State of California
Office of Administrative Law

In re: **Acupuncture Board**	**DECISION OF DISAPPROVAL OF REGULATORY ACTION**
Regulatory Action: **Title 16, California Code of Regulations**	**Government Code Section 11349.3**
Adopt sections: 1399.480, 1400.1, 1400.2, 1400.3 **Amend sections:** **Repeal sections:**	**OAL Matter Number: 2016-0830-01** **OAL Matter Type: Regular (S)**

SUMMARY OF REGULATORY ACTION

This rulemaking action by the California Acupuncture Board (Board) proposes to adopt sections 1399.480, 1400.1, 1400.2, and 1400.3 in title 16 of the California Code of Regulations (CCR) to establish application and registration requirements for participation in sponsored free health care events. This action also includes provisions regarding the termination of authorization to participate in sponsored free health care events. Lastly, the Board seeks to incorporate by reference two forms that will be utilized as part of the application and registration process.

On August 30, 2016, the Board submitted the above-referenced rulemaking action to the Office of Administrative Law (OAL) for review. On October 12, 2016, OAL notified the Board that OAL disapproved the proposed regulations. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the above-referenced rulemaking action for the following reasons:

1. The proposed regulations failed to comply with the clarity standard of Government Code section 11349.1, subdivision (a)(3); and

2. The Board did not meet the required Administrative Procedure Act (APA) procedural requirements due to its failure to:

    a. properly notice the addition, to the rulemaking record, documents relied upon by the Board, pursuant to Government Code section 11347.1;

b. include in the rulemaking record the original public comment or a copy of the original public comment submitted in connection with this rulemaking action, pursuant to Government Code section 11347.3, subdivision (b)(6); and

c. provide supporting information to justify the Board's reasonable alternatives determination, pursuant to Government Code section 11346.9, subdivision (a)(4).

All APA issues must be resolved prior to OAL's approval of any resubmission.

DISCUSSION

The Board's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. Clarity Standard.

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3), requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c), defines "clarity" to mean: "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

The clarity standard is further defined in section 16 of title 1 of the CCR, OAL's regulation on "clarity," which provides the following:

> In examining a regulation for compliance with the "clarity" requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

(a) A regulation shall be presumed not to comply with the "clarity" standard if any of the following conditions exists:

(1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or

(2) the language of the regulation conflicts with the agency's description of the effect of the regulation; or

(3) the regulation uses terms which do not have meanings generally familiar to those "directly affected" by the regulation, and those terms are defined neither in the regulation nor in the governing statute; or

(4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or

(5) the regulation presents information in a format that is not readily understandable by persons "directly affected;" or

(6) the regulation does not use citation styles which clearly identify published material cited in the regulation.

(b) Persons shall be presumed to be "directly affected" if they:

(1) are legally required to comply with the regulation; or

(2) are legally required to enforce the regulation; or

(3) derive from the enforcement of the regulation a benefit that is not common to the public in general; or

(4) incur from the enforcement of the regulation a detriment that is not common to the public in general.

There are a number of regulatory provisions in the Board's proposed action that do not meet the clarity standard.

1.1 <u>Proposed Section 1399.480 of the CCR</u>.

Proposed subdivision (b) of section 1399.480 states:

'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.

The phrase "good standing" is vague. The phrase is not defined in section 1399.480 or the governing statute, thus the phrase does not have a meaning easily understood by those "directly affected" and can be reasonably and logically interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, subds. (a)(1) and (b).) Additionally, the phrase "good standing" may have different meanings depending upon the state in which the practitioner is licensed. In this rulemaking action, the Board sought to adopt a definition for "good standing" in proposed subdivision (c)(1)(C) of section 1400.2. However, due to the proposed placement of the definition in section 1400.2, it is unclear whether the definition of "good standing" applies only to section 1400.2 or whether the definition also applies to section 1399.480. As such, the regulation is unclear.

1.2 Proposed Section 1400.1 of the CCR.

Proposed subdivision (a) of section 1400.1 states, in part: "A sponsoring entity shall register with the board by submitting to the board a completed Form 901-A (DCA/2014 – revised), which is hereby incorporated by reference." Subdivision (a) is unclear because the regulation does not use a citation style that clearly identifies published material cited in the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(6).) Additionally, failure to identify Form 901-A by title of publication violates subdivision (c)(4) of section 20 of title 1 of the CCR. As such, the regulation is unclear.

1.3 Proposed Section 1400.2 of the CCR.

1.3.1 Proposed Subdivision (a)

Proposed subdivision (a) of section 1400.2 states, in part: "An applicant shall request authorization by submitting to the board a completed Form 901-B (CAB/2014), which is hereby incorporated by reference...." Subdivision (a) is unclear because the regulation does not use a citation style that clearly identifies published material cited in the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(6).) Additionally, failure to identify Form 901-B by title of publication violates subdivision (c)(4) of section 20 of title 1 of the CCR. As such, the regulation is unclear.

1.3.2 Proposed Subdivision (c)(1)

Proposed subdivision (c)(1) of section 1400.2 is unclear for two reasons. First, subdivision (c)(1) is unclear because the language of the regulation can be reasonably interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(1).) Proposed subdivision (c)(1) lists three circumstances under which the Board shall deny a request for authorization to participate in a sponsored free health care event. Neither an "and" nor an "or" appears at the end

of the second item on this list, which is located at subdivision (c)(1)(B) of section 1400.2. From the language of the proposed regulation, it is unclear whether all of the conditions listed in subdivisions (c)(1)(A) through (C) must be met, or if just one of these conditions must be met in order for the Board to deny a request for authorization to participate in a sponsored free health care event. Because this language may be interpreted two different ways, the regulation is unclear.

Second, subdivision (c)(1) is unclear because the language of the regulation conflicts with the description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).) Page 9 of the Initial Statement of Reasons (ISOR) states, in part:

> [F]ailure to meet any of the specified requirements determined by the Board and discussed under section 1400.2 of these proposed regulations will constitute an automatic denial of the application.

This statement does not accurately describe what is accomplished through the adoption of subdivision (c)(1). Contrary to the explanation provided, subdivision (c)(1) does not clearly provide that "failure to meet *any* of the specified requirements" will constitute an automatic denial of the application. (Emphasis added.) As such, the regulation is unclear.

1.3.3 Proposed Subdivision (c)(1)(C)

Proposed subdivision (c)(1)(C) of section 1400.2 is unclear because the language of the regulation can be reasonably interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(1).) Proposed subdivision (c)(1)(C) lists three specifications used to determine whether an applicant possesses a license in "good standing." Neither an "and" nor an "or" appears at the end of the second item on this list, which is located at subdivision (c)(2)(C)(ii) of section 1400.2. From the language of the proposed regulation, it is unclear whether all of the specifications listed in subdivisions (c)(2)(C)(i) through (iii) must be met, or if just one of these specifications must be met in order for an applicant to be deemed to not possess a license in "good standing." Because this language may be interpreted two different ways, the regulation is unclear.

OAL also notes that the numbering hierarchy utilized in subdivisions (c)(1)(C)(i) through (iii) does not align with the numbering hierarchy utilized in the Board's surrounding regulatory sections. (See, e.g., Cal. Code Regs., tit. 16, sec. 1399.485, subd. (b)(1)(B).)

1.3.4 Proposed Subdivision (c)(1)(C)(i)

Proposed subdivision (c)(1)(C)(i) of section 1400.2 is unclear because the language of the regulation conflicts with the description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).) Page 10 of the ISOR states, in part:

> The first section specifies that "in good standing" means that *a practitioner is not currently the subject of any investigation by a governmental entity* or has not been charged with an offense for any act substantially related to the practice of acupuncture by any public agency. [Emphasis added.]

This statement does not accurately describe what is accomplished through the adoption of subdivision (c)(1)(C)(i). Contrary to the explanation provided, subdivision (c)(1)(C)(i) does not address investigation by a governmental entity. Subdivision (c)(1)(C)(i) states only that "good standing" means the applicant "[h]as not been charged with an offense for any act substantially related to the practice for which the applicant is licensed by any public agency." As such, the regulation is unclear.

1.3.5 Proposed Subdivision (c)(2)

Proposed subdivision (c)(2) of section 1400.2 is unclear because the language of the regulation can be reasonably interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(1).) Proposed subdivision (c)(2) lists four circumstances under which the Board may deny a request for authorization to participate in a sponsored free health care event. Neither an "and" nor an "or" appears at the end of the third item on this list, which is located at subdivision (c)(2)(C) of section 1400.2. From the language of the proposed regulation, it is unclear whether all of the conditions listed in subdivisions (c)(2)(A) through (D) must be met, or if just one of these conditions must be met in order for the Board to deny a request for authorization to participate in a sponsored free health care event. Because this language may be interpreted two different ways, the regulation is unclear.

1.3.6 Proposed Subdivision (c)(2)(D)

Proposed subdivision (c)(2)(D) of section 1400.2 states: "The Board may deny a request for authorization to participate if: … The applicant has participated in four (4) or more sponsored events during the 12 month period immediately preceding the current application."

Proposed subdivision (c)(2)(D) is unclear for two reasons. First, subdivision (c)(2)(D) is unclear because the language of the regulation conflicts with the description of the effect of the regulation. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).) Page 11 of the ISOR states, in part:

> [I]t would be against the public interest to permit an applicant to practice, even temporarily for a limited purpose, in this State without a license for more than four (4) sponsored events per year (maximum of 30 calendar days per year). As a result, the Board has specified that grounds for denial of authorization to practice to [sic] an out-of-state practitioner would include that an applicant had participated in four (4) sponsored events during the 12-month period immediately preceding the current application.

This statement does not accurately describe what is accomplished through the adoption of subdivision (c)(2)(D). Contrary to the explanation provided, subdivision (c)(2)(D) does not reference a specific number of days as a factor that may lead to the denial of a request for authorization to participate in a sponsored free health care event. Subdivision (c)(2)(D) states only that the Board may deny a request for authorization to participate in a sponsored free health care event if the applicant has participated in "four (4) or more sponsored events during a 12 month period immediately preceding the current application." Because the regulation does not mention a maximum number of calendar days an out-of-state practitioner may practice without a license, the Board would need to add that requirement to the regulation to enforce the limitation. Otherwise, the language of the ISOR conflicts with the effect of the regulation.

Second, subdivision (c)(2)(D) is unclear because the language of the regulation can be reasonably interpreted to have more than one meaning. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(1).) As written, it is not clear whether the 12 month period set forth in the regulation is calculated from the date the application is received, the date the application is reviewed (or, if the review occurs over a span of several days, which day within that period), or the date the Board renders a decision on the application. Because this language is subject to more than one meaning, the regulation is unclear.

1.4 <u>Proposed Section 1400.3 of the CCR</u>.

Proposed subdivision (d) of section 1400.3 states, in part: "The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act." Subdivision (d) is unclear because the regulation does not use a citation style that clearly identifies published material cited in the regulation. (Cal. Code Regs., tit. 1, sec. 16,

subd. (a)(6).) The reference to the Administrative Procedure Act is not accompanied by a supporting citation. As such, the regulation is unclear.

1.5 Proposed Form 901-A.

Proposed Form 901-A is unclear because one of the requirements contained within the form conflicts with the description of the effect of the form. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).) Item number 5 under part 3 of Form 901-A requests the following information:

> Attach a list of all out-of-state health-care practitioners who you currently believe intend to apply for authorization to participate in the event. The list should include the name, profession, and *state of licensure* of each identified individual. [Emphasis added.]

However, pages 3 and 4 of the ISOR state, in part:

> The form includes space for all of the required information to be submitted under the statute. Form DCA 901-A would include the following: …
> Part 3 – Requires the applicant to…disclose each *licensing authority* that will have jurisdiction over an out-of-state licensed health-care practitioner. [Emphasis added.]

This statement does not accurately describe what is accomplished through the adoption of item number 5 under part 3 of Form 901-A. Contrary to the explanation provided, Form 901-A requests that the applicant list the state of licensure, not the "licensing authority" that has jurisdiction over the practitioner. The term "licensing authority" is generally understood to refer to a professional or occupational licensing board or agency, as opposed to the state in which the applicant has been licensed. (For example, if referring to an applicant licensed to practice acupuncture in California, the "licensing authority" is the Acupuncture Board whereas the "state of licensure" is California.) As such, item number 5 under part 3 of Form 901-A is unclear.

1.6 Proposed Form 901-B.

Proposed Form 901-B is unclear because the requirements contained within the form conflict with the description of the effect of the form. (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).)

First, page 7 of the ISOR states, in part:

> Part 1 [of Form 901-B] – Requires the applicant to provide: a completed application, a $25 processing fee to the board *(with a $49 fee if using "ink on cards" to have fingerprints made)*.... [Emphasis added.]

Contrary to the explanation provided, Form 901-B does not require an applicant to provide a $49 processing fee if using "ink on cards" to have fingerprints made. Form 901-B refers only to a $25 processing fee. As such, Part 1 of Form 901-B is unclear.

Second, page 7 of the ISOR states, in part:

> Part 3 [of Form 901-B] – Requires the applicant to respond regarding: current licensure in another state, district or territory of the United States; *any pending investigations by any governmental entity;* any past or pending charges against a [sic] Acupuncture license; disciplinary actions taken against any healing arts license; surrender of a [sic] Acupuncture license; *malpractice settlements or judgments; criminal convictions; permits to prescribe controlled substances from the federal Drug Enforcement Agency (DEA); current physical or mental impairment related to drugs or alcohol; and, mental incompetency or conservatorship.* [Emphasis added.]

This statement does not accurately describe what is accomplished through the adoption of Part 3 of Form 901-B. Contrary to the explanation provided, Form 901-B does not require the applicant to provide responses regarding all of the above referenced information. Part 3 only requests the following information: 1) information regarding current licensure, certification, or registration in another state, district, or territory of the United States; 2) information regarding whether the applicant has ever had a license or certification to practice acupuncture revoked or suspended; 3) information regarding whether the applicant has ever been subject to any disciplinary action or proceeding by a licensing body; and 4) information regarding whether the applicant has ever allowed any license or certification to practice acupuncture to be cancelled or to remain in an expired status without renewal. As such, Part 3 of Form 901-B is unclear.

Third, pages 7 and 8 of the ISOR state, in part:

> Part 5 [of Form 901-B] – Requires the applicant to acknowledge and certify the following: ... *Notification that the applicant's signature on the application authorizes the National Practitioner Data Bank (NPDB) and the Drug Enforcement Administration (DEA) to release any and all information required by the Board.* [Emphasis added.]

This statement does not accurately describe what is accomplished through the adoption of Part 5 of Form 901-B. Contrary to the explanation provided, Form 901-B does not require the applicant to acknowledge and certify understanding that the applicant's signature on the application authorizes the National Practitioner Data Bank and the Drug Enforcement Administration to release any and all information required by the Board. In fact, it is completely missing from the form. As such, Part 5 of Form 901-B is unclear.

Fourth, pages 7 and 8 of the ISOR state, in part:

> Part 5 [of Form 901-B] – Requires the applicant to acknowledge and certify the following: … *Notification that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.* [Emphasis added.]

This statement does not accurately describe what is accomplished through the adoption of Part 5 of Form 901-B. Contrary to the explanation provided, Form 901-B does not require the applicant to acknowledge and certify understanding that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation. In fact, it too is completely missing from the form. As such, Part 5 of Form 901-B is unclear.

For the reasons discussed above, the Board failed to comply with the clarity standard of the APA. The Board must make proposed modifications to the regulation text available to the public for comment for at least 15 days pursuant to Government Code section 11346.8, subdivision (c), and section 44 of title 1 of the CCR before adopting the regulations and resubmitting this regulatory action to OAL for review. Additionally, any comments made in response to the proposed modifications must be presented to the Board for consideration prior to adoption. Objections and recommendations must be summarized and responded to in the Final Statement of Reasons (FSOR) pursuant to Government Code section 11347.1, subdivision (d).

In addition, because the Board falls within the Department of Consumer Affairs, Business and Professions Code section 313.1, subdivision (b), requires the Board to make all proposed modifications to the regulation text available to the director of the Department of Consumer Affairs prior to resubmitting this regulatory action to OAL for review.

2. <u>Failure to Follow Required APA Procedures</u>.

The APA requires agencies to follow specific procedures. In this rulemaking action, the Board failed to properly notice the addition, to the rulemaking record, documents relied upon by the Board; failed to include in the rulemaking record the original public comment or a copy of the original public comment submitted in connection with this rulemaking action; and failed to provide supporting information to justify the Board's reasonable alternatives determination.

2.1 Failure to Properly Notice the Addition, to the Rulemaking Record, Documents Relied Upon by the Board.

In the Table of Contents of the rulemaking record, the Board lists five documents upon which it relied in the development of these regulations, including Acupuncture Board meeting minutes from May 18, 2012. These five documents were identified as documents relied upon (or "Underlying Data") in the ISOR, pursuant to Government Code section 11346.2, subdivision (b)(3). However, in the "Updated Information" section of the FSOR, the Board states that the ISOR incorrectly identified the Board meeting minutes relied upon in connection with this rulemaking action. Rather than relying upon the Board meeting minutes from May 18, 2012 (as identified in the Table of Contents and the ISOR), the Board relied upon the Board meeting minutes from November 17, 2011. The Board meeting minutes from November 17, 2011 are included in the rulemaking file, but were not properly noticed to the public pursuant to Government Code section 11347.1. The Board must make the minutes from the November 17, 2011 Board meeting available to the public for at least 15 days and add the minutes to the rulemaking record before adopting the regulations and resubmitting this regulatory action to OAL for review. (Gov. Code, sec.11347.1.)

2.2 Failure to Include in the Rulemaking Record the Original Public Comment or a Copy of the Original Public Comment Submitted in Connection with this Rulemaking Action.

Government Code section 11347.3, subdivision (a), provides: "[e]very agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding."

Subdivision (b) of section 11347.3 further specifies:

> (b) The rulemaking file shall include: ...
>
> > (6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

The Board included a copy of the public comment received in connection with this rulemaking action in the rulemaking file. What is in the record is devoid of the original email transmission information; thus, it is not a print out of the original email or a copy of the original email. Instead, the comment contains the following information at the top of the page, which was included by the Board at the time of reproduction of the original comment:

Comment received for AB 2699
From: Richard Friberg. *Via email to acupuncture@dca.ca.gov*
Received on: June 16, 2015

Thus, the comment reproduced in the file is incomplete. The Board must provide the original public comment or a complete copy of the original public comment submitted in connection with this rulemaking action.

2.3 Failure to Provide Supporting Information to Justify the Board's Reasonable Alternatives Determination.

Government Code section 11346.9, subdivision (a)(4), requires the Board to include in the FSOR:

> A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In the FSOR, the Board's reasonable alternatives determination failed to explain whether any reasonable alternatives were considered by the Board. Additionally, the Board failed to include sufficient supporting information to justify its conclusions, as required by Government Code section 11346.9, subdivision (a)(4).

3. Miscellaneous.

OAL also notes the following issues that must be addressed prior to any resubmission of this rulemaking action:

3.1 Regulation Text.

3.1.1 The regulation text contains a number of capitalization and grammatical errors.

3.1.2 The numbering of the proposed regulatory sections requires revision. The Board is seeking to adopt four new sections within new article 7 of division 13.7 of title 16 of the CCR. However, article 7 already exists. The first section the Board is seeking to adopt is section 1399.480. This section already exists and contains general Board definitions. The three remaining sections the Board is seeking to adopt are sections 1400.1, 1400.2, and 1400.3. Although these sections do not yet exist in the CCR, these section numbers fall within division 14 of title 16 of the CCR, rather than division 13.7. Division 14 contains regulations promulgated by the Board of Registered Nursing.

3.1.3 The Board is adopting Form 901-A (DCA/2014 – revised) in this rulemaking action. This form is utilized by numerous healing arts boards in California that organize sponsored free health care events. Although the 2014 version of the form was the newest version of the form available at the time of publication of the Notice of Proposed Action, nonsubstantive revisions have since been made to Form 901-A to include new contact information for the Department of Consumer Affairs. Additionally, the version of the form has been updated to "(DCA/2016 – revised)." The Board must incorporate these nonsubstantive revisions to Form 901-A prior to resubmittal of this rulemaking action.

3.2 Reference Citation.

Proposed section 1400.2 lists Business and Professions Code section 144 as an authority to promulgate the regulation. However, Business and Professions Code section 144 is not an appropriate authority citation and is better utilized as a reference citation.

3.3 Forms Incorporated by Reference.

The forms incorporated by reference in the regulation text were not attached to the original or any of the copies of the Form 400 submitted in connection with this rulemaking action.

3.4 Initial Statement of Reasons (ISOR).

Page 8 of the ISOR references an attachment to STD. Form 399 ("See STD. 399, Table A") that explains how the Board determined that the $25 processing fee was appropriate. The Board must attach a copy of Table A of STD. Form 399 to the ISOR upon resubmittal of this rulemaking action.

3.5 Final Statement of Reasons (FSOR).

3.5.1 The proposed regulation text duplicates language found in Business and Professions Code section 901. However, the rulemaking record is missing an explanation addressing why this duplication is necessary. The Board must include a justification for the duplication in the FSOR pursuant to subdivision (b)(1) of section 12 of title 1 of the CCR.

3.5.2 The proposed regulation text incorporates two forms by reference. However, the FSOR is missing the incorporation by reference statements required by section 20 of title 1 of the CCR.

3.6 Table of Contents.

The Table of Contents lists "11347.1 Statement" under tab H of the rulemaking file. However, the rulemaking file does not contain a tab H or a document entitled "11347.1

Statement." The Board must revise the Table of Contents to accurately reflect the contents of the rulemaking file.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced rulemaking action. Pursuant to Government Code section 11349.4, subdivision (a), the Board may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval. The Board shall make all substantive regulatory text changes, which are sufficiently related to the original text, and any additional documents relied upon available to the public for at least 15 days for public comment pursuant to Government Code sections 11346.8 and 11347.1. Any comments made in relation to these proposed modifications must be presented to the Board for consideration, any objections and recommendations must be summarized and responded to in the FSOR, and the Board must approve the final version of the regulation text. Additionally, the Board must make all proposed modifications to the regulation text available to the director of the Department of Consumer Affairs prior to resubmitting this regulatory action to OAL for review. If you have any questions, please contact me at (916) 323-6820.

Date: October 19, 2016

Lindsey S. McNeill
Attorney

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