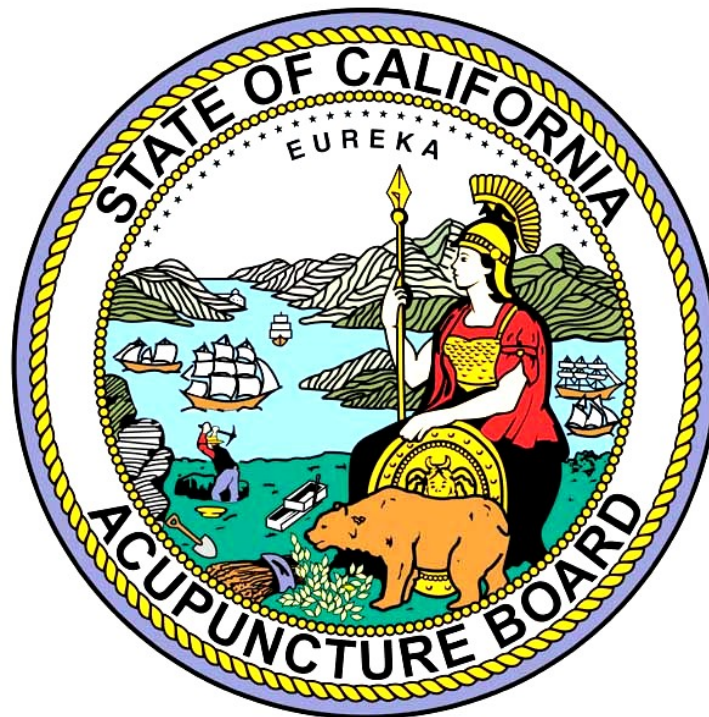


California Acupuncture Board Meeting

October 26, 2016

Los Angeles, Sacramento, CA
Teleconference



Board Members

Hildegarde Aguinaldo, J.D. – President
Public Member
Jamie Zamora – Vice President
Public Member
Kitman Chan – Public Member
Dr. Michael Corradino, DAOM, L.Ac
Francisco Hsieh – Public Member
Jeannie Kang, L.Ac

Legal Counsel

Kelsey Pruden, Esq.

Staff

Ben Bodea – Executive Officer
Erica Bautista – Administration Coordinator
Cricket Borges – Enforcement Analyst
Kristine Brothers – Enforcement Coordinator
Tammy Graver – Board Liaison
Vacant - Continuing Education Coordinator
Jay Herdt – Education Coordinator
Marc Johnson – Policy Coordinator
Van Martini – Office Technician
Terry Sinkovich – Exam Coordinator
Vacant – Exam Analyst
Tammy Stadley – Licensing Technician
Beck Untalasco – Seasonal Clerk
Sandra Wilson – Licensing Technician



ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

NOTICE OF ACUPUNCTURE BOARD MEETING

Wednesday, October 26, 2016 – 9:30 a.m.

The Board will meet via teleconference at the following locations:

Site 1

**Department of Consumer Affairs – HQ1
1625 North Market Blvd, 1st Floor Hearing Room
Sacramento, CA 95834**

Site 2

**550 South Hope Street
Suite #1910, Conference Room
Los Angeles, CA**

The Board plans to webcast this meeting at <https://thedcapage.wordpress.com/webcasts/>
Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

California Acupuncture Board Members

Hildegarde Aguinaldo, President, Public Member

Jamie Zamora, Vice President, Public Member

Kitman Chan, Public Member

Dr. Michael Corradino, DAOM, MTOM, L.Ac, Licensed Member

Francisco Hsieh, Public Member

Jeannie Kang, L.Ac, Licensed Member

Vacant, Licensed Member

AGENDA — FULL BOARD MEETING

1. Call to Order, Roll Call and Establishment of a Quorum (Aguinaldo)
2. Approval of August 31, 2016, Board Meeting Minutes (Johnson)
3. Approval of September 21, 2016, Board Meeting Minutes (Johnson)
4. Regulatory Update (Johnson)
 - a. Title 16, California Code of Regulations (CCR), Sections 1399.480, 1400.1, 1400.2, 1400.3 - Sponsored Free Health Care Events (AB 2699)
 - b. Title 16, CCR Section 1399.455 – Advertising Guidelines: Display of License Number in Advertising

- c. Title 16, CCR Section 1399.450(b) - Prostitution Enforcement and Condition of Office
- d. Title 16, CCR Section 1399.482.2 – Continuing Education Ethics Requirement
- e. Title 16, CCR Section 1399.451(a) – Hand Hygiene Requirements
- 5. Consideration and possible action regarding proposed regulations - Title 16 of the California Code of Regulations (CCR) Sections 1399.433, 1399.434, 1399.437 and Repeal of CCR Section 1399.436 – Implementation of SB 1246 (Johnson)
- 6. Consideration and possible action regarding proposed regulations - Title 16, CCR Section 1399.469 – Uniform Standards Related to Substance Abuse (Johnson)
- 7. Public Comment for items not on Agenda (Aguinaldo)
The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))
- 8. Future Agenda Items (Aguinaldo)
- 9. Adjournment (Aguinaldo)

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the President. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT www.acupuncture.ca.gov

Please Note: Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you need additional reasonable accommodations, please make your request no later than five (5) business days before this meeting. Please direct any questions regarding this meeting to the Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204.

**#2 – Meeting Minutes of
August 31, 2016**



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1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
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**California Acupuncture Board
Public Board Meeting
DRAFT Meeting Minutes
Wednesday, August 31, 2016**

LOCATION:

Department of Consumer Affairs – HQ2
1747 North Market Blvd, 1st Floor Meeting Room
Sacramento, CA 95834

TELECONFERENCE LOCATIONS:

US Bank Tower
Conference Room 6L
663 West Fifth Street
Los Angeles, CA 90071

Pacific College of Oriental Medicine
7445 Mission Valley Road
Conference Room, Main Building 2
San Diego, CA 92108

Board Members Present - Sacramento

Kitman Chan, Public Member
Francisco Hsieh, Public Member

Board Members Present - Los Angeles

Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Jeannie Kang, L.Ac, Licensed Member

Board Member Present - San Diego

Dr. Michael Corradino, DAOM, Licensed Member

Legal Counsel Present - Sacramento

Kelsey Pruden

Staff Present - Sacramento

Ben Bodea, Acting Executive Officer
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator
Van Martini, Office Technician

Acupuncture Board Members

Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Vacant, Licensed Member



FULL BOARD MEETING - 9:00 AM

Agenda Item #1 – Call to Order, Roll Call and Establishment of a Quorum

Hildegarde Aguinaldo (Aguinaldo), Board President, called the meeting to order at 9:15am. Marc Johnson (Johnson) called the roll. Aguinaldo – present in Los Angeles, CA; Zamora – present in Los Angeles, CA; Chan – present in Sacramento, CA; Corradino – present in San Diego, CA; Hsieh – present in Sacramento, CA; Kang – present in Los Angeles, CA. **6-0 Quorum established.**

Agenda Item #2 – Opening Remarks (Aguinaldo)

Board President Aguinaldo welcomed the public and thanked everyone for attending.

Agenda Item #3 – Approval of December 11, 2015 Board Meeting Minutes (Board Action)

President Aguinaldo asked for a change on page one for 'Member' to 'Members'. She also noted the change from 'Counsels' to 'Counsel'. Legal Counsel Kelsey Pruden (Pruden) recommended Board Members Jeannie Kang (Kang) and Francisco Hsieh (Hsieh) abstain since they were not present at the December 11, 2015 meeting.

No public comments were made on this item.

*MOTION: Vice President Zamora made a motion to approve the December 11, 2015 Board meeting minutes, with the changes addressed today. Board Member Dr. Michael Corradino (Corradino) seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – ABSTAIN; Kang – ABSTAIN. **MOTION PASSES 4-0-2.***

Agenda Item #4 – Approval of June 10, 2016 Board Meeting Minutes (Board Action)

President Aguinaldo complimented staff on the new format of the Meeting Minutes. She then requested additional detail to the 'Item #10 – Public Comment' section, specifically on the 'issue of bleeding' comment. Staff agreed to review the section and update.

Public Comment suggested a change to the citation of a presenter listed within the minutes from "Kory-Ward Cook" to "Kory Ward-Cook". Board agrees.

*MOTION: President Aguinaldo made a motion to approve the June 10, 2016 Board meeting minutes, with the changes to item #10 and the correct name of the presenter. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0.***



Agenda Item #5 – Consideration and possible action on proposed amendments to Title 16 of the California Code of Regulations (CCR) Sections 1399.434, 1399.434, 1399.437 and Repeal of CCR Section 1399.436 – Implementation of SB 1246 (Johnson)

Johnson began with an overview of the current status of SB 1246 Rulemaking package. He noted there had been three letters received during the 45-day public comment period, which began April 12, 2016 and ended on June 6, 2016, and one witness at the June 6, 2016 public hearing. Counsel Pruden commented that the Board is required to respond to any adverse comments received during the 45-day public comment period or during the regulatory hearing. Each comment received will be read aloud in full, along with the proposed staff response. Johnson noted staff is also proposing several changes to the approved regulatory language, and explained the process of re-noticing the regulatory language to the public for the required 15-day comment period.

1. Letter received via Mail dated April 27 from Dr. Bob Damone, DAOM and Dean of Southern California University of Health Sciences, College of Eastern Medicine:

Dr. Damone, in his letter, commended the Board for its transparent preparations for SB 1246 implementation. He expressed concern that the proposed verbiage, as set out in page 2 of the Board's Initial Statement of Reasons (ISOR), was not fully loyal to the nuances of ACAOM accreditation as expressed in SB 1246, specifically Business and Professions Code (BPC) Section 4927.5. Staff recommended acceptance of the comment with the correct language to be included in the FSR.

President Aguinaldo asked about the difference between a substantive and non-substantive change to the proposed regulatory language. Counsel Pruden explained the difference between the two, and that this comment was not considered a change to the regulatory language. She also noted there were changes to the regulatory text, to be addressed after the comments were responded to, and how the Board can respond the comments received.

Discussion commenced on how to accept or reject the comments and proposed responses. President Aguinaldo requested the Board take a global motion approving or denying all comments and responses at once, instead of approving or denying each comment individually.

2. Letter received via mail dated April 28, 2106 from Dr. Bob Damone, Doctor of Acupuncture and Oriental Medicine (DAOM), Dean of Southern California University of Health Sciences (SCUHS), College of Eastern Medicine.

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Dr. Damone, in his letter, expressed further concern regarding the verbiage in the proposed CCR Section 1399.437(e), which he felt should be further defined in its narrow sense as coursework listed 1399.433. Otherwise, CAB approved schools may appear to be expected to acquire CAB approval at least 30 days in advance of even minor curriculum changes, even to those courses which do not affect CAB-required coursework. This could potentially interfere with a given program's ability to meet with agility the evolving needs of its student, accreditors, and regulatory bodies. Staff recommended acceptance of the comment with accompanying changes to CCR Section 1399.437(e). Johnson then read aloud the proposed change to Section 1399.437(e).

Member Chan asked what the difference between coursework and coursework in curriculum. Counsel Pruden explained that the statute allows the Board to approve curriculum via an application which the school would submit. If a school were to change the coursework within that curriculum, they would need to notify the Board. President Aguinaldo asked what would fall under a minor change to a curriculum that should not be captured under coursework. Public comment came from Dr. Steve Given, DAOM, L.Ac, Associate Academic Dean of the California Institute of Integral Studies, who stated that there was concern as to how the Board would be notified even if the change was considered minor, and what would constitute a substantive change.

Discussion commenced on what schools would be required to submit in making changes, and what would constitute a major or minor change to curriculum or coursework. Interim Executive Officer Benjamin Bodea (IEO Bodea) clarified what constitutes a change to curriculum. He noted the proposed language does not define a major or minor change to the curriculum, merely that any changes to coursework – such as a syllabus change which goes through an internal school process such as a committee – would need to be sent to the Board for approval.

President Aguinaldo felt that any changes to coursework that would bring the school out of compliance with the regulation would need to be reported to the Board. IEO Bodea agreed. He cautioned against trying to define it further, saying that some training programs may not interpret what constitutes a minor change to their curriculum as others might do. Vice President Zamora felt that it would not be difficult for schools to notify the Board of changes to their coursework especially when its primary purpose is to protect the public through compliance with the required curriculum.

Counsel Pruden suggested a change to the beginning of 1399.433 and 1399.434, by changing 'criteria' to 'coursework that contains the following criteria' in order to better tie in with 1399.437(e). President Aguinaldo agreed, feeling the Board could not get much more specific. She then asked if schools typically had elaborate 14-15 page syllabuses; IEO Bodea replied that the Board only looks at the syllabus listed on the application itself.



Member Kang was concerned about the impact of the proposed language on smaller schools; she felt that larger schools were less affected by it, but wanted to make sure that in order to protect the public that the smaller schools also would be compliant with it as well. Vice President Zamora felt the language as proposed was sufficient.

The Board decided to take individual motions and votes on each comment received.

*MOTION FOR DAMONE LETTER #1: Vice President Zamora made a motion to approve the staff response to accept the comment and adopt the response as written in the Board packet. Member Corradino seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

*MOTION FOR DAMONE LETTER #2: President Aguinaldo made a motion to accept the comment and adopt the changes to 1399.437(e) as specified by Legal Counsel. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

3. Letter received via mail dated May 25, 2016 from Dr. Steven Given, DAOM, L.Ac, Associate Academic Dean of the California Institute of Integral Studies.

Johnson noted Dr. Given's letter had three distinct comments to be addressed.

First, Dr. Given expressed concern regarding the status of an institution with ACAOM as set out on page two of the ISOR, stating the ISOR did not completely notate the language from BPC Section 4927.5. Staff recommended acceptance of this comment, with the correct language from 4927.5 to be included in the FSR.

No public comment was taken on this item.

*MOTION: Vice President Zamora made a motion to accept the staff recommendation to accept the comment and to include the language from BPC Section 4927.5 in the FSR. President Aguinaldo seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Second, Dr. Given's concern was regarding the review of curriculum as set out in CCR Section 1399.437(e). He felt the language as written would make it unclear when or how an institution would be required to resubmit curriculum to the Board. Staff recommended acceptance of this comment with the accompanying changes to CCR Section 1399.437(e).

Counsel Pruden suggested additional changes to 1399.437 to include how and when the submittal is required. IEO Bodea pointed out the SB 1246 does require 30 days for Board review of submitted curriculum, although it does not define what a re-submittal

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timeline would be. Member Corradino felt the Board dealt with the issue in the previous comment. Member Kang asked what a re-submittal of curriculum might mean under the statute. After discussion of the issue, the Board felt that the existing language was sufficient.

Discussion commenced on how acupuncture training programs would be required to re-submit changes to their curriculum.

*MOTION: Vice President Zamora made a motion to accept the staff recommendation to accept the comment and adopt the response as written in the Board packet. Member Chan seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Third, Dr. Given felt that as long as any improvement to an institution's curriculum leaves the institution fully in compliance with CA regulations, no further review by CAB was necessary. He also stated that such review would be burdensome and would make it harder from institutions to make positive changes to their program of study. Staff recommended rejection of this comment, on the basis that the Board is charged with protecting the public and does so by ensuring that any changes to an approved acupuncture training program's curriculum continues to meet Board requirements..

No public comment was taken on this item.

*MOTION: Vice President Zamora made a motion to accept the staff recommendation to reject the comment and adopt the response as written in the Board packet. President Aguinaldo seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Finally, Dr. Given cautioned the Board regarding attempting to ensure that licensed acupuncturists continue to meet the same educational training and clinical experience standards. He hoped that Board staff and commissioners would create an environment where an institution may meet or exceed the standards set out in regulation. Staff recommended rejection of this comment, since the Board is merely setting minimum standards for approved training program curriculum, not making the program exceed those standards as proposed.

No public comment was taken on this item.

*MOTION: Board Member Chan made a motion to accept the staff recommendation to reject the comment and adopt the response as written in the Board packet. Member Corradino seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

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4. Comments received at the June 6, 2016 public hearing in Sacramento, CA:

Johnson noted one person provided feedback at the June 6, 2016 hearing in Sacramento. Dr. Steven Given, DAOM, L.Ac, Associate Academic Dean of the California Institute of Integral Studies had six distinct comments regarding the proposed rulemaking.

First, Dr. Given suggested a correction on proposed CCR Section 1399.433(b) (1) (G) – ‘Jin Gui’ is listed. Dr. Given feels ‘Yaolae’ should be added to further define the term. Staff recommended rejection of this comment, feeling ‘Jin Gui’ was a significant enough identifier.

There was discussion on the meaning of the term. Member Corradino clarified that the term was a technique used in Acupuncture training, and the term was okay as is.

Public comment was taken on the item. Dr. Given felt it was not burdensome to include the full name of the texts in regulation. Member Kang asked about the terms ‘Asian’ and ‘Oriental’ medicine in the text, which Counsel Pruden explained would be taken up when the review of the language took place later in the meeting. President Aguinaldo asked the issue of namings and terms be assigned to the Board’s Education Committee for review.

*MOTION: President Aguinaldo made a motion to accept the staff recommendation to reject the comment and adopt the response as written in the Board packet. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – NO; Kang – YES. **MOTION PASSES 5-1***

Second, Dr. Given noted the ‘Clean Needle Technique’ manual as referred in the proposed CCR Section 1399.433b (2)(K) is no longer published by the National Acupuncture Foundation. It is now published by the Council of Colleges of Acupuncture and Oriental medicine and available on their website. Staff recommended acceptance of the comment with the corresponding changes to be made to 1399.433b (2)(K) and 1399.434b(2)(K).

*MOTION: Member Corradino made a motion to accept the staff recommendation to accept the comment and adopt the changes to CCR Sections 1399.433b(2)(K) and 1399.434b(2)(K) with the additional changes discussed. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

There was no public comment on this item.

Third, Dr. Given pointed out language in CCR Section 1399.433h (4) and 1399.434h(4), which he felt was outdated, referring to “subsection H - clinical practice hours – nine

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hundred fifty hours” and the “statement in subsection 4 – thereafter two hundred seventy five hours the clinical supervisor shall be physically present at the needling of the patient”. He stated that California is the only state which requires this, and there was virtually no evidence that is necessary or enhances the training of the intern. He also noted “that in the following sentence...that the clinic supervisor shall be in close proximity, and is true for all stages of clinical stages and continues to be true.” Staff recommended rejection of the comment and proposed changes to CCR Sections 1399.433(h(4) and 1399.434h(4).

Johnson read aloud the proposed changes the text. IEO Bodea explained the reasoning for the proposed changes, stating that the Board was not changing anything in the section, merely clarifying a regulation that has been in place since 2005 and adding words so that it is clearer to the schools. Member Kang asked if the issue could be dealt with during the Board’s proposed Omnibus regulatory package in the future; IEO Bodea said it could be.

*MOTION: President Aguinaldo made a motion to accept the staff recommendation to reject the comment and adopt the language as discussed today. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Fourth, Dr. Given repeated his written comment that a statement in the ISOR referring to approved training programs does not list the full text of the statute. Staff recommended acceptance of this comment, with the correct and full language from CA BPC Section 4927.5 to be included in the FSR.

There was no public comment on this item.

*MOTION: President Aguinaldo made a motion to accept the staff recommendation to accept the comment and make the changes to the FSR. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Fifth, Dr. Given reiterated his written comment regarding curriculum review. He felt “the Board should have complete authority first 30 days as per SB 1246, but thereafter the review of curriculum needs to be ended as far as CAB is concerned.” He states “that under the accreditation process, schools are constantly improving and changing curriculum – and if an institution were required to go back to CAB for every time they made improvement to their curriculum, institutions would have a disincentive to continue to improve their curriculum as is required by accreditation, and believes that CAB would be inundated with minor changes, when in fact it is not necessary for CAB to approve that.” Staff recommended rejection of this comment, on the basis that in order to protect the public and to ensure that California Board requirements apply to all acupuncture



training programs, it is necessary to require approved training programs to submit all changes to their Board approved curriculum.

There were no public comments on this item.

*MOTION: President Aguinaldo made a motion to accept the staff recommendation to reject the comment and adopt the response as written in the Board packet. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Finally, Dr. Given said that in “a statement made in documents forwarded to me that licensed acupuncturists continue to meet the same training and clinical experience standards. More in the spirit of education under accreditation should meet or exceed those standards.” He feels “it is in fact not appropriate for a Board to say that everybody must meet the same standards...we should be able to meet or exceed those standards according to the review of faculty and the academic leadership of the individual institution...that is in fact what is happening now, institutions do have an opportunity to exceed those standards as they see fit.” Staff recommended rejection of this comment, as the Board is setting minimum standards for Approved Training Program curriculum, not making the program exceed the standards as proposed.

There was no public comment on this item.

*MOTION: Vice President Zamora made a motion to accept the staff recommendation to reject the comment and adopt the response as written in the Board packet. Board Member Chan seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

5. Proposed additional changes to SB 1246 regulatory text:

Counsel Pruden reviewed the changes to the regulatory text, some of which have already been reviewed and approved by the Board. She also detailed the additional proposed changes not already reviewed:

CCR Section 1399.433, adding the words ‘clinical experience’, as required by statute.

CCR Section 1399.433, adding additional language about international education training hours which mirrors 1399.434, as required by statute.

CCR Section 1399.433b (2)(K) removal of ‘as its primary reference’, which makes the regulation more specific.

Addition of authority and reference sections, which details the statutes the Board is making more specific or implementing, as required by the Administrative Procedure Act.



CCR Section 1399.437, adding the updated revision date for the “Application for Board Approval of Curriculum”.

CCR Section 1399.437a (5), adding the words ‘all information and documentation submitted under this section shall be in English’, in order to clarify the application must be in English.

CCR Section 1399.437b, defining what a complete application is and requiring all information and documentation.

CCR Section 1399.437c, adding additional information as to how the application may be incomplete and again defining that a complete application is.

There were no public comments on this item.

*MOTION: Vice President Zamora made the following motion – “I move to amend the proposed language as staff has recommended, to approve the modified text for a 15-day comment period and delegate to the Executive Officer, if there are no comments received during the public comment period, the authority to make technical, non-substantive changes as necessary in completing the rulemaking file.” President Aguinaldo seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. **MOTION PASSES 6-0***

Agenda Item #6 – Consideration and possible action related to proposed regulatory adoption of Title 16 of CCR Section 1399.457 – Standardized 801 Malpractice Reporting Form (Johnson)

This item was not taken up by the Board. Counsel Pruden announced the Board already had the legal authority to develop a form as set out in California Business and Professions Code Section 804.

There was no public comment on this item.

Agenda Item #7 – Legislative Update: AB 2190 (Salas and Hill) (Johnson)

Johnson gave a short update on the Board’s Sunset Bill, AB 2190. The bill has been approved by the Legislature and is on its way to the Governor for approval or denial. He noted the Board had a good and collaborative process with the Legislature during work on AB 2190.

There was no public comment on this item.



Agenda Item #8 – Pursuant to Government Code section 11126(c)(1), the Board will meet in closed session to discuss the possible appointment of Interim Executive Officer.

This item was moved to the end of the Agenda by President Aguinaldo.

Agenda Item #9 – Consideration and Possible Action to Approve the California Acupuncture Board Member Administrative Manual (Bodea)

AEO Bodea reviewed the changes to the Administrative Manual. The changes are minor and non-substantive.

There was no public comment on this item.

MOTION: President Aguinaldo made the motion to accept the changes to the manual as specified in the Board packet and delegate to the Executive Officer the authority to make non-substantive changes. Vice President Zamora seconded the motion.

Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – YES; Kang – YES. MOTION PASSES 6-0.

Agenda Item #10 – Public Comment for items not on Agenda (Aguinaldo)

The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))

There were no public comments on items not on the Agenda.

Agenda Item #11 – Future Agenda Items (Aguinaldo)

Member Kang asked about the history of the sale of needles in California. This will be taken up at the September meeting.

Member Corradino asked that the issue of First Professional Doctorate degrees being issued by acupuncture schools be placed on a future agenda, as he noted the degrees are going to be issued within the next year or two.

(Taken out of order) Agenda Item #8 – Pursuant to Government Code section 11126(c)(1), the Board will meet in closed session to discuss the possible appointment of an Interim Executive Officer.

The Board went into closed session to discuss this item. Upon resuming open session, President Aguinaldo announced that Benjamin Bodea has been named Interim Executive Officer.



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ADJOURNMENT AT 1:45pm.

**#2 – Meeting Minutes of
September 21, 2016**



CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
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**California Acupuncture Board
Public Board Meeting
DRAFT Meeting Minutes
Wednesday, September 21, 2016**

**LOCATION:
PACIFIC COLLEGE OF ORIENTAL MEDICINE
ROOM 100
7445 MISSION VALLEY ROAD
SAN DIEGO, CA 92108**

Board Members Present

Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Jeannie Kang, L.Ac, Licensed Member

Board Member Absent

Francisco Hsieh, Public Member

Legal Counsel Present

Kelsey Pruden

Staff Present

Ben Bodea, Acting Executive Officer
Kristine Brothers, Enforcement Coordinator
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator

Acupuncture Board Members

*Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Vacant, Licensed Member*

FULL BOARD MEETING - 9:30 AM

Agenda Item #1 – Call to Order, Roll Call and Establishment of a Quorum

Hildegarde Aguinaldo (Aguinaldo), Board President, called the meeting to order at 9:45am. Marc Johnson (Johnson) called the roll. Hildegarde Aguinaldo – present; Jaime Zamora – present; Kitman Chan – present; Dr. Michael Corradino – present; Francisco Hsieh – absent; Jeannie Kang – present. **5-0 Quorum established.**

Agenda Item #2 – Opening Remarks and Announcement (Aguinaldo)

President Aguinaldo welcomed everyone to the meeting and thanked Pacific College of Oriental Medicine for their hospitality and hosting the meeting.



Agenda Item #3 – Petition for Reinstatement of Surrendered License (9:35 AM):

The Board heard the petition for reinstatement of a surrendered license by Dong Hyun Chang (Case # PRRL-1A-2015-172).

The Board then went into closed session at 12:35pm.

Agenda Item #4 – Pursuant to Government Code Section 11126 (c) (3) the Board will convene in closed session to deliberate on the Petition and take action on disciplinary matters.

The Board met in closed session on this item.

Agenda Item #5 – Pursuant to Government Code Section 11126 (a) (1) the Board will meet in closed session to consider the possible selection, appointment or employment of an Executive Officer.

The Board met in closed session on this item.

Open session resumed at 4:53pm.

Upon resumption, President Aguinaldo announced that Agenda Items #6 (President's Report), #7 (Executive Officer and Staff reports) and #9 (Consideration and possible action on proposed amendments to Title 16, CCR Sections 1399.469 – Uniform Standards Related to Substance Abuse) would be continued to the next Public Board meeting due to time constraints.

(Taken out of order) Agenda Item #10 – Consideration and possible Approval of Acupuncture Training Programs (Herdt)

10a. Health Medicine School (HMS) – Sunnyvale, CA

Jay Herdt (Herdt) announced that HMS's application was being tabled upon recommendation of Legal Counsel. HMS was aware the application was to be tabled.

10b. Institute of Clinical Acupuncture and Oriental Medicine (ICAOM) – Honolulu, HI

Herdt reported on ICAOM's application to become a Board approved acupuncture training program, noting the school has been operating since 1996, and was fully accredited by the Accreditation Commission for Acupuncture and Oriental Medicine



(ACAOM) in 2002. Herdt reported ICAOM is in full compliance with California requirements with staff recommending approval of the application.

A representative from ICAOM noted she was pleased to see the application passing staff review.

*MOTION: Vice President Jamie Zamora (Zamora) made a motion to approve ICAOM as a Board approved acupuncture training program. Member Kitman Chan (Chan) seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – YES; Hsieh – ABSENT; Kang – YES. **MOTION PASSES 5-0-1.***

10c. Maryland University of Integrative Health (MUIH) – Laurel, Maryland

Herdt reported on MUIH's application to become a Board approved school. He commented that MUIH originally had a number of non-compliance issues but through corrective actions, MUIH is now in full compliance with California requirements. Staff recommended approval of the application.

There was no public comment.

*MOTION: Vice President Zamora made a motion to approve MUIH as a Board approved acupuncture training program. President Aguinaldo seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – ABSTAIN; Hsieh – ABSENT; Kang – YES. **MOTION PASSES 4-0-1-1.***

President Aguinaldo thanked the staff for their hard work on the school applications and complimented the new, streamlined format of the school approval materials.

(Taken out of order) Agenda Item #8 – Consideration and possible action on Title 16, CCR Sections 1399.434, 1399.434, 1399.437 and Repeal of CCR Section 1399.436 – Implementation of SB 1246 (Johnson)

Johnson began with a brief overview of the SB 1246 rulemaking package so far. The Board approved revised language at the August 31, 2016 public Board meeting which was released for a 15-day public comment period. He noted one letter was received during the public comment period from Ron Zaidman, DAOM, President and CEO of Five Branches University, regarding the proposed changes to 1399.433(h) and 1399.434(h).

Dr. Zaidman, in his comments, said that “during the initial 700 hours of clinical instruction, the student shall remain in the direct line of sight of the clinic supervisor at all times when the patient is being diagnosed and/or treated’ assumes that patients in America are okay being treated in a large, common treatment room, community clinic style. While some patients may accept this, the majority of patients

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want privacy and a private room. In brief, striking, 'Thereafter, for a second period of 275 hours the clinic supervisor shall be physically present at the needling of the patient' would, in the view of our academic leadership and faculty, assure the highest education and clinical training, and would maximize patient safety". Staff recommended rejection of the comment and the proposed Board response was read aloud.

MOTION: Vice President Zamora made a motion to accept staff's recommendation to reject the comment as it relates to CCR Sections 1399.433(h) and 1399.434(h). Board Member Corradino seconded the motion. MOTION REINDED; VOTE NOT TAKEN.

Public Comment was taken on the item. Bill Mosca, CSOMA, speaking on behalf of Dr. Zaidman, felt the proposed language does make substantial changes to clinical supervision. He also felt the Initial Statement of Reasons for SB 1246 did not note the clinical supervision change. Jack Miller, PCOM, felt the decision was hasty and stated if such a decision was made by his school it would be questioned by their accreditor. He felt this change would be costly and such costs would be passed onto his students.

Dr. Yun Kim, Emperor's College, felt the proposed change was essentially requiring a one-on-one supervisor for students, which she felt was almost impossible. She asked for additional time to see what other professions do and what their best practices are before making such changes. Jacques MoraMarco, also from Emperor's College, appreciated the Board's diligent work in trying to maximize consumer protection. He noted the words 'direct supervision' seemed to come from the Chiropractic Board. An-York Lee, L.Ac, called into question of the quality of supervision being provided to interns and had concerns about the cost. Dr. Bob Damone, SCUHS, urged the Board to extend the comment period on the proposed change to allow for research and to look at what other health care professions are doing.

President Aguinaldo asked about options for the regulation. Johnson explained that due to statutory requirements the regulation needed to be in place by January 1, 2017. Legal Counsel Kelsey Pruden (Pruden) also explained that the proposed Board response was specifically tailored to the comment received during the 15-day comment period, and explained how the Board can respond to the comment by using the staff recommendation, or go another direction. President Aguinaldo noted an additional comment in Dr. Zaidman's letter about needling, which she felt was related to the public comments received today. IEO Bodea suggested removing the double underlined language referring to 'physically present', reverting the proposed regulation to the regulatory language already in place, which would still be considered a regulatory change, and taking up changes to the existing supervision language at a later date in an effort to not delay this regulatory package further.



Counsel Pruden agreed but noted there would need to be an additional fifteen day public comment period on the proposed language and another Board meeting to consider any comments received about it.

Discussion commenced on further changes to the language and the timing. Johnson reminded the Board that statutorily the Board had to have the regulations in place by January 1, 2017. Vice President Zamora felt the Board had dealt with the issue enough and that the Board had met its requirements in posting for public comment for 60 days. Counsel Pruden recommended making a decision on this text immediately since the deadline was coming up. President Aguinaldo noted all of the single underlined language was the original and the public comment was against the recently proposed changes, which are double underlined. She felt the Board should partially reject and partially accept his comment. Counsel Pruden clarified the motion for adopting the language in 1399.433(h) and 1399.434(h) by removing all double underlined text and reverting to the single underlined text. She read aloud the updated language with the changes discussed here.

*MOTION: President Aguinaldo made a motion to change the language in 1399.433(h) and 1399.434(h) by removing all double underlined text and reverting to the single underlined text, and to delegate to the Executive Officer the authority to make technical changes and complete the rulemaking file if no adverse comments are received. Board Member Michael Corradino seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – ABSTAIN; Corradino – YES; Hsieh – ABSENT; Kang – YES. **MOTION PASSES 4-0-1-1.***

*MOTION: President Aguinaldo made a motion to partially accept the comment relating to 700 hours of clinical instruction and partially reject the comment relating to 275 hours. Vice President Zamora seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – ABSTAIN; Corradino – YES; Hsieh – ABSENT; Kang – YES. **MOTION PASSES 4-0-1-1.***

Agenda Item #11 – Public Comment for items not on Agenda (Aguinaldo)

The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))

Public comments were taken on items not on the agenda.

A commenter asked the Board about schools reporting minor curriculum changes.

Another commenter appreciated the location of this Board meeting and would like to see it happen here again.

A third comment was made in appreciating the Board's work.

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A comment was also made about herbal formula requirements in the national exam.

Agenda Item #12 – Future Agenda Items

Board Member Chan asked about revising the licensing renewal form to include more space to list CEUs and other information.

Board Member Corradino asked for the two items from the Board's Research Committee be examined in the future.

Agenda Item #13 – Adjournment

Adjournment at 6:08 PM.

#4 – Regulatory Update



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CAB list of past and future regulations

Updated: October 26, 2016

Set out below are a list of past and future pending regulations. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action.

Note: Authority for regulatory changes is provided under California Business and Professions (B&P) Code Chapter 12, Article 1, Code section 4933.

Pending regulations				
	Subject	Title 16, California Code of Regulations (CCR) Section referred	Date authorizing vote taken (vote)	Current Status
1	Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation (SB 1441)	Amend Section 1399.469	10/25/2013 (5-0)	Public comment period ended May 30, 2016. Staff has proposed changes to approved language and Disciplinary Guidelines. If Board approves, a 15-day modified text notice will be issued.
2	Standards for the Approval of Educational Training and Clinical Experience Received Outside the United States; Curriculum Standards for Board Approval of Curriculum; Requirements for Board Approval of Curriculum. (SB 1246)	Adopt Section 1399.433, Amend Section 1399.434, Repeal Section 1399.436, Amend Section 1399.437	11/17/2015 (7-0)	Board approved new regulatory language based upon public comments received at 9/21/16 public meeting. If no Board changes, regulation will be submitted to DCA and Agency for final approval.
3	Sponsored Free Health-Care Events (AB 2699)	Adopt Article 7 and Sections 1399.480, 1400.1, 1400.2 and 1400.3	11/17/2011 (5-0)	OAL disapproved regulation on 10/13/16. Board has 120 days to re-submit. Staff revising language for Board approval at November meeting. If approved, a 15-day modified text notice will be issued.
4	Advertising Guidelines – Display of License Number in Advertising	Adopt Section 1399.455	2/19/2013 (5-0)	Package reviewed by staff and Legal Counsel. Staff revising language for Board review and possible approval at November meeting. If approved, a 15-day modified text notice will be issued.

5	Prostitution Enforcement and Condition of Office	Amend Section 1399.450(b)	2/14/2014 (6-0)	Package reviewed by staff and Legal Counsel. Staff recommends returning package to Enforcement committee for further review and development.
6	Continuing Education Ethics Requirement	Adopt Section 1399.482.2	11/15/2012 (5-0)	Package reviewed by staff and Legal Counsel. Staff recommends returning package to Education committee for further review and development.
7	Hand Hygiene Requirements	Amend Section 1399.451(a)	2/14/2014 (5-0)	Package under staff development. Expected submittal to OAL for notice publication and public comment period by Spring 2017.

Adopted Regulations

	Subject	Title 16, CCR Sections referred	Date approved by Office of Administrative Law; date in effect with link to text of regulation
1	Educational Curriculum Requirements	Amend Section 1399.415	Approved by OAL 10/5/04 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art2.shtml#1399415
2	Cite and Fine Enforcement	Amend Section 1399.465	Approved by OAL 4/17/06 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art6.shtml#1399465
3	Continuing Education	Amends Sections 1399.480 – 1399.489.1	Approved by OAL on 8/25/08 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art8.shtml#1399480
4	Retroactive Fingerprinting Requirements	Adopts Sections 1399.419.1 and 1399.419.2	Approved by OAL 9/23/10 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art25.shtml#13994191
5	Consumer Protection Enforcement Initiative (CPEI)	Amends Sections 1399.405, 1399.419, 1399.469.1, 1399.468.2	Approved by OAL 9/1/15; in effect 10/1/2015 https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I45A8F9C0D48E11DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)
6	Display of Licensure by Acupuncture Board (BPC 138)	Adopt section 1399.463.3	Approved by OAL 7/12/16; in effect 10/1/2016 http://www.acupuncture.ca.gov/pubs_forms/laws_regs/bpc138_orderofadoption.pdf

**State of California
Office of Administrative Law**

In re:
Acupuncture Board

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1399.480, 1400.1, 1400.2,
1400.3

Amend sections:

Repeal sections:

NOTICE OF DISAPPROVAL OF
REGULATORY ACTION

Government Code Section 11349.3

OAL Matter Number: 2016-0830-01

OAL Matter Type: Regular (S)

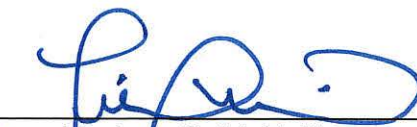
This rulemaking action by the California Acupuncture Board proposes to adopt sections 1399.480, 1400.1, 1400.2, and 1400.3 in title 16 of the California Code of Regulations to establish application and registration requirements for participation in sponsored free health care events. This action also 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.

OAL disapproves this regulatory action for the following reason(s):

Clarity and Incorrect Procedure

Within seven (7) calendar days of the date of this notice, the Office of Administrative Law will send the adopting agency a written decision detailing the reason(s) for disapproval of this regulatory filing.

Date: October 12, 2016



Lindsey S. McNeill
Attorney

For: Debra M. Cornez
Director

Original: Benjamin Bodea
Copy: Marc Johnson

**State of California
Office of Administrative Law**

In re:
Acupuncture Board

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1399.480, 1400.1,
1400.2, 1400.3

Amend sections:

Repeal sections:

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

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 Proposed Section 1399.480 of the CCR.

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 Proposed Section 1400.3 of the CCR.

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. Failure to Follow Required APA Procedures.

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.

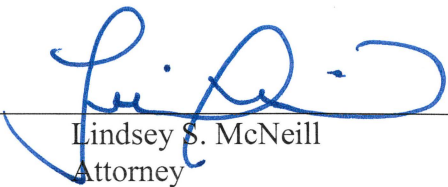
The Table of Contents lists “11347.1 Statement” under tab H of the rulemaking file. However, the rulemaking file does not contain a tab H or a document entitled “11347.1

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

For: Debra M. Cornez
Director

Original: Benjamin Bodea
Copy: Marc Johnson

#5 – Implementation of SB 1246

Memo

CALIFORNIA ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
 (916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov



DATE	October 26, 2016
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Title 16, California Code of Regulations (CCR) Sections 1399.433, 1399.434, 1399.437 and Repeal of CCR Section 1399.436 – Implementation of SB 1246

Introduction and Background:

Senate Bill 1246 (Lieu, Chapter 397, Statutes of 2014) is the Board’s Sunset Bill from 2014. The provisions of SB 1246 take effect on January 1, 2017. At the November 11, 2015 California Acupuncture Board (Board) meeting, the Board approved proposed regulatory language based off SB 1246 which:

1. Creates standards for the approval of educational training and clinical experience received outside the United States (proposed CCR Section 1399.433)
2. Sets forth curriculum standards for Board approval of curriculum (proposed CCR section 1399.434)
3. Repeals obsolete requirements for Board approval of curriculum. (repeal of CCR section 1399.436)
4. Creates a process for approving curriculum (proposed CCR Section 1399.437)

Staff began work on the proposed SB 1246 rulemaking in early 2016. In April 2016, the Board filed the rulemaking package with OAL, and the 45-day public comment period on the proposed regulation began on April 22, 2016. The comment period ended on June 6, 2016, with a public hearing held on June 6, 2016.

Based upon comments received during the initial 45-day comment period, staff recommended multiple changes to the proposed text. These changes included:

- CCR Section 1399.433: Addition of “clinical experience”; further definition of what ‘coursework’ means; further definition of what international training requirements are needed for foreign students (mirroring the domestic curriculum requirements); updating the reference to the CNT manual; further definition of a school clinic supervisor’s role and presence with the student and addition of a reference and authority section.
- CCR Section 1399.434: Addition of “clinical experience”; further definition of what ‘coursework’ means; updating the reference to the CNT manual; further definition

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of a school clinic supervisor's role and presence with the student and addition of a reference and authority section.

- CCR Section 1399.437: Revision of the application date; clarifying what a complete or incomplete application is; specifying all forms must be in English; further defining what constitutes a curriculum change and addition of a reference and authority section.

These changes were reviewed and approved by the Board at the August 31, 2016 public meeting, and a 15-day modified text period was issued from September 1, 2016 until September 15, 2016. The Board then met on September 21, 2016 in San Diego to review comments received during the initial 15-day comment period and subsequently approved additional changes to the proposed language. These changes included:

- CCR Sections 1399.433h and 1399.434h: Removal of all double-underlined changes in this section (as approved by the Board on August 31, 2016) and revert to the text in this section as originally approved on November 11, 2015.

As a result, a second modified text period was issued from October 1, 2016 lasting until October 15, 2016. As before, the modified text was regular mailed and emailed to all interested parties on the Board's email list and also was posted on the Board's website.

Action Items for Board:

1. Review, discussion and direction of Board response to comments received during the second 15-day modified text period.
2. Discussion, if any, on changes to the approved regulatory language. Staff does not recommend this action as it would further delay already tight rulemaking timeline.
3. Approve the proposed Order of Adoption for CCR Sections 1399.433, 1399.434, 1399.436 and 1399.437, which will be submitted with the rulemaking file. The proposed Order of Adoption is the exact same language approved by the Board at the previous September 21, 2016 public meeting.
4. Delegation to the Executive Officer the authority to continue the regulatory process, submit the rulemaking file for approval and grant authority to make non-substantive changes to the regulation.

Suggested Motion: "I move to approve the proposed order of adoption for the proposed regulations, to delegate the authority to the executive officer to complete the rulemaking file and to make any technical and non-substantive changes that may be required."

Written Comments Received:

The public comments received must directly pertain to the changes as proposed to CCR Sections 1399.433h and 1399.434h, and the Board is not required to respond to

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comments outside of the proposed regulatory changes. Two letters were received during the second 15-day comment period that directly pertains to the changes noticed. The comments below have been summarized for brevity below; the full text of the letter is set out in Appendix B.

Letter received via mail dated October 5, 2016 from Dr. Bob Damone, Doctor of Acupuncture and Oriental Medicine (DAOM), Dean of Southern California University of Health Sciences, College of Eastern Medicine.

Dr. Damone thanked the Board for its willingness to collaborate with members of the profession and felt the Board took reasonable action despite the time pressures leading up to the implementation of SB 1246. He remains concerned about the regulatory language for clinical supervision and feels *“the traditional paternalistic model of master-apprentice pedagogy common in East Asian countries has been implanted along with Acupuncture practice into American Acupuncture educational regulations... this is seriously out of step with the principles of adult education and current best practices in clinical pedagogy promulgated by highly respected entities such as the Accreditation Commission for Graduate Medical Education (ACGME).”*

Dr. Damone made five distinct comments regarding the proposed regulatory action:

1. Regarding the proposed language for 1399.433h and 1399.434h, he feels *“it is our contention that the practice of acupuncture needling is an ‘Entrustable Professional Activity’ that can be performed safely, effectively, and independently by well-trained Acupuncture interns fairly early in their training, and certainly well before a 700-hour minimum supervisory period.”*

Proposed Board Response:

The Board rejects this comment. The proposed changes to CCR Section 1399.433(h) and 1399.434(h) do not alter any of the current clinical requirements that have been in regulation since 2005. Needling is a precise and sensitive procedure and there exists a difference between the didactic instruction in the practice and the clinical application of needling. The Acupuncture Board’s primary purpose is to protect the public and reduce the risk of public harm. Therefore, supervision is necessary to ensure that the skills learned didactically continue to develop when transitioning to patient care.

2. Dr. Damone points out the difference between clinical supervision regulations for acupuncture tutorials and acupuncture training programs by referring to the Board’s CCR Section 1399.426, which reads as follows:

1399.426. Supervising Acupuncturist’s Responsibilities

“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

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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."

He states that *"the regulatory language above reflects a reasonable approach to safe and pedagogically sound clinical supervision for both acupuncture tutorials and acupuncture training programs. We support immediate adoption of this standard for all acupuncture education in California."*

Proposed Board Response:

The Board rejects this comment. The proposed changes to CCR Section 1399.433(h) and 1399.434(h) do not alter any of the existing clinical requirements that have been in regulation since 2005. A tutorial candidate works in very close proximity at all times with the supervisor in an environment much different from an acupuncture school. In a Tutorial Program, the Tutorial Supervisor works with only one, or, at most, two trainees, in a small clinic setting. This presents a drastically different learning environment and level of supervision when compared to a Board approved acupuncture training program (at educational institutions) where common practice assigns a minimum of four clinical student interns per clinic supervisor, and in some cases exceeding that number, in a larger clinical facility setting. In addition, the Tutorial Training Program requires the successful completion of a minimum of 3,798 hours to be eligible for the licensing exam whereas Board Approved acupuncture training programs (at institutions) require a minimum of 3,000 hours. Therefore, the requirements from CCR Section 1399.426 would not be applicable here.

3. Dr. Damone cites the *"the resident clinical supervision standards from the Accreditation Commission for Graduate Medical Education (ACGME), Common Program Requirements. In decreasing order of supervisory intensity, the ACGME guidelines identify three levels of clinical supervision. They are: 1) direct supervision; 2) indirect supervision and; 3) oversight. Depending on the educational level of the resident, and the relative complexity and associated risk of a given medical procedure, the appropriate degree of supervisory oversight can be implemented using this model. A similar model would fit perfectly within the clinical supervision regulations for Acupuncture Training programs. We urge the Board to seriously consider these guidelines."*

Proposed Board Response:

The Board rejects this comment. The ACGME standards reflect the Entrustable Professional Activity (EPA) used within the education models for physicians and osteopaths. Those standards do not readily translate to acupuncture education models. Medical students may have more supervisory independence sooner than acupuncture students but the same western medical education requirements and hours, pre-requisites (Bachelor's degree) and qualification testing (MCAT, at the very least) are not required of acupuncture students. Moreover, there are no established national

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acupuncture training supervision standards, therefore the Board is emboldened to adhere to the system presently in place to ensure public protection.

4. Dr. Damone notes the *"interpretation of 'Immediate and Direct Supervision' by the California Chiropractic Board"*, and states that *"the California Chiropractic Board defines the terms "immediate and direct" supervision in a more liberal fashion than does the California Acupuncture Board, as is evidenced below:*

'Immediate and direct supervision' means the licensed Doctor of Chiropractic shall be at all times on the premises where the examinations are being conducted. The licensed Doctor of Chiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings."

Proposed Board Response:

The Board rejects this comment. Chiropractic education and practice has a different type of learning and clinical training than Acupuncture. For example, Chiropractic treatment does not involve the use of needles. Therefore utilizing language that works for chiropractic education does not translate to the educational regulations proposed.

5. Finally, Dr. Damone asks *"that the Board will consider placing on its future agenda the issue of updating and modernizing the California acupuncture clinical supervision regulations to reflect current scientific evidence and best practices within health profession education, including those used by the medical profession."*

Proposed Board Response:

The Board rejects this comment. The Board is currently restoring the proposed regulations regarding clinical supervision so that there will be no proposed changes to what is currently in place. In the future, the Board may look into reviewing the acupuncture training program clinical supervision requirements in light of any changes to the profession. At this time, however, the Board is opting to keep the requirements as is for the reasons outlined above.

Letter received via mail dated October 10, 2016 from Dr. Gregory Lane, Doctor of Acupuncture and Oriental Medicine (DAOM), Director of Clinical Services, Pacific College of Oriental Medicine.

Dr. Lane thanked the Board and acknowledged all of the hard work and time invested by the Board in deliberating the issues and seeking feedback leading up to the public meeting. He feels that the Board has demonstrated a commitment to uphold the highest standards of the profession, as well as solicit and consider feedback from professionals in the field, including quality training institutions.

Dr. Lane's letter had three comments regarding the proposed regulatory action:

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1. Dr. Lane feels *“that there remains work to be done in further revision of the regulatory language as relates to clinical supervision in acupuncture programs. We respectfully request that in a future agenda the CAB consider recommendations for regulation modification that would serve ideal clinical supervision in acupuncture training programs. We propose that any future changes would take into consideration current evidence and best practices in clinical teaching effectiveness in other health professions education.”*

Proposed Board Response:

The Board rejects this comment. The Board is currently restoring the proposed regulations regarding clinical supervision so that there will be no proposed changes to what is currently in place. In the future, the Board may look into reviewing the acupuncture training program clinical supervision requirements in light of any changes to the profession. At this time, however, the Board is opting to keep the requirements as is for the reasons outlined above.

2. Dr. Lane also cites ACGME common program requirements, writing that *“The current evidence and best practices in health professions education supports a tiered approach, which aims towards a higher level of autonomy of the clinical student utilizing competency-based assessments on the part of the supervisors. As you can see there is a clearly delineated tier structure providing for the appropriate level of oversight balanced with self-directed learning with the goal of developing well-trained future practitioners and protecting public safety. We believe this model also fits our profession.”*

Proposed Board Response:

The Board rejects this comment. The ACGME standards reflect the Entrustable Professional Activity (EPA) used within the education models for physicians and osteopaths. Those standards do not readily translate to acupuncture education models. Medical students may have more supervisory independence sooner than acupuncture students but the same western medical education requirements and hours, pre-requisites (Bachelor’s degree) and qualification testing (MCAT, at the very least) are not required of acupuncture students. Moreover, there are no established national acupuncture training supervision standards, therefore the Board is emboldened to adhere to the system presently in place to ensure public protection.

3. Finally, Dr. Lane further states that *“...we would also like to bring attention to the CAB that there are inconsistencies in the regulations governing clinical supervision in acupuncture tutorials and in acupuncture training programs. We respectfully request that these regulations be considered in a future agenda for re- wording to close disparity and bring into alignment the regulations.”* He is referring to the Board’s CCR Section 1399.426, which reads as follows:

1399.426. Supervising Acupuncturist’s Responsibilities

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“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.”

Proposed Board Response:

The Board rejects this comment. The proposed changes to CCR Section 1399.433(h) and 1399.434(h) do not alter any of the current clinical requirements that have been in regulation since 2005. A tutorial candidate works in very close proximity at all times with the supervisor in an environment much different from an acupuncture school. In a Tutorial Program, the Tutorial Supervisor works with only one, or, at most, two trainees in a small clinic setting. This presents a drastically different learning environment and level of supervision when compared to a Board approved acupuncture training program (at educational institutions) where common practice assigns a minimum of four clinical student interns per clinic supervisor, and in some cases exceeding that number, in a larger clinical facility setting. In addition, the Tutorial Training Program requires the successful completion of a minimum of 3,798 hours to be eligible for the licensing exam whereas Board Approved acupuncture training programs (at institutions) require a minimum of 3,000 hours. Therefore, the requirements from CCR Section 1399.426 would not be applicable here.

Attachments

- Proposed Order of Adoption for CCR Sections 1399.433, 1399.434, 1399.436 and 1399.437
- Public Comment from Dr. Bob Damone, SCUHS
- Public Comment from Dr. Gregory Lane, PCOM

#5 – Implementation of SB 1246

Order of Adoption

**CALIFORNIA ACUPUNCTURE BOARD
IMPLIMENTATION OF SB 1246
ORDER OF ADOPTION**

[Note: The originally proposed regulatory text is indicated by single underline and single strikethrough. The first modifications to the originally proposed text are indicated by ~~double strikeout~~ for deleted text and double underline for added text. The second modifications to the originally proposed text are indicated by ~~italics with strikethrough~~ for deleted text and *italics* for added text]

Add Title 16, California Code of Regulations Article 3.5, Acupuncture Training Programs, Section 1399.433 as follows:

1399.433 Criteria for International Education Training and Clinical Experience (effective 1/1/17)

An applicant that has received educational training and clinical experience outside of the United States shall meet all of the following criteria contained herein. ~~The total number of hours of all didactic and laboratory training shall consist of a minimum of 2,050 hours and a total of number of hours of supervised clinical instruction shall consist of a minimum of 950 hours, with the curriculum including the following components:~~ 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 ~~criteria~~ 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 as its primary reference the most current edition of the "Clean Needle Technique Manual" published by the National Acupuncture Foundation, current edition of the "Clean Needle Technique Manual 7th edition", (2015) published by the Council of Colleges of Acupuncture and Oriental Medicine, which is hereby incorporated by reference, or an equivalent standard which has been approved by the Board.~~ 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-10);

(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 subject:

(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 Diseases 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~~ *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. ~~During the initial 700 hours of clinical instruction, the student shall remain in the direct line of sight of the clinic supervisor at all times when the patient is being diagnosed and/or treated. After 700 hours of clinical instruction, The the~~ The clinic supervisor shall ~~otherwise~~ otherwise be in close proximity to the location at which the patient is being treated ~~during the clinical instruction~~ during the clinical instruction. The student shall also consult with the clinic supervisor before and after each treatment.

NOTE: Authority Cited: Sections 4933, 4939, Business and Professions Code.

Reference: Sections 4927.5, 4939, Business and Professions Code

Amend Title 16, California Code of Regulations Article 3.5 Acupuncture Training Programs, Section 1399.434 as follows:

1399.434 Criteria for Approval of Acupuncture and Oriental Medicine Training Program Curriculum (effective 1/1/17)

~~A school approved by the board shall use a training program, which related to the study and practice of acupuncture and oriental medicine, for all students entering its acupuncture and oriental medicine training program on or after January 1, 2005 that~~

meets the following criteria: 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 criteria 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 as its primary reference the most current edition of the "Clean Needle Technique Manual" published by the National Acupuncture Foundation, current edition of the "Clean Needle Technique Manual 7th edition" (2015), published by the Council of Colleges of Acupuncture and Oriental Medicine, which is hereby incorporated by reference, or an equivalent standard which has been approved by the Board.~~ 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-10);
- (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~~ 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. ~~During the initial 700 hours of clinical instruction, the student shall remain in the direct line of sight of the clinic supervisor at all times when the patient is being diagnosed and/or treated. After 700 hours of clinical instruction, The the~~ The clinic supervisor shall ~~otherwise~~ otherwise be in close proximity to the location at which the patient is being treated ~~during the clinical instruction~~ during the clinical instruction. The student shall also consult with the clinic supervisor before and after each treatment.

~~(i) A board approved training program shall consist of at least 2,050 hours of didactic and laboratory training and at least 950 hours of supervised clinical instruction. The course work 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.~~

NOTE: Authority Cited: Sections 4927.5, 4933, Business and Professions Code.
Reference: Sections 4927.5, 4938, Business and Professions Code

Repeal Title 16, California Code of Regulations Article 3.5 Acupuncture Training Programs, Section 1399.436:

1399.436. Criteria for Approval of Acupuncture Training Program.

~~A school approved by the board shall use a training program for all students enrolled in its acupuncture and Oriental medicine training program before January 1, 2005 that meets the following criteria:~~

~~(a) The curriculum shall include adequate theoretical training in the following:~~

~~Subject~~

~~Minimum Class Hours~~

~~(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--a survey of the nature of disease and illness, including microbiology, immunology, psychopathology, and epidemiology.~~

~~(8) Nutrition and vitamins.~~

400

- ~~(9) History of medicine--a survey of medical history, including transcultural healing practices.~~
- ~~(10) Medical terminology--fundamentals of English language medical terminology.
30~~
- ~~(11) Clinical sciences--a review of internal medicine, pharmacology, neurology, surgery, obstetrics/gynecology, urology, radiology, nutrition and public health.~~
- ~~(12) 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.~~
- ~~(13) Western pharmacology.~~
- ~~(14) 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.....128 class hours~~
- ~~(15) Traditional Oriental medicine--a survey of the theory and practice of traditional diagnostic and therapeutic procedures.~~
- ~~(16) Acupuncture anatomy and physiology--fundamentals of acupuncture, including the meridian system, special and extra loci, and auriculotherapy.~~
- ~~(17) Acupuncture techniques--instruction in the use of needling techniques, moxibustion, and electroacupuncture, including contraindication and complications. Students shall either (1) successfully complete a course which requires a student to pass an examination in clean needle technique, taught at a board approved school 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.~~
- ~~(18) Acupressure.~~
- ~~(19) Breathing techniques--introductory course in QiGong.~~
- ~~(20) Traditional Oriental exercise--introductory course in Tai Chi Chuan....660 minimum class hours
660~~
- ~~(21) Traditional Oriental herbology including botany--a portion of the hours shall be given in a clinical setting.....300 minimum class hours~~
- ~~(22) Practice management--instruction in the legal and ethical aspects of maintaining a professional practice, including record keeping, professional liability, patient accounts, and referral procedures.~~
- ~~(23) Ethics relating to the practice of acupuncture.....30 minimum class hours~~

~~(b) The curriculum shall include adequate clinical instruction, 75% of which shall be in a clinic which is owned and operated by the training program, which includes direct patient contact where appropriate in the following:~~

- ~~(1) Practice observation--supervised observation of the clinical practice of acupuncture with case presentations and discussions.~~

~~(2) Diagnosis and evaluation--the application of Eastern and Western diagnostic procedures in evaluating patients.~~

~~(3) Supervised practice--the clinical treatment of a patient with acupuncture
.....~~

~~.....800 minimum class hours~~

~~During the initial 235 hours of diagnosis, evaluation and clinical practice the supervisor shall be physically present at all times during the diagnosis and treatment of the patient. Thereafter, for a second period of 235 hours the supervisor shall be physically present at the needling of the patient. The 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 supervisor before and after each treatment.~~

~~(c) The total number of hours of all theoretical training shall consist of a minimum of 1,548 hours and the total number of hours of clinical instruction shall consist of a minimum of 800 hours., and the course work shall extend over minimum period of four (4) academic years, eight (8) semesters, twelve (12) quarters, nine (9) trimesters, or thirty-six (36) months.~~

~~(d) Candidates for admission shall have successfully completed an approved high school course of study or have passed a standard equivalency test.~~

~~(e) The training program should be located in a state university or college, an 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.~~

~~(f) The training program shall develop an evaluation mechanism to determine the effectiveness of its theoretical and clinical program.~~

~~(g) Coursework shall carry academic credit.~~

~~(h) The director and/or supervisor(s) of the clinical portion of the training program shall be a licensed acupuncturist or other licensed practitioner authorized to practice acupuncture.~~

~~(i) All instructors shall be competent to teach their designated courses by virtue of their education, training and experience.~~

~~(j) Each approved program shall receive accreditation or approval under Article 4 (commencing with Section 94770) of Chapter 7 of Part 59 of the Education Code, or the approval of the program by the board shall automatically lapse.~~

~~(k) Each training program shall develop a mechanism to evaluate and award transfer credit to students for prior coursework and experience which is equivalent to that coursework and clinical instruction required in subsections (b) and (d). The training program's policies and procedures for evaluating and awarding transfer credit shall be set forth in writing and submitted to the board. Such policies and procedures shall include all of the following:~~

~~(1) Credit shall only be awarded for actual coursework or directly relevant experience received by the student. As used in this regulation, "experience" means academically relevant learning which involved the student directly in the area of the curriculum required in this section and includes integrated field and clinical internships, apprenticeships, tutorial programs and cooperative educational programs.~~

~~(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 by the school in the subject area(s) in which transfer credit may be awarded.~~

~~(3) The outcome of the prior education and experience shall be equivalent to that of an average student who has completed the same subject(s) in the training program and shall meet the curriculum standards and graduation requirements of the training program.~~

~~(4) 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.~~

~~(5) Up to 100% transfer credit may be awarded for courses completed successfully in biology, chemistry, physics, psychology, anatomy, physiology, pathology, nutrition and vitamins, history of medicine, medical terminology, clinical science, clinical medicine, Western pharmacology, cardiopulmonary resuscitation, practice management, and ethics 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.~~

~~(6) Credit for clinical coursework and instruction in traditional Oriental medicine, acupuncture anatomy and physiology, acupuncture techniques, acupressure, breathing techniques, traditional Oriental exercise, or traditional Oriental herbology 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 these subject areas are completed successfully at a school approved by the board.~~

~~(7) The entire record of the training program's 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 of the student.~~

~~(8) All students shall receive upon matriculation a copy of the training program's policies and procedures for evaluating and awarding transfer credit.~~

Amend Title 16, California Code of Regulations Article 3.5 Acupuncture Training Programs, Section 1399.437 as follows:

1399.437 Documentation Required for Approval Requirements for Board Approval of Curriculum

~~Educational institutions or programs seeking approval of an acupuncture training program shall provide the board with such documents and other evidence as may be necessary for the board to determine the actual nature and extent of the training offered, including but not limited to, catalogues, course description, curricula plans, and study bulletins.~~

(a) Educational and training programs seeking board approval of its curriculum shall submit an "Application for Board Approval of Curriculum" (rev 1/1/17), (rev 4/15), incorporated herein 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) Application for Board Approval of Curriculum shall be deemed received and complete pursuant to Business and Professions Code Section 4927.5(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 the reasons the application is incomplete including 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 all required documents a complete application to the board within 30 days of the mailing of the written notification that the application is incomplete.

(d) An application submitted subsequent to the abandonment of a former application shall be treated as a new application.

(e) Any changes to curriculum coursework as listed in California Code of Regulations Title 16, Chapter 13.7, Article 3.5, 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.

NOTE: Authority Cited: Sections 4927.5, 4933, Business and Professions Code.
Reference: Sections 4927, 4937, 4938, Business and Professions Code

#5 – Implementation of SB 1246

Comments Received

Southern California University

of Health Sciences

October 5, 2016

Mr. Marc Johnson
Policy Coordinator
California Acupuncture Board
1747 North Market Boulevard
Suite 180
Sacramento, CA 95834

Esteemed California Acupuncture Board Members,

On behalf of the faculty, students, and administration of the College of Eastern Medicine at Southern California University of Health Sciences, I submit the following public comment in response to California Acupuncture Board (Board) proposed modifications to the text of Title 16, California Code of Regulations Sections 1399.433(h) and 1399.434(h), relating to the implementation of SB 1246, based upon action taken by the Board at the September 21, 2016 public meeting:

Thank You to the Board for its Willingness to Collaborate with Members of the Profession

We would like to thank the Board for removing the added text specifying that during the first 700 hours of clinical supervision clinical acupuncture interns must be in the *direct line of sight of their clinical supervisor* at all times. The Board listened intently to the comments of the public members present at the meeting, and despite the time pressures leading up to the implementation of SB 1246, the Board members took reasonable action in the best interest of the People of California.

While the Board has acted very reasonably in the matter described above, myself and my colleagues remain concerned about the regulatory language for clinical supervision in Acupuncture Training Programs. Ideal clinical supervision regulations for Acupuncture Training Programs should guarantee patient safety and should also be based on sound principles of modern American clinical pedagogy. Current evidence and best practices in health professions education support the development of clinical mastery through graduated and progressive assumption of more and more clinical autonomy.

The traditional paternalistic model of master-apprentice pedagogy common in East Asian countries has been implanted along with Acupuncture practice into American Acupuncture educational regulations. While this approach and its supporters seek to replicate traditional models of clinical pedagogy out of a desire to maintain practitioner quality and patient safety, it seriously curtails the intern's autonomy and may interfere with the progressive formation of professional identity and the development of clinical autonomy and confidence. This is seriously out of step with the principles of adult education and current best practices in clinical pedagogy promulgated by highly respected entities such as the Accreditation Commission for Graduate Medical Education (ACGME). Indeed, some experts feel that unreasonable levels of pedagogical paternalism exerted through stifling oversight of interns may have the unintended effect of creating unsafe practitioners due to a relative lack of confidence in autonomous needling practice.

Progressive Formation of Professional Identity and Entrustable Professional Activities (EPAs)

The Carnegie Foundation's 2011 report, billed as the modern-day version of the influential Flexner Report of 1910, emphasizes the need for medical education to "focus on the progressive formation of professional identity" (Irby, 2011, p. 547). Also worthy of attention here is Ten Cate & Sheele's categorization of medical interventions by identifying "Entrustable Professional Activities (EPAs) or activities that the faculty or the public would entrust to trainees at each level" (2007). These EPAs have also been described as "units of professional practice, defined as tasks or responsibilities to be entrusted to a trainee once sufficient specific competence is reached to allow for unsupervised practice. They are independently executable within a timeframe and observable and measurable in the process and outcome" (2012). It is our contention that the practice of acupuncture needling is an EPA that can be performed safely, effectively, and independently by well-trained Acupuncture interns fairly early in their training, and certainly well before a 700-hour minimum supervisory period.

References

- Irby, D. (2011). *Educating physicians for the future: Carnegie's calls for reform*. *Medical Teacher*, 33(7), 547-550. doi:10.3109/0142159X.2011.578173.
- Ten Cate O, Sheele F. 2007. *Competency-based postgraduate training: Can we bridge the gap between theory and clinical practice?* *Acad Med* 82:542-547.
- Ten Cate O, Young JQ. *The patient handover as an entrustable professional activity: adding meaning in teaching and practice*. *BMJ Qual Saf*. 2012;21 Suppl 1:i9-12.

Disparity Between Clinical Supervision Regulations for Acupuncture Tutorials and Acupuncture Training Programs

It is noteworthy that the current CAB regulations governing clinical supervision in Acupuncture Tutorials, printed for your reference below, are more liberal than the regulations for acupuncture training programs:

1399.426. Supervising Acupuncturist's Responsibilities

*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.***

The regulatory language above reflects a reasonable approach to safe and pedagogically sound clinical supervision for both acupuncture tutorials and acupuncture training programs. We support immediate adoption of this standard for all acupuncture education in California.

Inflated Perception of the Risk Associated with Acupuncture Needle Insertion

The existing CAB Acupuncture Training Program clinical supervision regulatory language is based on an inflated perception of the risks associated with the act of acupuncture needling. It appears that this is the root of the Board's impulse to adopt what we consider to be an overly protective regulatory standard. Such a high level of protectionism would be reasonable and warranted *if* acupuncture needling was a high-risk and dangerous procedure; however, it is most definitely not. It is therefore absurd to suggest that the supervisor must be in *direct line of sight* whenever acupuncture needling occurs, except when performed by novice clinical observers.

Whereas there are known risks associated with the medical procedure of acupuncture needle insertion and removal, these risks are minimal relative to other health care procedures. All properly trained students in quality acupuncture training programs are well prepared to handle them. In contrast to biomedical clinical practice as a physician, in which hollow bore intravenous needles, basic surgery, and other invasive procedures are routinely applied, acupuncturists do not incur anywhere near this level of risk in their clinical practice of acupuncture. The safety record of acupuncturists is excellent. According to White (2004), as quoted in the 7th Edition of the Clean Needle Technique Manual published in 2015 by the Council of Colleges of Acupuncture and Oriental Medicine:

“According to the evidence from 12 prospective studies which surveyed more than a million treatments, the risk of a serious adverse event with acupuncture is estimated to be 0.05 per 10,000 treatments, and 0.55 per 10,000 individual patients. The risk of serious events occurring in association with acupuncture is very low, below that of many common medical treatments.”

Reference

White A. A cumulative review of the range and incidence of significant adverse events associated with acupuncture. *Acupuncture Med.* 2004;22(3) (September):122-133

Reasonable Clinical Supervision Regulation by the Accreditation Commission for Graduate Medical Education (ACGME)

What follows immediately below are the resident clinical supervision standards from the Accreditation Commission for Graduate Medical Education (ACGME), Common Program Requirements (pp.14-15) in which there are clear distinctions among graded levels of supervisory oversight to maximize patient safety and instructional effectiveness. In decreasing order of supervisory intensity, the ACGME guidelines identify three levels of clinical supervision. They are: 1) direct supervision; 2) indirect supervision and; 3) oversight. Depending on the educational level of the resident, and the relative complexity and associated risk of a given medical procedure, the appropriate degree of supervisory oversight can be implemented using this model. A similar model would fit perfectly within the clinical supervision regulations for Acupuncture Training programs. We urge the Board to seriously consider these guidelines.

Levels of Supervision

To ensure oversight of resident supervision and graded authority and responsibility, the program must use the following classification of supervision:

- a) **Direct Supervision** – the supervising physician is physically present with the resident and patient.
- b) **Indirect Supervision:**
 - (1) **With direct supervision immediately available** – the supervising physician is physically within the hospital or other site of patient care, and is immediately available to provide Direct Supervision.
 - (2) **With direct supervision available** – the supervising physician is not physically present within the hospital or other site of patient care, but is immediately available by means of telephonic and/or electronic modalities, and is available to provide Direct Supervision.
- c) **Oversight** – The supervising physician is available to provide review of procedures/encounters with feedback provided after care is delivered (ACGME, Common Program Requirements, pp. 14-15).

Interpretation of “Immediate and Direct Supervision” by the California Chiropractic Board

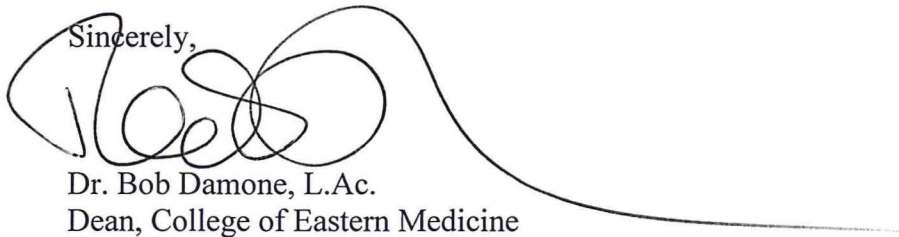
The California Chiropractic Board defines the terms “immediate and direct” supervision in a more liberal fashion than does the California Acupuncture Board, as is evidenced below:

“Immediate and direct supervision” means the licensed Doctor of Chiropractic shall be at all times on the premises where the examinations are being conducted. The licensed Doctor of Chiropractic shall be responsible for the verification of the recorded findings and will be solely responsible for rendering a conclusion based on the findings (CA Chiropractic Rules and Regulations, p.12).

Summary

In short, my colleagues and I thank the Board for its reasonable decision to remove the 700 hour “line of sight” verbiage from the regulations. We also hope that the Board will consider placing on its future agenda the issue of updating and modernizing the California acupuncture clinical supervision regulations to reflect current scientific evidence and best practices within health profession education, including those used by the medical profession. That discussion should also include consideration of applying to Acupuncture Training Programs the existing clinical supervision guidelines for Acupuncture Tutorial Programs. This would definitely be in the best interest of acupuncture patients, students, and practitioners by maximizing patient safety and enhancing pedagogical effectiveness.

Sincerely,

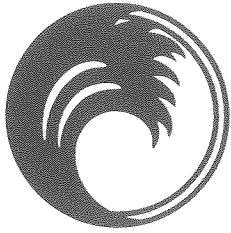


Dr. Bob Damone, L.Ac.
Dean, College of Eastern Medicine

#5 – Implementation of SB 1246

Comments Received

Pacific College of
Oriental Medicine



Pacific College of Oriental Medicine

October 10, 2016

Dear California Acupuncture Board Members,

Pacific College of Oriental Medicine (PCOM) submits the following public comment in response to action taken by the California Acupuncture Board (CAB) at the September 21, 2016 public meeting, which occurred on our San Diego campus and related to proposed text modification by the CAB to the text of Title 16, California Code of Regulations.

First we would like say that were happy to host the CAB on our campus and to acknowledge all of the hard work and time investment of the CAB in deliberating the issues and seeking feedback leading up to the public meeting. During the meeting we appreciated that the CAB listened and gave careful consideration to the feedback presented. In short, we believe the CAB made the correct decision to remove the following text: *“During the initial 700 hours of clinical instruction, the student shall remain in the direct line of sight of the clinical supervisor at all times when the patient is being diagnosed and/or treated. After 700 hours of clinical instruction”*.

The CAB has demonstrated a commitment to uphold the highest standards of the profession, solicit and consider feedback from professionals in the field including quality training institutions, such as PCOM that develop well-trained future practitioners. With that said, we believe that there remains work to be done in further revision of the regulatory language as relates to clinical supervision in acupuncture programs. We respectfully request that in a future agenda the CAB consider recommendations for regulation modification that would serve ideal clinical supervision in acupuncture training programs. We propose that any future changes would take into consideration current evidence and best practices in clinical teaching effectiveness in other health professions education.

The current evidence and best practices in health professions education supports a tiered approach, which aims towards a higher level of autonomy of the clinical student utilizing competency-based assessments on the part of the supervisors. We offer a suggested comparison taken from the Accreditation Commission for Graduate Medical Education (ACGME), Common Program Requirements, pp.14-15).

“Levels of Supervision

To ensure oversight of resident supervision and graded authority and responsibility, the program must use the following classification of supervision:

*a) **Direct Supervision** – the supervising physician is physically present with the resident and patient.*

*b) **Indirect Supervision:***

*(1) **with direct supervision immediately available** – the supervising physician is physically within the hospital or other site of patient care, and is immediately available to provide Direct Supervision.*

*(2) **with direct supervision available** – the supervising physician is not physically present within the hospital or other site of patient care, but is immediately available by means of telephonic and/or electronic modalities, and is available to provide Direct Supervision.*

*c) **Oversight** – The supervising physician is available to provide review of procedures/encounters with feedback provided after care is delivered. (ACGME, Common Program Requirements, pp. 14-15)”*

As you can see there is a clearly delineated tier structure providing for the appropriate level of oversight balanced with self-directed learning with the goal of developing well-trained future practitioners and protecting public safety. We believe this model also fits our profession.

We would also like to bring attention to the CAB that there are inconsistencies in the regulations governing clinical supervision in **acupuncture tutorials** and in **acupuncture training programs**. We respectfully request that these regulations be considered in a future agenda for re-wording to close disparity and bring into alignment the regulations. For your reference re-printed below is the text from section 1399.426. Title 16, California Code of Regulations:

“Supervising Acupuncturist's Responsibilities

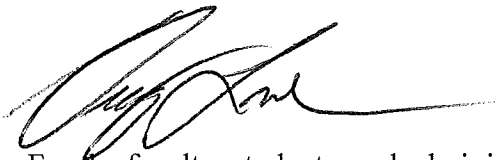
*The supervisor shall only assign those patient treatments which can be safely and effectively performed by the trainee and which are consistent with the level of training received by the trainee. The supervisor shall provide continuous direction and immediate supervision of the trainee when patient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

In support of re-working the regulations governing acupuncture clinical training programs we acknowledge there are known risks associated with the procedure of acupuncture needle insertion and removal, however compared to other health care procedures these risks remain minimal. That is why at PCOM we take the perspective that as long as there is any risk at all we are 100% committed to mitigating this by implementing appropriate levels of supervision during our clinical training program. We believe that all properly trained students in our program and in other quality acupuncture training programs are well prepared to perform acupuncture needle insertion and removal as well as other clinical techniques appropriately and ensure public safety. Contrast this with biomedical clinical training where hypodermic needles are used along with other substantially more invasive procedures.

The safety record of PCOM and of acupuncturists who are trained in high quality training programs remains excellent. In a review of the literature which included 115 articles (98 case reports and 17 case series) of acupuncture-related adverse events conducted by the World Health Organization (WHO), *Bulletin of the World Health Organization* 2010;88:915-921C. doi: 10.2471/BLT.10.076737 they concluded that, “various types of acupuncture-related adverse events have been reported in China. Similar events have been reported by other countries, usually as a result of inappropriate technique. Acupuncture can be considered inherently safe in the hands of well- trained practitioners.” They also determined there was “no clear trend in the frequency of reports of acupuncture-related adverse events over the past 30 years”.

PCOM would like to thank the CAB for its consideration of views expressed by our institution and by other member colleges. We sincerely believe that by working collaboratively with high quality training programs such as PCOM the CAB will not only uphold its duty to protect the public but also be regarded as a valuable partner in the future growth of the profession.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Lane', written in a cursive style.

For the faculty, students, and administration of the Pacific College of Oriental Medicine
Gregory Lane, DACM, LAc.
Doctor of Acupuncture and Chinese Medicine
Director of Clinical Services, Pacific College of Oriental Medicine

#6 – Uniform Standards Related to
Substance Abuse – SB 1441
Memo

ACUPUNCTURE BOARD

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov



DATE	October 26, 2016
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	SB 1441 - Uniform Standards Related to Substance-Abusing Licensees

Issue:

Approval of revised Title 16, California Code of Regulations Section 1399.469 regulatory language and new Uniform Standards Related to Substance-Abusing Licensees document based upon SB 1441.

Action items for Board:

1. Discussion and recommended approval of revised language for title 16, California Code of Regulations (CCR) Section 1399.469. If approved, the proposed language would be subject to a 15-day public comment period. If any comments were received during this 15-day public comment period, the regulation package would come before the Board at a future public meeting to address those comments. Absent any comments, the Board may delegate the authority to the Executive Officer to make any technical and non-substantive changes and complete the rulemaking for submission to the Office of Administrative Law for final approval.
2. Discussion, review and recommended approval of new 'Uniform Standards Related to Substance Abusing Licensees (September 2016)' document.
3. Delegation to Executive Officer to continue the regulatory process and grant authority to make non-substantive changes to the regulation and the Disciplinary Guidelines.

Suggested Motion: "I move to approve the proposed regulatory modified text and document for a 15-day public comment period and if there are no comments, to delegate the authority to the executive officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes."

Background and discussion:

Originally, this rulemaking package proposed to update the Board's existing 1996 disciplinary guidelines to a new 'Acupuncture Board Disciplinary Guidelines and Conditions of Probation [September 2015]' which includes appropriate provisions of the Uniform Standards formulated by the Department of Consumer Affairs Substance

Abuse Coordination Committee (SACC) pursuant to BPC section 315, as set out by Senate Bill 1441 (Ridley-Thomas, 2008). This proposal originally included standard language to be used in disciplinary orders and conditions of probation if the licensee is determined to be a substance-abusing licensee.

The Board previously approved the proposed regulatory language and updates to the Disciplinary Guidelines at the September 18, 2015 public board meeting. Staff then commenced the rulemaking process, filing the regulatory package with OAL and then publically releasing the proposed language, Notice to Consumers and Initial Statement of Reasons. The 45-day public comment period began on April 15, 2016 and concluded on May 30, 2016. No public comments were received during the comment period, nor were any received at the public hearing held on May 31, 2016.

Upon further review of the approved language and the updated 2015 Guidelines with Legal Counsel, staff decided to further update the approved regulatory language. The new language is similar to the language approved in 2015, but now clearly articulates when a licensee is a substance-abusing licensee and when the Uniform Standards apply (after a hearing, and the Board, or the ALJ, makes a determination based on the evidence presented at the hearing that the licensee is a substance abusing licensee).

Additionally, staff proposes a new, stand-alone document incorporating the Uniform Standards as required by SB 1441. The new 'Uniform Standards for Substance Abusing Licensees (September 2016)' document was removed from the previously approved 2015 Disciplinary Guidelines and, as before, contains model language that contains the uniform standards developed by SACC in April 2010 as required by SB 1441. Staff believes separating the Uniform Standards from the Disciplinary Guidelines provides the Board, Board staff, and other interested parties more clarity. Additionally, the terms of each document apply in different situations, and thus should be separated.

Meanwhile, Staff proposes to remove the proposed document incorporated by reference 'Acupuncture Board Disciplinary Guidelines and Conditions of Probation [September 2015]', from the regulation and the 1996 Disciplinary Guidelines will continue to be used. Revisions to the 1996 Disciplinary Guidelines will be completed and presented to the Board for consideration in early 2017.

Attachments

1. Updated SB 1441 regulatory language
2. New 'Uniform Standards for Substance Abusing Licensees (September 2016)' handbook

#6 – Uniform Standards Related to
Substance Abuse – SB 1441
Proposed Language

**California Acupuncture Board
Specific Language of Proposed Changes – SB 1441
Uniform Standards Related to Substance-Abusing Licensees and Disciplinary
Guidelines and Conditions of Probation**

[Note: The originally proposed regulatory text is indicated by single underline and single strikethrough. The modifications to the originally proposed text are indicated by ~~double strikethrough~~ for deleted text and double underline for added text.]

Amend section 1399.469 to read as follows:

1399.469. Disciplinary Guidelines ~~and Conditions of Probation~~ and Uniform Standards Related to Substance Abuse

- (a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Acupuncture Board shall ~~consider~~ comply with the disciplinary guidelines entitled "Department of Consumer Affairs, Acupuncture Board 'Disciplinary Guidelines' ~~1996~~ and Conditions of Probation" ~~[September 2015]~~, 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.
- ~~(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Business and Professions Code. If the licensee does not rebut that presumption, in addition to any and all relevant terms and conditions contained in the "Acupuncture Board Disciplinary Guidelines and Conditions of Probation" [September 2015], the Board's Uniform Standards Related to Substance-Abusing Licensees shall apply and the substance-abusing conditions shall be used in the order as written. Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation in any order that the Board determines would provide greater public protection. Neither the Board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Board's Uniform Standards Related to Substance-Abusing Licensees in cases involving substance-abusing licensees. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.~~

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines referenced in subsection (a) in any order that the Board determines would provide greater public protection.

NOTE: Authority cited: Sections ~~315, 315.2, 315.4~~ 4928.1 and 4933, Business and Professions Code; and Sections 11400.20 and ~~11400.21~~, Government Code.
Reference: Sections 11400.20, ~~11400.21~~ and 11425.50(e), Government Code; Sections 315, 315.2, 315.4, 4955, 4955.2, 4960.5, Business and Professions Code.

#6 – Uniform Standards Related to
Substance Abuse – SB 1441
Proposed Uniform Standards

CALIFORNIA ACUPUNCTURE BOARD

UNIFORM
STANDARDS RELATED TO
SUBSTANCE-ABUSING
LICENSEES

SEPTEMBER 2016

THE BOARD'S UNIFORM STANDARDS RELATED TO SUBSTANCE-ABUSING LICENSEES

Pursuant to Business and Professions Code §315, the following standards are adopted by the Board and shall be adhered to for all cases where the evidence establishes that an individual is a substance-abusing licensee.

1. Clinical Diagnostic Evaluations:

If the Board orders a licensee ~~who is either in a diversion program or~~ whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

- holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
- has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
- is approved by the board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The clinical diagnostic evaluation report shall:

- set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
- set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
- set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24

hours of such a determination.

For all evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

2. Removal from Practice Pending Clinical Diagnostic Evaluation

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, ~~and the criteria below~~, a probation manager shall determine, whether or not the licensee is safe to return to either part-time or full-time practice based on the following criteria:

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope, pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

However, no licensee shall return to practice until he or she has at least 30 days of negative drug tests.

3. Board Communication with Probationer's Employer:

If the licensee ~~who is either in the Board diversion program or~~ whose license is on probation has an employer, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate

regarding the licensee's work status, performance, and monitoring.

4. Drug Testing Standards:

The following standards shall govern all aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation ~~or in a diversion program~~ due to substance use:

TESTING FREQUENCY SCHEDULE

~~A~~The Board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation ~~or diversion~~.

Nothing precludes a the Board from increasing the number of random tests for any reason. ~~Any~~If the Board who finds or has suspicion that a licensee has committed a violation of a the Board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

- I. PREVIOUS TESTING/SOBRIETY
In cases where a the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

- II. VIOLATION(S) OUTSIDE OF EMPLOYMENT
An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur

at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's Board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

~~The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back to back testing as well as, numerous different intervals of testing. Except as directed, the scheduling of drug tests shall be done on a random~~

basis, preferably by a computer program.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the Board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The ~~appropriate~~ Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

~~A~~ The Board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of

penalty.

OUTCOMES AND AMENDMENTS

~~For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:~~

Historical Data - Two Years Prior to Implementation of Standard

~~Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.~~

Post Implementation Data- Three Years

~~Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.~~

Data Collection

~~The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:~~

~~Probationer/Diversion Participant Unique Identifier~~

~~License Type~~

~~Probation/Diversion Effective Date~~

~~General Range of Testing Frequency by/for Each Probationer/Diversion Participant~~

~~Dates Testing Requested~~

~~Dates Tested~~

~~Identify the Entity that Performed Each Test~~

~~Dates Tested Positive~~

~~Dates Contractor (if applicable) was informed of Positive Test~~

~~Dates Board was informed of Positive Test~~

~~Dates of Questionable Tests (e.g. dilute, high levels)~~

~~Date Contractor Notified Board of Questionable Test~~

~~Identify Substances Detected or Questionably Detected~~

~~Dates Failed to Appear~~

~~Date Contractor Notified Board of Failed to Appear~~

~~Dates Failed to Call In for Testing~~

~~Date Contractor Notified Board of Failed to Call In for Testing~~

~~Dates Failed to Pay for Testing~~

~~Date(s) Removed/Suspended from Practice (identify which)~~

~~Final Outcome and Effective Date (if applicable)~~

5. Participation in Group Support Meetings

If a the Board requires a licensee to participate in group support meetings, the following shall apply:

- I. When determining the frequency of required group meeting attendance, the Board shall give consideration to the following:
 - the licensee's history;
 - the documented length of sobriety/time that has elapsed since substance use;
 - the recommendation of the clinical evaluator;
 - the scope and pattern of use;
 - the licensee's treatment history; and,
 - the nature, duration, and severity of substance abuse.
- II. Group Meeting Facilitator Qualifications and Requirements:
 1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
 2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
 3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
 4. The facilitator shall report to the Board any unexcused absence of the Board licensee required to participate within 24 hours.

6. Determining What Treatment is Necessary

In determining whether inpatient, outpatient, or other type of treatment is necessary, the Board shall consider the following criteria:

- Recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, severity of substance abuse, and
- threat to himself/herself or the public.

7. Work Site Monitor Requirements:

A The Board may require the use of worksite monitors. If a the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the Board:

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of

monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the Board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

8. Procedure for Positive Testing

~~When~~If a licensee tests positive for a banned substance:

1. The Board shall order the licensee to cease practice;

2. The Board shall contact the licensee and instruct the licensee to leave work; and

3. The Board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the Board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the Board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the Board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

9. Procedures for a Confirmed Ingested Banned Substance

When a the Board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the Board shall impose the consequences set forth in Uniform Standard #10.

10. Major and Minor Violations & Consequences

Major Violations include, but are not limited to:

1. Failure to complete a the Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the Board.

11. Petition for Return to Practice

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program;
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse; and
3. Negative drug screening reports for at least six (6) months, two (2) positive

worksite monitor reports, and complete compliance with other terms and conditions of the program.

12. Petition for Reinstatement

“Petition for Reinstatement” as used in this standard is an informal request as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable;
2. Demonstrated successful completion of recovery program, if required;
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated that he or she is able to practice safely; and
5. Continuous sobriety for three (3) to five (5) years.