period of four years in one identified location:

(1) Course outlines of each approved course given.

(2) Record of time and places of each approved course given.

(3) Course instructor curriculum vitae or resumes.

(4) The attendance record for each approved course that shows the name, signature and license number of the acupuncturists who took the course and a record of any certificates issued to them.

(5) Participant evaluation forms for each approved course given.

(d) Providers shall issue, within 60 days of the conclusion of an approved course, to each participant who has completed the course, a typewritten or printed certificate of completion that contains the following information:

(1) Provider's name and number.

(2) Course title.

(3) Participant's name and, if applicable, his or her acupuncture license number.

(4) Date and location of course.

(5) Number of continuing education hours completed.

(6) Statement directing the acupuncturist to retain the certificate for at least four (4) years from the date of completion of the course.

(e) Providers shall notify the board within 30 days of any changes in organizational structure of a provider or the person(s) responsible for the provider's continuing education course, including name, address, or telephone number changes.

(f) Provider approval is non-transferable.

(g) The board retains the right and authority to audit or monitor courses given by any provider.

(h) Upon request, providers shall submit to the board attendance records for an approved course that includes name, signature and license number of the acupuncturists taking the course and course evaluation forms completed by the participant on the quality and usefulness of the course.

**§ 1399.483. Approval of continuing education courses.**

(a) Only a provider may obtain approval to offer continuing education courses.

(b) The content of all courses of continuing education submitted for board approval shall be relevant to the practice of acupuncture and Asian medicine and shall fall within the following two (2) categories

(1) Category 1 courses are those courses related to clinical matters or the actual provision of health care to patients. Examples of Category 1 courses include, but are not limited to, the following:

(A) Acupuncture and Asian Medicine

(B) Western biomedicine and biological sciences.

(C) Scientific or clinical content with a direct bearing on the quality of patient care, community or public health, or preventive medicine.

(D) Courses concerning law and ethics and health facility standards.

(E) Courses designed to develop a licensee's patient education skills, including, but not limited to, patient education in therapeutic exercise techniques, nutritional counseling, and biomechanical education.

(F) Courses designed to enhance a licensee's ability to communicate effectively with other medical practitioners.

(G) Courses in acupuncture's role in individual and public health, such as emergencies and disasters.

(H) Courses in the behavioral sciences, patient counseling, and patient management and motivation when such courses are specifically oriented to the improvement of patient health.

(I) Research and evidence-based medicine as related to acupuncture and Asian medicine.

(2) Category 2 courses are those courses unrelated to clinical matters or the actual provision of health care to patients. Examples of Category 2 courses include, but are not limited to, the following:

(A) Practice management courses unrelated to clinical matters and direct patient care, including, but not limited to administrative record keeping, laws and regulations unrelated to clinical medicine, insurance billing and coding, and general business organization and management.

(B) Breathing and other exercises, i.e. qi gong and taiji quan that are for the benefit of the licensee and not the patient.

(c) Each provider shall include, for each course offered, a method by which the course participants evaluate the following:

(1) The extent to which the course met its stated objectives.

(2) The adequacy of the instructor's knowledge of the course subject.

(3) The utilization of appropriate teaching methods.

(4) The applicability or usefulness of the course information.

(5) Other relevant comments.

(d) Courses designed to be completed by an individual on an independent or home study basis shall not exceed 50% of the required continuing education hours.

(1) Courses that require practical or hands on techniques may not be approved for independent or home study.

(2) Courses approved for independent or home study shall include a self-assessment by the licensee upon completion of the course that tests the participants mastery of the course material.

(e) A provider is prohibited from selling, advertising or promoting any named brand product or service during a course. A provider shall ensure that any discussion of name product or service is objectively selected and presented with favorable and unfavorable information and balanced discussion of prevailing information on the product, competing products, alternative treatments or services. A provider shall ensure written disclosure to the audience, at the time of the program, of any relationship between any named product(s) or services discussed and the provider or between any such products or service and any individuals' instructor, presenter, panelist, or

moderator. However, a provider may offer for sale products or services after the course has been completed as long as it is made clear to all participants that they are under no obligation whatsoever to stay for the sales presentation or purchase any products. Nothing in this subdivision shall be interpreted as restricting a provider from discussing generic products during a course.

#### **§ 1399.484. Application for course approval**

(a) Providers may not offer a course for continuing education hours without prior approval from the board. To obtain approval for a course, a provider shall submit to the board, at least 45 days before the course is first offered, a request for course approval, in English, on the "Request for Continuing Education (CE) Course Approval Form" (Rev. 5/08) that is hereby incorporated by reference.

(b) When a previously approved course is to be repeated, the provider shall notify the board in writing of the new date and location at least 30 days before the new course date.

(c) Providers shall notify the board of any changes to the date or location of an approved course. A change to the date of an approved course may not be prior to the date for which the course was originally approved.

(d) Providers shall notify the board within 48 hours of a course date if the approved course is postponed. The provider shall notify the board in writing of the new date and location of the postponed course. If a postponed course is not taught within three (3) months of the original course date, the provider must reapply for approval.

(e) Any changes in the content of or instructor(s) for an approved course shall require the submittal of a new course application at least 45 days before the course begins.

#### **§ 1399.485. Instructors**

(a) It shall be the responsibility of each provider to use qualified instructors.

(b) Instructors teaching approved continuing education courses shall have the following minimum qualifications:

(1) An acupuncturist instructor, shall

(A) hold a current valid license to practice acupuncture or is otherwise authorized to act as a guest acupuncturist in accordance with section 4949 of the code. A "current valid license" is one that has not been revoked, suspended, placed on probation, voluntarily surrendered or otherwise disciplined by the board, and

(B) be knowledgeable, current and skillful in the subject matter of the course as evidenced through:

1. holding a baccalaureate or higher degree from a college or university and written documentation of experience in the subject matter; or
2. have at least two years' experience in teaching similar subject matter content within the five years preceding the course; or
3. have at least two years' experience within the last five years in the specialized area in which he or she is teaching.

(2) A non-acupuncturist instructor shall:

(A) be currently licensed or certified in his or her area of expertise if appropriate, and

(B) show written evidence of specialized training, that may include, but not be limited to, a certificate of training or an advanced degree in given subject area, and

(C) have at least two years' teaching experience within the last five years in the specialized area in which he or she teaches.

#### **§ 1399.486. Advertisements**

(a) Information disseminated by providers publicizing continuing education shall be true and not misleading and shall include the following:

(1) Course titles shall reflect course content and may not contain marketing language.

(2) A clear, concise description of the course content and/or objectives.

(3) Whether the course has been approved as a Category 1 or Category 2 course.

(4) The date and location of the course.

(5) The provider's name, provider's number and telephone number.

(6) The statement "This course has been approved by the California Acupuncture Board, Provider Number \_\_\_\_\_, for \_\_\_\_\_ hours of continuing education."

(7) Provider's policy on refunds for cases of non-attendance or cancellations.

(8) A written disclosure of all products that will be for sale after completion of the course.

(b) A provider may not describe a course as being board approved until written confirmation of approval by the board has been received by the provider. Where a provider is waiting for a determination by the board on a request for course approval, the provider may advertise that the course is "pending" approval. A provider that advertises that its course is pending approval shall assume all responsibility if the course is subsequently denied by the board.

**§ 1399.487. Denial, withdrawal and appeal of approval**

(a) The board may deny a provider application or withdraw its approval of a provider for causes that include, but are not limited to, the following:

- (1) the provider or applicant has been convicted of a crime substantially related to the activities of a provider or licensee;
- (2) the provider or applicant has failed to comply with any provision of Chapter 12, Division 2 of the Business and Professions Code or Division 13.7 of Title 16 of the California Code of Regulations;
- (3) the provider or applicant has had a license revoked, suspended, placed on probation, voluntarily surrendered or otherwise disciplined by the board;
- (4) the board may suspend review and approval of an application if an administrative action is pending against an applicant's license.

(b) Any material misrepresentation of fact by a provider or applicant in any information required to be submitted to the board is grounds for withdrawal or denial of an application.

(c) The board may withdraw its approval of a provider or a course after giving the provider written notice setting forth its reasons for withdrawal and after giving the provider a reasonable opportunity to be heard by the board or its designee.

(d) Should the board deny approval of a provider or a course request, the applicant may appeal the action by submitting to the board, a letter stating the reason(s) for the appeal. The letter of appeal shall be filed with the board within ten (10) days of the mailing of the applicant's notification of the board's denial. The appeal shall be considered by the board or its designee. In the event that the board or its designee grants the appeal after the date of the course for which the appeal is being made, the board will accept continuing education hours from its licensees who completed the course.

**§ 1399.488. Processing times for provider and course request applications**

(a) The board shall inform a provider seeking approval within thirty (30) days after receipt of a completed application and required fees of its decision whether the application has been approved.

(b) The board shall inform a provider seeking course approval within thirty (30) days after receipt of a completed application form together with all required information and documentation whether the course is approved.

(c) If a provider seeking approval submits a request for a course approval along with the initial provider application, the course request will not be considered for approval until the provider application is approved. In such cases, the board's processing time for the course request will be in accordance with Section 1399.488(b).

**§ 1399.489. Continuing education compliance**

(a) With the exception of those holding an inactive license, when renewing an initial license that has been issued for less than two years, licensees shall complete the following hours of board-approved continuing education:

Period of Initial Licensure	Requiring Continuing Education Hours
13-16 Months	35
17-20 Months	40
21-23 Months	45

Thereafter, all licensees shall complete 50 hours every two years as a condition of renewal. No more than five (5) hours of continuing education in each two-year period may be obtained in Category 2.

(b) Licensees are limited to fifty percent (50%) of the required continuing education hours every two (2) years for independent or home study courses.

(c) Each licensee at the time of license renewal shall sign a statement under penalty of perjury that he or she has or has not complied with the continuing education requirements. It shall constitute unprofessional conduct for any licensee to misrepresent completion of the required continuing education.

(d) The board may audit a random sample of licensees who have reported compliance with the continuing education requirement.

(e) Any licensee selected for audit shall be required to submit documentation or records of continuing education coursework that he or she has taken and completed.

(f) Each licensee shall retain for a minimum of four (4) years records of all continuing education programs that he or she has attended that indicate the provider's name, title of the course or program, date(s) and location of course, and number of continuing education hours awarded.

(g) Instructors of approved continuing education courses may receive one hour of continuing education for each classroom hour completed as an instructor, up to a maximum of six (6) hours of continuing education per year, regardless of how many hours or courses are taught. Participation as a member of a panel presentation for an



approved course shall entitle the participant to earn continuing education hours equal to the actual panel presentation time within the appropriate category.

(h) Any licensee who participates in the development of an occupational analysis, an examination development session, item review session or a passing score workshop, shall receive one (1) hour of continuing education for every two (2) hours of participation.

**§ 1399.489.1. Inactive License.**

(a) Any licensee who is not actively engaged in the practice of acupuncture desiring an inactive license under the provisions of Article 9 (commencing with Section 700) Chapter 1 of Division 2 of the code or to restore an inactive license to active status shall submit a completed "Active/Inactive License Application" (Rev. 5/08), that is hereby incorporated by reference, to the board. The applicant need not submit his or her certificate or a copy thereof to the board with the application.

(b) To restore an inactive license to active status, the licensee shall have completed a minimum of 50 hours of approved continuing education within the last two (2) years in compliance with this article. At least 45 hours of continuing education must be in coursework approved as Category 1. In the event a license has been inactive less than one (1) year, a minimum of 25 hours of continuing education is required, with at least 22 hours of coursework approved as Category 1.

(c) The inactive status of any license shall not deprive the board of its authority to institute or continue a disciplinary proceeding against a licensee upon any ground provided by law or to enter an order suspending or revoking a license or otherwise taking disciplinary action against the licensee on any such ground.

# **BUSINESS AND PROFESSIONS CODE – GENERAL PROVISIONS**

## **Pertinent Laws that Apply to Acupuncturists**

**\*Please refer to the Business and Professions Code for all applicable general provisions**

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- 801. Insurers' reports of malpractice, settlements or arbitration awards; Insured's written consent to settlement
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- 820. Examination of licentiate for mental illness or physical illness affecting competency
- 821. Effect of licentiate's failure to comply with order for examination

## General Provisions

( General Provisions enacted by Stats. 1937, Ch. 399. )

### § 27. Information to be provided on Internet; Entities in DCA required to comply

(a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Household Goods and Services shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees and registrants.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information on its licensees and registrants.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(18) The Veterinary Medical Board shall disclose information on its licensees, registrants, and permit holders.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Cannabis Control shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

(Amended by Stats. 2018, Ch. 703, Sec. 1.3. (SB 1491) Effective January 1, 2019.)

**§ 30. Provision of federal employer identification number or social security number by licensee**

(a) (1) Notwithstanding any other law, any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall, at the time of issuance of the license, require that the applicant provide its federal employer identification number, if the applicant is a partnership, or the applicant's social security number for all other applicants.

(2) (A) In accordance with Section 135.5, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall require either the individual taxpayer identification number or social security number if the applicant is an individual for a license or certificate, as defined in subparagraph (2) of subdivision (e), and for purposes of this subdivision.

(B) In implementing the requirements of subparagraph (A), a licensing board shall not require an individual to disclose either citizenship status or immigration status for purposes of licensure.

(C) A licensing board shall not deny licensure to an otherwise qualified and eligible individual based solely on his or her citizenship status or immigration status.

(D) The Legislature finds and declares that the requirements of this subdivision are consistent with subsection (d) of Section 1621 of Title 8 of the United States Code.

(b) A licensee failing to provide the federal employer identification number, or the individual taxpayer identification number or social security number shall be reported by the licensing board to the Franchise Tax Board. If the licensee fails to provide that information after notification pursuant to paragraph (1) of subdivision (b) of Section 19528 of the Revenue and Taxation Code, the licensee shall be subject to the penalty provided in paragraph (2) of subdivision (b) of Section 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board shall not process an application for an initial license unless the applicant provides its federal employer identification number, or individual taxpayer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board or the Employment Development Department, furnish to the board or the department, as applicable, the following information with respect to every licensee:

(1) Name.

(2) Address or addresses of record.

(3) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(7) Whether license is active or inactive, if known.

(8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means a person or entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar of California, and the Department of Real Estate.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board or the Employment Development Department, as applicable.

(g) Licensing boards shall provide to the Franchise Tax Board or the Employment Development Department the information required by this section at a time that the board or the department, as applicable, may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, a federal employer identification number, individual taxpayer identification number, or social security number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(i) A deputy, agent, clerk, officer, or employee of a licensing board described in subdivision (a), or any former officer or employee or other individual who, in the course of his or her employment or duty, has or has had access to the information required to be furnished under this section, shall not disclose or make known in any manner that

information, except as provided pursuant to this section, to the Franchise Tax Board, the Employment Development Department, the Office of the Chancellor of the California Community Colleges, a collections agency contracted to collect funds owed to the State Bar by licensees pursuant to Sections 6086.10 and 6140.5, or as provided in subdivisions (j) and (k).

(j) It is the intent of the Legislature in enacting this section to utilize the federal employer identification number, individual taxpayer identification number, or social security number for the purpose of establishing the identification of persons affected by state tax laws, for purposes of compliance with Section 17520 of the Family Code, for purposes of measuring employment outcomes of students who participate in career technical education programs offered by the California Community Colleges, and for purposes of collecting funds owed to the State Bar by licensees pursuant to Section 6086.10 and Section 6140.5 and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(k) If the board utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of any licensing board described in subdivision (a) may release an individual taxpayer identification number or social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

(l) For the purposes of enforcement of Section 17520 of the Family Code, and notwithstanding any other law, a board, as defined in Section 22, the State Bar of California, and the Department of Real Estate shall at the time of issuance of the license require that each licensee provide the individual taxpayer identification number or social security number of each individual listed on the license and any person who qualifies for the license. For the purposes of this subdivision, "licensee" means an entity that is issued a license by any board, as defined in Section 22, the State Bar of California, the Department of Real Estate, and the Department of Motor Vehicles.

(m) The department shall, upon request by the Office of the Chancellor of the California Community Colleges, furnish to the chancellor's office, as applicable, the following information with respect to every licensee:

(1) Name.

(2) Federal employer identification number if the licensee is a partnership, or the licensee's individual taxpayer identification number or social security number for all other licensees.

(3) Date of birth.

(4) Type of license.

(5) Effective date of license or a renewal.

(6) Expiration date of license.

(n) The department shall make available information pursuant to subdivision (m) only to allow the chancellor's office to measure employment outcomes of students who participate in career technical education programs offered by the California Community Colleges and recommend how these programs may be improved. Licensure information made available by the department pursuant to this section shall not be used for any other purpose.

(o) The department may make available information pursuant to subdivision (m) only to the extent that making the information available complies with state and federal privacy laws.

(p) The department may, by agreement, condition or limit the availability of licensure information pursuant to subdivision (m) in order to ensure the security of the information and to protect the privacy rights of the individuals to whom the information pertains.

(q) All of the following apply to the licensure information made available pursuant to subdivision (m):

(1) It shall be limited to only the information necessary to accomplish the purpose authorized in subdivision (n).

(2) It shall not be used in a manner that permits third parties to personally identify the individual or individuals to whom the information pertains.

(3) Except as provided in subdivision (n), it shall not be shared with or transmitted to any other party or entity without the consent of the individual or individuals to whom the information pertains.

(4) It shall be protected by reasonable security procedures and practices appropriate to the nature of the information to protect that information from unauthorized access, destruction, use, modification, or disclosure.

(5) It shall be immediately and securely destroyed when no longer needed for the purpose authorized in subdivision (n).

(r) The department or the chancellor's office may share licensure information with a third party who contracts to perform the function described in subdivision (n), if the third party is required by contract to follow the requirements of this section.

*(Amended (as added by Stats. 2017, Ch. 828, Sec. 2) by Stats. 2018, Ch. 838, Sec. 2.5. (SB 695) Effective January 1, 2019.)*

## **Division 1. Department of Consumer Affairs**

*( Heading of Division 1 amended by Stats. 1973, Ch. 77. )*

### **Chapter 1. The Department**

**§ 115.4. Licensure process expedited for honorably discharged veterans of Armed Forces**

(a) Notwithstanding any other law, on and after July 1, 2016, a board within the department shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the Armed Forces of the United States and was honorably discharged.

(b) A board may adopt regulations necessary to administer this section.

*(Added by Stats. 2014, Ch. 657, Sec. 1. (SB 1226) Effective January 1, 2015.)*

**§ 115.5. Board required to expedite licensure process for certain applicants; Adoption of regulations**

(a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

(b) A board may adopt regulations necessary to administer this section.

*(Added by Stats. 2012, Ch. 399, Sec. 1. (AB 1904) Effective January 1, 2013.)*

**§ 119. Misdemeanors pertaining to use of licenses**

Any person who does any of the following is guilty of a misdemeanor:

(a) Displays or causes or permits to be displayed or has in his or her possession either of the following:

(1) A canceled, revoked, suspended, or fraudulently altered license.

(2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.

(b) Lends his or her license to any other person or knowingly permits the use thereof by another.

(c) Displays or represents any license not issued to him or her as being his or her license.

(d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.

(e) Knowingly permits any unlawful use of a license issued to him or her.

(f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.

(g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

*(Amended by Stats. 2000, Ch. 568, Sec. 1. Effective January 1, 2001.)*

**§ 121. Practice during period between renewal and receipt of evidence of renewal**

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

*(Added by Stats. 1979, Ch. 77.)*

**§ 123. Conduct constituting subversion of licensing examination; Penalties and damages**

It is a misdemeanor for any person to engage in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination, including, but not limited to:

(a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during, or after an examination; or using or purporting to use any examination

questions or materials which were improperly removed or taken from any examination for the purpose of instructing or preparing any applicant for examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

(b) Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Nothing in this section shall preclude prosecution under the authority provided for in any other provision of law. In addition to any other penalties, a person found guilty of violating this section, shall be liable for the actual damages sustained by the agency administering the examination not to exceed ten thousand dollars (\$10,000) and the costs of litigation.

(c) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

*(Amended by Stats. 1991, Ch. 647, Sec. 1.)*

#### **§ 125. Misdemeanor offenses by licensees**

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows his or her license to be used by that person.

(b) Acts as his or her agent or partner.

*(Amended by Stats. 1994, Ch. 1206, Sec. 2. Effective January 1, 1995.)*

#### **§ 125.6. Unlawful discrimination by licensees**

(a) (1) With regard to an applicant, every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to that person if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she refuses to perform the licensed activity or aids or incites the refusal to perform that licensed activity by another licensee, or if, because of any characteristic listed or defined in subdivision (b) or (e) of Section 51 of the Civil Code, he or she makes any discrimination, or restriction in the performance of the licensed activity.

(2) Nothing in this section shall be interpreted to prevent a physician or health care professional licensed pursuant to Division 2 (commencing with Section 500) from considering any of the characteristics of a patient listed in subdivision (b) or (e) of Section 51 of the Civil Code if that consideration is medically necessary and for the sole purpose of determining the appropriate diagnosis or treatment of the patient.

(3) Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy.

(4) The presence of architectural barriers to an individual with physical disabilities that conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

(b) (1) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

(2) Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to perform a licensed activity for which he or she is not qualified to perform.

(c) (1) "Applicant," as used in this section, means a person applying for licensed services provided by a person licensed under this code.

(2) "License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

*(Amended by Stats. 2007, Ch. 568, Sec. 2. Effective January 1, 2008.)*

#### **§ 135.4. Refugees, asylees, and special immigrant visa holders: professional licensing: initial licensure process.**

(a) Notwithstanding any other law, a board within the department shall expedite, and may assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they have been admitted to

the United States as a refugee under Section 1157 of Title 8 of the United States Code, have been granted asylum by the Secretary of Homeland Security or the Attorney General of the United States pursuant to Section 1158 of Title 8 of the United States Code, or they have a special immigrant visa (SIV) that has been granted a status under Section 1244 of Public Law 110-181, under Public Law 109-163, or under Section 602(b) of Title VI of Division F of Public Law 111-8.

(b) Nothing in this section shall be construed as changing existing licensure requirements. A person applying for expedited licensure under subdivision (a) shall meet all applicable statutory and regulatory licensure requirements.

(c) A board may adopt regulations necessary to administer this section.

*(Added by Stats. 2020, Ch. 186, Sec. 1 Effective January 1, 2021)*

#### **§ 139.5. Department of Consumer Affairs: license: application: processing timeframes.**

Beginning July 1, 2021, each board, as defined in Section 22, within the department that issues a license shall do both of the following on at least a quarterly basis:

(a) Prominently display on its internet website one of the following:

- (1) The current average timeframes for processing initial and renewal license applications.
- (2) The combined current average timeframe for processing both initial and renewal license applications.

(b) Prominently display on its internet website one of the following:

- (1) The current average timeframes for processing each license type that the board administers.
- (2) The combined current average timeframe for processing all license types that the board administers.

*(Added by Stats. 2020, Ch. 131, Sec. 1 Effective January 1, 2021)*

#### **§ 141. Disciplinary action by foreign jurisdiction; Grounds for disciplinary action by state licensing board**

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

*(Added by Stats. 1994, Ch. 1275, Sec. 2. Effective January 1, 1995.)*

### **Division 1.5. Denial, Suspension and Revocation of Licenses**

*( Division 1.5 added by Stats. 1972, Ch. 903. )*

#### **Chapter 2. Denial of Licenses**

*( Division 1.5 added by Stats. 1972, Ch. 903. )*

#### **§ 480. Grounds for denial by board; Effect of obtaining certificate of rehabilitation [Operative July 1, 2020]**

(a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.
- (iii) Chapter 9 (commencing with Section 7000) of Division 3.



(iv) Chapter 11.3 (commencing with Section 7512) of Division 3.

(v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.

(vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

*(Repealed and added by Stats. 2018, Ch. 995, Sec. 4. (AB 2138) Effective January 1, 2019. Section operative July 1, 2020, by its own provisions.)*

### **Chapter 3. Suspension and Revocation of Licenses**

*( Chapter 3 added by Stats. 1972, Ch. 903. )*

#### **§ 490. Grounds for suspension or revocation; Discipline for substantially related crimes; Conviction; Legislative findings**

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

*(Amended by Stats. 2010, Ch. 328, Sec. 2. (SB 1330) Effective January 1, 2011.)*

#### **§ 490.5. Suspension of license for failure to comply with child support order**

A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.

*(Amended by Stats. 2010, Ch. 328, Sec. 3. (SB 1330) Effective January 1, 2011.)*

## **Division 2. Healing Arts**

*( Division 2 enacted by Stats. 1937, Ch. 399. )*

### **Chapter 1. General Provisions**

*( Chapter 1 enacted by Stats. 1937, Ch. 399. )*

## **Article 6. Unearned Rebates, Refunds and Discounts**

*( Article 6 added by Stats. 1949, Ch. 899. )*

#### **§ 650. Rebates for patient referrals; Consideration between supplier and health facility**

(a) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic

Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

(b) The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

(c) The offer, delivery, receipt, or acceptance of any consideration between a federally qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall be permitted only to the extent sanctioned or permitted by federal law.

(d) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility, provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

(e) Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2 of this code, it shall not be unlawful to provide nonmonetary remuneration, in the form of hardware, software, or information technology and training services, as described in subsections (x) and (y) of Section 1001.952 of Title 42 of the Code of Federal Regulations, as amended October 4, 2007, as published in the Federal Register (72 Fed. Reg. 56632 and 56644), and subsequently amended versions.

(f) "Health care facility" means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Public Health under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(g) Notwithstanding the other subdivisions of this section or any other provision of law, the payment or receipt of consideration for advertising, wherein a licensee offers or sells services through a third-party advertiser, shall not constitute a referral of patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a licensee. The fee paid to the third-party advertiser shall be commensurate with the service provided by the third-party advertiser. If the licensee determines, after consultation with the purchaser of the service, that the service provided by the licensee is not appropriate for the purchaser or if the purchaser elects not to receive the service for any reason and requests a refund, the purchaser shall receive a refund of the full purchase price as determined by the terms of the advertising service agreement between the third-party advertiser and the licensee. The licensee shall disclose in the advertisement that a consultation is required and that the purchaser will receive a refund if not eligible to receive the service. This subdivision shall not apply to basic health care services, as defined in subdivision (b) of Section 1345 of the Health and Safety Code, or essential health benefits, as defined in Section 1367.005 of the Health and Safety Code and Section 10112.27 of the Insurance Code. The entity that provides the advertising shall be able to demonstrate that the licensee consented in writing to the requirements of this subdivision. A third-party advertiser shall make available to prospective purchasers advertisements for services of all licensees then advertising through the third-party advertiser in the applicable geographic region. In any advertisement offering a discount price for a service, the licensee shall also disclose the regular, nondiscounted price for that service.

(h) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by that imprisonment and a fine of fifty thousand dollars (\$50,000).

*(Amended by Stats. 2016, Ch. 360, Sec. 1. (AB 2744) Effective January 1, 2017.)*

#### **§ 651. Dissemination of false or misleading information concerning professional services or products; Permissible advertising**

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent,

misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(B) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(C) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician's and surgeon's licensing board prior to January 1, 2019, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience. A multidisciplinary board or association approved by the Medical Board of California prior to January 1, 2019, shall retain that approval.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician's and surgeon's licensing board prior to January 1, 2019, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

(D) A doctor of podiatric medicine licensed under Article 22 (commencing with Section 2460) of Chapter 5 by the California Board of Podiatric Medicine may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Article 22 (commencing with Section 2460) of Chapter 5 by the California Board of Podiatric Medicine who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Article 22 (commencing with Section 2460) of Chapter 5 by the California Board of Podiatric Medicine who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

- (8) A statement of publications authored by the practitioner.
- (9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.
- (10) A statement of his or her affiliations with hospitals or clinics.
- (11) A statement of the charges or fees for services or commodities offered by the practitioner.
- (12) A statement that the practitioner regularly accepts installment payments of fees.
- (13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.
- (14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventive or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California or a doctor of podiatric medicine licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 by the California Board of Podiatric Medicine who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

*(Amended by Stats. 2017, Ch. 775, Sec. 6. (SB 798) Effective January 1, 2018.)*

**Article 9. Inactive License**

*( Article 9 added by Stats. 1977, Ch. 410.. )*

**§701. Issuance**

(a) As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

(b) Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

*(Amended by Stats. 2018, Ch. 249, Sec. 1. (AB 1659) Effective January 1, 2019.)*

**Article 10.5. Unprofessional Conduct**

*( Article 10.5 added by Stats. 1979, Ch. 348. )*

**§ 726. Commission of act of sexual abuse or misconduct with patient or client**

(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division or under any initiative act referred to in this division.

(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

*(Amended by Stats. 2015, Ch. 510, Sec. 3. (AB 179) Effective January 1, 2016.)*

## **Article 11. Professional Reporting**

*( Article 11 repealed and added by Stats. 1975, 2nd Ex. Sess., Ch. 1. )*

### **§ 800. Central files of licensees' individual historical records**

(a) The Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the Dental Board of California, the Dental Hygiene Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, the Acupuncture Board, and the Physician Assistant Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licensee pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

(2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

(3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) (1) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

(2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

(3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

(4) These disclosures shall effect no change in the confidential status of these records.

*(Amended by Stats. 2018, Ch. 858, Sec. 2. (SB 1482) Effective January 1, 2019.)*

**§ 801. Insurers' reports of malpractice, settlements or arbitration awards; Insured's written consent to settlement**

(a) Except as provided in Section 801.01 and subdivisions (b), (c), (d), and (e) of this section, every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency specified in subdivision (a) of Section 800 shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980), Chapter 14 (commencing with Section 4990), or Chapter 16 (commencing with Section 4999.10) shall send a complete report to the Board of Behavioral Sciences as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 11 (commencing with Section 4800) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 6 (commencing with Section 2700) shall send a complete report to the Board of Registered Nursing as to any settlement or arbitration award over ten thousand dollars (\$10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), or (c) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer.

(h) For purposes of this section, "insurer" means the following:

(1) The insurer providing professional liability insurance to the licensee.

(2) The licensee, or his or her counsel, if the licensee does not possess professional liability insurance.

(3) A state or local governmental agency, including, but not limited to, a joint powers authority, that self-insures the licensee. As used in this paragraph, "state governmental agency" includes, but is not limited to, the University of California.

*(Amended by Stats. 2017, Ch. 520, Sec. 1. (SB 799) Effective January 1, 2018.)*



**§ 805.8. Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct.**

(a) As used in this section, the following terms shall have the following meanings:

(1) "Agency" means the relevant state licensing agency with regulatory jurisdiction over a healing arts licensee listed in paragraph (2).

(2) "Healing arts licensee" or "licensee" means a licensee licensed under Division 2 (commencing with Section 500) or any initiative act referred to in that division. "Healing arts licensee" or "licensee" also includes a person authorized to practice medicine pursuant to Sections 2064.5, 2113, and 2168.

(3) "Health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.

(5) "Sexual misconduct" means inappropriate contact or communication of a sexual nature.

(b) A health care facility or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the agency within 15 days of receiving the written allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(c) The report provided pursuant to subdivision (b) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided in subdivision (c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) A willful failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed one hundred thousand dollars (\$100,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the licensee regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licensee. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(e) Except as provided in subdivision (c), any failure to file the report described in subdivision (b) shall be punishable by a fine, not to exceed fifty thousand dollars (\$50,000) per violation, that shall be paid by the health care facility or other entity subject to subdivision (b). The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; whether there has been a prior failure to file a report required under this section; and whether a report was filed with another state agency or law enforcement. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital, as defined in Section 124840 of the Health and Safety Code.

(f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity shall not incur any civil or criminal liability as a result of making a report required by this section.

(g) The agency shall investigate the circumstances underlying a report received pursuant to this section.

*(Added by Stats. 2019, Ch. 849, Sec. 2. (SB 425) Effective January 1, 2020.)*

## **Article 12. Insurance Fraud**

*( Article 12 added by Stats. 1978, Ch. 174. )*

### **§ 810. Grounds for disciplinary action against health care professional**

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has been convicted of any felony involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or has been convicted of any felony involving Medi-Cal fraud committed by the licensee or certificate holder in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to determine whether or not the license or certificate shall be suspended, revoked, or some other disposition shall be considered, including, but not limited to, revocation with the opportunity to petition for reinstatement, suspension, or other limitations on the license or certificate as the board deems appropriate.

(2) It shall constitute cause for automatic suspension and for revocation of a license or certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder has more than one conviction of any felony arising out of separate prosecutions involving fraud committed by the licensee or certificate holder in conjunction with providing benefits covered by worker's compensation insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The board shall convene a disciplinary hearing to revoke the license or certificate and an order of revocation shall be issued unless the board finds mitigating circumstances to order some other disposition.

(3) It is the intent of the Legislature that paragraph (2) apply to a licensee or certificate holder who has one or more convictions prior to January 1, 2004, as provided in this subdivision.

(4) Nothing in this subdivision shall preclude a board from suspending or revoking a license or certificate pursuant to any other provision of law.

(5) "Board," as used in this subdivision, means the Dental Board of California, the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the State Board of Optometry, the California State Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

*(Amended by Stats. 2017, Ch. 775, Sec. 16. (SB 798) Effective January 1, 2018.)*

## **Article 12.5 Mental Illness or Physical Illness**

*( Article 12.5 added by Stats. 1982, Ch. 1183, Sec. 1. )*

**§ 820. Examination of licentiate for mental illness or physical illness affecting competency**

Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.

*(Amended by Stats. 1989, Ch. 1104, Sec. 1.7.)*

**§ 821. Effect of licentiate's failure to comply with order for examination**

The licentiate's failure to comply with an order issued under Section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate or license.

*(Added by Stats. 1982, Ch. 1183, Sec. 1.)*