

**Acupuncture Board
Specific Language of Proposed Changes**

1. Amend section 1399.405 to read as follows:

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 ~~executive director of the board~~, 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.

NOTE: Authority cited: Sections 4933, Business and Professions Code. Reference: Sections 4955 and 4960, Business and Professions Code; and Sections 11500 and 11415.60, Government Code.

2. Amend section 1399.419 to read as follows:

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.

NOTE: Authority cited: Section 4933, Business and Professions Code. Reference: Section 4939-15376, Government Code; and Sections 820, 4938 and 4944, Business and Professions Code.

3. Amend section 1399.450 to read as follows:

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

(b) Where an acupuncture license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, employees, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.

NOTE: Authority cited: Section 4933, Business and Professions Code.

4. Amend section 1399.469 to read as follows:

1399.469. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedures 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"~~ comply with the "Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation" [October 2011], 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. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniforms Standards Related to Substance Abuse.

Notwithstanding the Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation, any proposed decision issued 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 that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has

committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Section 4933, Business and Professions Code; and Sections 11400.20, 11400.21, Government Code. Reference: Sections 11400.20, 11400.21 and 11425.50(e), Government Code; Sections 315, 726 and 729, Business and Professions Code; and Section 44010, Education Code.

5. Section 1399.469.1 is added to Article 6 of Division 13.7 to read as follows:

1399.469.1. Required Actions Against Registered 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.

NOTE: Authority cited: Section 4933, Business and Professions Code. Reference: Sections 480, 4928.1, 4955, 4955.1, 4955.2, 4956, 4960, 4960.2, and 4960.5, Business and Professions Code.

6. Section 1399.469.2 is added to Article 6 of Division 13.7 to read as follows:

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.

NOTE: Authority cited: Section 4933, Business and Professions Code. Reference: Sections 4928.1 and 4955.