BACKGROUND PAPER FOR THE California Acupuncture Board

(Oversight Hearing, March 12, 2012, Senate Committee on Business, Professions and Economic Development)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE ACUPUNCTURE BOARD

BRIEF OVERVIEW OF THE ACUPUNCTURE BOARD

Function of the Board

The Acupuncture Board (Board) regulates the practice of acupuncture and Asian medicine in the State of California. The Board established and maintains entry standards of qualification, primarily through its authority to license.

The practice of acupuncture, as defined in B&P Code Section 4927, involves the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. B&P Code Section 4937 authorizes a licensed acupuncturist to engage in the practice of acupuncture and to perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain, and restore health. Section 4937 gives acupuncturists some additional authority to practice a number of other forms of Asian treatment. However, as set out in subdivision (b), these treatments (unlike the practice of acupuncture itself) are not restricted to the acupuncture profession.

The primary responsibility of the Acupuncture Board is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board implements regulatory programs and performs a variety of functions to protect consumers. These activities include setting licensure requirements for acupuncturists, developing and administering the licensure exam, issuing and renewing licenses, overseeing the investigation of complaints against licensees or allegations of unlicensed activity, overseeing the continuing education program, and monitoring probationer acupuncturists.

The Acupuncture Licensure Act commences with Business and Professions (B&P) Code, Section 4925 et seq. The Board's regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR).

The Acupuncture Licensure Act provides that the "Protection of the public shall be the highest priority of the Acupuncture Board in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." In concert with this statutory mandate, the board's 2007 Strategic Plan, states, "The mission of the Acupuncture Board is to benefit, educate, and protect the public through regulation of licensure, development of education standards, provision of consumer information, and enforcement of the Acupuncture Licensure Act."

The Strategic Plan also included a vision statement which indicated that the Board is "committed to the enhancement of the health and safety of the people of California by ensuring highly qualified practitioners working as primary care professionals in partnership with other health care providers, fair and ethical standards of professional conduct, and excellence in practitioner training and education."

There are approximately 10,000 active licensees in California. The Board has an annual operating budget of approximately $1.5 million. The Board is a special fund agency, and its funding comes from the licensing of acupuncturists and biennial renewal fees of acupuncturists, as well as acupuncture schools and continuing education (CE) providers. Currently, the license and renewal fee for acupuncturists is $325. The Board also receives revenue through its cite and fine program. The average revenue from fines over the past three fiscal years (2008/09 through 2010/11) is $87,000.

The Board's anticipated expenditures for FY 2010/2011 is $1.9 million. The Board is scheduled to loan the General Fund $5 million in Fiscal Year 2011/12. That loan is scheduled to be repaid with interest in FY 2013/14. However, the reserve funds will be reduced to 2.1 months before the loan is scheduled for repayment. The Board spends approximately 40% of its budget on its enforcement program, with the major portion of these expenditures going to OE&E.

The Board is authorized 9 staff positions, three of which were vacant when the sunset report was submitted. Due to the hiring freeze, the Board has not filled these positions. The Board states that "the vacancies have had a negative impact on the Board's ability to handle our workload," but they provide no evidence to support this statement.

In 2010, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process of healing arts boards. According to DCA, the CPEI is a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12 -18 months. As part of CPEI, the Board was authorized to hire one additional staff position. However, because of a hiring freeze ordered by then Governor Schwarzenegger on August 31, 2010, as well as a 5% staff reduction directive from the Department of Finance on October 26, 2010, the Board had not filled the newly authorized position as of October 2011.

History of the Board

The Board of Medical Examiners (now called the Medical Board of California (MBC)) began regulating acupuncture in 1972 under provisions that authorized the practice of acupuncture under the supervision of a licensed physician as part of acupuncture research in medical schools.

Subsequently, the law was amended to allow acupuncture research to be conducted under the auspices of medical schools rather than just in medical schools.
In 1975, Senate Bill 86 (Chapter 267, Statutes of 1975) created the Acupuncture Advisory Committee (Committee) under the Board of Medical Examiners and allowed the practice of acupuncture but only upon prior diagnosis or referral by a licensed physician, chiropractor or dentist. In 1976, California became the eighth state to license acupuncturists. Subsequent legislation in 1978, established acupuncture as a "primary health care profession" by eliminating the requirement for prior diagnosis or referral by a licensed physician, chiropractor or dentist; and Assembly Bill 2424 (Chapter 1398, Statutes of 1978) authorized Medi-Cal payments for acupuncture treatment.

In 1980, the law was amended to: (1) abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; (2) expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that Oriental (Asian) massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and, (3) provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the MBC's fund. Most of these statutory changes became effective on January 1, 1982.

In 1982, the Legislature designated the Acupuncture Examining Committee as an autonomous body, and effective January 1, 1990 through AB 2367 (Chapter 1249, Statutes of 1989) the name was changed to the Acupuncture Committee to better identify it as a state licensing entity for acupuncturists. On January 1, 1999, the committee's name was changed to the Acupuncture Board (SB 1980, Chapter 991, Statutes of 1998) and removed the Committee from within the jurisdiction of the Medical Board of California (SB 1981, Chapter 736, Statutes of 1998).

Senate Bill 248 (Chapter 659, Statutes of 2005) repealed the 9 member Board and reconstituted the Board effective January 1, 2006. As a result, the Board is currently composed of seven members with a public majority (i.e., 4 public members and 3 professional members). Five members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Four members of the Board, including at least one member who is an acupuncturist, shall constitute a quorum.

The Legislature has mandated that the acupuncture members of the Board must represent a cross-section of the cultural backgrounds of the licensed members of the profession. Members of the Board are appointed for a term of 4 years. Each member may serve no more than 2 full terms. The following is a list of current members of the Board with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

ROBERT BREWER was appointed as a public member by the Senate Rules Committee on August 30, 2006.	9/14/09 Reappointed 3/10/10	6/1/2013	Senate
CHARLES J. KIM, (Vice-Chair) was reappointed as a public member by Governor Arnold Schwarzenegger on July 31, 2009. Since 2007, Mr. Kim has served as chair of the Korean Institute of Southern	3/14/08 Reappointed 7/13/09	6/1/2013	Governor

California, a non-profit education organization. From 1995 to 2007, he served as national president for the Korean American Coalition and, from 1988 to 1995, was managing partner for American Access Group. Mr. Kim founded the Inter-Community Action Network (ICAN) in the Diamond Bar, La Habra, Fullerton, Buena Park, Cerritos areas in 2007 and is a member and past president of the Rotary Club of Koreatown. He is also a member of the National Council on North Korea, Community Advisory Board for the Southern California Gas Company, and Advisory Council on Democratic and Peaceful Unification of Korea.			
ANYORK LEE, L.Ac., (Chair) was appointed as a licensed member by Governor Arnold Schwarzenegger in July 2009. Mr. Lee has served as an acupuncturist in private practice since 1983. Mr. Lee has served as an instructor and clinic supervisor at Alhambra Medical University. He serves as the president of the Council of Acupuncture and Oriental Medicine Associations and is a member of the California Alliance of Acupuncture Medicine Board of Directors. This position requires Senate confirmation.	7/31/09	6/1/2013	Governor
GEORGE WEDEMEYER was appointed to the California Acupuncture Board as a public member by Speaker of the Assembly Karen Bass on June 18, 2009.	6/18/09	6/1/2013	Assembly
PAUL WEISMAN, was appointed as a public member by Governor Arnold Schwarzenegger on July 31, 2009. Since 1991, Mr. Weisman has worked as a tax and sports attorney for his own practice, the Law Office of Paul H. Weisman. Prior to that, Mr. Weisman was a senior associate at Goldfarb, Sturman and Averbach from 1988 to 1990, senior attorney with District Counsel, Internal Revenue Service from 1983 to 1987 and attorney for the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service from 1982 to 1983. He has served as an alternate board member for the Los Angeles County Assessment Appeals Board since 2002.	7/31/09	6/1/2013	Governor
Vacant – licensed acupuncturist			Governor
Vacant – licensed acupuncturist			Governor

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2005. At that time, the JLSRC identified 10 issues for discussion.

On October 31, 2011, the Board submitted its required Sunset Report to this Committee. In this report the Board described actions it has taken since its last sunset review. Below are the Board's responses to the issues raised during the last Sunset Review. For a complete history of the background of these issues see, "Background Paper for Hearing January 4, 2005."

- The Board was fully reconstituted effective January 1, 2006. Senate Bill 248 (Chapter 659, Statutes of 2005) repealed the nine-member Board on January 1, 2006, creating a new Board of seven members with a revised membership.

- Scope of practice has continued to be an issue for the Board. The Board formed a "Blue Ribbon Panel" in November 2010 to look into primary care definition, scope of practice and related educational requirements. According to the Board's Sunset Report, the panel was unable to hold its first meeting in November 2011, due to staffing limitations. That meeting has not been held.

- In 2005, the Board enacted emergency regulations requiring acupuncturists to use needles labeled for single use only and made it unprofessional conduct for an acupuncturist to use a needle more than once. This regulation benefits consumers by helping to protect them from life-threatening conditions such as HIV, hepatitis, and antibiotic resistant bacteria.

- In 2005, legislation was introduced to define the term "acupuncture assistant," which was administrative in nature and prohibited the assistants from performing acupuncture. This bill was vetoed by the Governor stating the bill was unnecessary. The Board has found over the last three years that the use of unlicensed acupuncture assistants is not a current issue. They report that they had only one enforcement issue involving an unlicensed acupuncture assistant in the last three years. The majority of unlicensed cases involve individuals whose licenses are delinquent.

- Physicians and surgeons, podiatrists and dentists are specifically exempt from the licensure requirements of an acupuncturist as long as they are licensed. The Board is not aware of any complaints against these professions for practicing acupuncture. However, any complaints regarding their practice would have been directed to the appropriate regulatory body.

- Senate Bill 248 (Chapter 659, Statutes of 2005) changed the quorum requirement from a majority of the members to five members. This did affect the ability of the Board to conduct business. Subsequently SB 821 (Chapter 307, Statutes of 2009) changed the quorum requirement to four members of the Board which shall include at least one acupuncturist.

- The Board has been randomly auditing 10 licensees a month. The results have shown that 93% of licensees are in compliance with the continuing education requirements. The Board states that it wishes to increase those audits. Unfortunately, with furloughs and vacancies the Board has not been able to deal with that additional workload.

- In 2009, the Board sponsored legislation to require acupuncture training programs be located in a school which has been approved by an accrediting agency of acupuncture and Asian medicine program that is recognized by the U.S. Department of Education. This piece of legislation was opposed by one of the acupuncture associations. Subsequently, the bill was amended deleting everything to do with the Acupuncture Board.

- The Board is still of the belief that the California Acupuncture Licensing Examination (CALE) should remain the state's licensing examination. The CALE is developed by the Department of Consumer Affairs Office of Professional Examination Services according to the Standards for Educational and Psychological Testing (Standards) published by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The Standards are the criteria used by the psychometric and legal professions to judge whether an examination is legally defensible and psychometrically sound. The Office of Professional Examination Services

has proven to be a very reliable and professional partner in the development of the licensing examination. Consistent with the Board's policy to ensure a psychometrically sound and valid licensing examination, the Board indicated that it has and will continue to review and evaluate testing alternatives.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (BOARD LACKING IN ITS OVERALL OPERATION.) Is the Board operating in an efficient and effective manner?

Background: When the Board was last reviewed in 2005, the JCBCCP (formerly the JLSRC) found that "while the vast majority of the Board's licensees are competent, responsible professionals and provided a valuable and valued service, the Board itself may not be serving the public and those licensees well." The JCBCCP pointed out four major problem areas for the Board:

- Misreads its governing statutes concerning the scope of practice of licensees.
- Seeks to erect significant barriers to new acupuncturists becoming licensed.
- Potentially endangers the public by refusing to promulgate regulations concerning sterilization of the needles used by acupuncturists or even to discuss this issue as an agenda item in any public meeting.
- Fails to take resolute and definitive steps to address the unlicensed practice of acupuncture by unlicensed assistants, some apparently as young as 18, and by other health care providers.

Because of problems also identified by the former JLSRC in a 2002 sunset review of this Board, the Little Hoover Commission (LHC) was charged by statute (Section 4934.1 of the B&P Code) to assess longstanding and contentious issues regarding the State'e regulation of the acupuncture profession including a review of the scope of practice and educational requirements for acupuncturists, the process for accrediting acupuncture schools and for examining licensees. The LHC released its report in 2004, and identified the core problem with the Board this way:

> "Many of the specific issues that the Governor and the Legislature asked the Commission to review have festered because the Acupuncture Board has often acted ***as a venue for promoting the profession rather than regulating the profession.***" (*Little Hoover Commission, Regulation of Acupuncture: A Complementary Therapy Framework: September 2004*, page 63 – emphasis added).

Some of these problems continue to persist with this Board and it appears to struggle with decision making and lacks follow through. For example:

- A "Blue Ribbon Panel" was established in November of 2010 in order to look into important issues regarding a primary care definition, scope of practice and related educational requirements. The Panel has not met and there is a question of the mandate given to this Panel for consideration.

- The Board approved six different regulation changes (transfer credits for out of state students, independent study, additional practice locations, clinical training, repeal of non-English exam, and disciplinary guidelines). None of these were mentioned in the Board's sunset report even though they are supposed to be included. Additionally, it appears no further action was taken on these regulations after the Board's vote to move forward with the regulations.

- In 2009, the Board decided to make important changes to the law regarding school approvals but ended up deferring to a national acupuncture association and hasn't moved forward with dealing with problems surrounding school approvals.

Additional problems with this Board include its scheduled meetings. The written meeting materials are, at times, insufficient to foster meaningful discussion or decisionmaking by the Board members, or open discussion with the public and participants at the meetings, and they are not always available in a timely manner..

There is also a problem in the way in which the Board utilizes its standing committees. According to the Board's Sunset Report, ". . .committees serve as an essential component of the full Board to address specific issues referred by the public or recommended by staff. Committees are composed of two Board Members who are charged with gathering public input, exploring alternatives to the issues and making a recommendation to the full Board." The Board has established four committees as described below:

> Executive Committee: Addresses issues related to expenditures/revenue/fund condition, executive officer selection/evaluation, legislation/regulations, committee policy/procedures, and special administrative projects.
>
> Education Committee: Addresses issues related to acupuncture educational standards, school application and approval process, tutorial programs, and continuing education.
>
> Examination Committee: Addresses issues related to development and administration contracts, administration, and miscellaneous issues.
>
> Enforcement Committee: Addresses issues related to scope of practice, complaints, disciplinary decisions, probation monitoring, reinstatements, and miscellaneous issues.

It is unclear if or when these committees meet. Additionally, it appears committee meetings are not typically held in public, as only six have been publicly noticed between February 2006 and February 2012. Because the meetings are not held in public, it is unclear how the committees conduct their business or how often they meet. Additionally, the public is not permitted to observe or join in the policy discussions.

Another problem regards the Board's compliance or adherence to its Strategic Plan. The Board's Strategic Plan was adopted in 2007. It lays out its mission, vision, principles, goals and objectives.

According to the strategic plan, the mission of the acupuncture board is to "benefit, educate, and protect the public through regulation of licensure, development of education standards, provision of consumer information, and enforcement of the Acupuncture Licensure Act." The board's seven key goals outlined in the plan are:

1. Advance higher education standards.
2. Review, clarify and disseminate the scope of practice.
3. Promote ethical conduct of licensees and students.
4. Reduce or eliminate unlicensed activity.
5. Clarify the process of school approval.
6. Re-evaluate and improve continuing education standards.
7. Improve communication with industry and consumers.

It is unclear which of the goals have been met and which remain unresolved. It is also unclear what actions have been taken in an effort to meet the strategic goals that were adopted in 2007. For example, how has the Board advanced higher education standards? The objectives were to clarify issues regarding the title of doctor and upgrade MAc level practitioner standards. How have these objectives been accomplished?

According to the Board's sunset report, a strategic planning session is scheduled for early 2012. The Board's Website, however, does not list an upcoming strategic planning meeting.

Most of the current issues for review are the same as those that this Committee and the former sunset review committees have struggled with for almost 14 years. Taken individually, these may not be particularly significant issues, but on the whole, they appear to indicate a general lack of accountability and follow through on the part of the Board and whether there is a willingness on the part of the Board to take direction and implement recommendations of the Legislature.

Staff Recommendation: ***The Board should explain the purpose of the "Blue Ribbon Panel" and what the Board intends to accomplish by convening the Panel. The Board should also submit to the Committee a corrective action plan to implement the following operational management tools:***

1. ***The Board should establish tracking mechanism for approved regulatory changes and other instructions given to staff.***
2. ***The Board should use its committees in a more open and productive manner. The Board should explain why it has a history of cancelling meetings.***
3. ***The Board should explain to the Committee whether it believes it is meeting the goals and objectives of its Strategic Plan of 2007.***
4. ***The Board should update its strategic plan and develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met.***
5. ***The Board should be given a written status report on the action plan at each board meeting.***
6. ***Board meetings should be webcast, when feasible.***
7. ***Board meeting materials should provide sufficient information to permit board members to make informed decisions and the public ability to understand the issues discussed.***

Because of the deficiencies and related problems with this Board it is recommended that this Board's sunset not be extended beyond two years and be reviewed once again to assure that corrective action has been taken by this Board.

Issue #2: (QUORUM PROBLEMS.) Why is this Board constantly in peril of losing its quorum?

According to statute (B&P Code Section 4929) three members of the Board shall be acupuncturists and four shall be public members. Section 4933 (c) states that four members of the Board, including at least one acupuncturist, shall constitute a quorum. Currently, there is only one licensed acupuncturist sitting on the Board. This means that if the sole licensed member is unable to attend scheduled meeting(s), the Board would not be able to conduct business.

The Board typically meets three times per year and has a history of canceling one meeting per year. The cancelled meetings may be due to quorum issues.

Year	Meeting Scheduled	Meetings Cancelled	Meetings Conducted
2008	4	1	3
2009	4	1	3
2010	5	1	4
2011	4	0	4 *

*One of the four meetings was a special meeting held for the sole purpose of conducting examination business in closed session.

Staff Recommendation: ***The Governor should appoint as soon as possible two of the licensed acupuncturists to the Board and the requirement that one licensed member be in attendance at a Board meeting in order to establish a quorum should be removed.***

ACUPUNTURE SCOPE OF PRACTICE ISSUES

ISSUE #3: (BOARD OVERLY INVOLVED IN SCOPE OF PRACTICE ISSUES.) Is there a need for the Board to be constantly involved in efforts to redefine scope of practice for acupuncturists?

Background: Section 4926 of the B&P Code provides Legislative intent regarding acupuncture practice (and the Acupuncture Practice Act) in California: "In its concern with the need to eliminate the fundamental causes of illness, not simply to remove symptoms, and with the need to treat the whole person, the Legislature intends to establish in this article, a framework for the practice of the art and science of Oriental medicine through acupuncture. The purpose of this article is to encourage the more effective utilization of the skills of acupuncturists by California citizens desiring a holistic approach to health and to remove the existing legal constraints which are an unnecessary hindrance to the more effective provision of health care services. Also, as it affects the public health, safety, and welfare, there is a necessity that individuals practicing acupuncture be subject to regulation and control as a primary health care profession."

"Acupuncture" is defined in B&P Code Section 4927, and the practice involves "the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of

certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion." No other person other than a physician and surgeon, a dentist, or a podiatrist, are permitted to perform the application of a needle to the human body or any acupuncture technique or method involving the application of a needle to the human body unless they have an acupuncturist's license.

B&P Code Section 4937 delineates additional techniques and modalities performed by an acupuncturist and provides that a licensed acupuncturist may "perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain, and restore health." A "magnet" is defined in Section 4937, as well as "plant, animal, and mineral products" and "dietary supplements." Both Section 4927 and 4937 taken together provide for the treatment, techniques and modalities which may be performed by an acupuncturist pursuant to their license. However, as set out in subdivision (b) of Section 4937, the modalities and techniques as described in Section 4937 are not exclusively limited to those who possess an acupuncture license, they may also be used by those who do not possess a license or who possess another license as a healing arts practitioner.

Over the years this Board has struggled with scope of practice issues regarding the practice of acupuncture. Because of the constant interpretations or misinterpretations of scope of practice by the Board, the former JLSRC requested the LHC to examine this issue. The primary issue for the Board at that time was whether an acupuncturist should be considered as a "primary health care provider" and, therefore, its scope of practice should be broadened. Both the LHC and Legislative Counsel did not believe that the law creating the Acupuncture Act intended for an acupuncturist to be the primary care professional responsible for coordinating (or being the "gatekeeper") for the ultimate care of a patient. As the LHC indicated:

> "While some people may turn to acupuncturists first for everything that ails them ... it is difficult to see how practitioners of an alternative healing paradigm can be responsible for coordinating care with biomedical specialists (another potential meaning)." (*Little Hoover Commission, Regulation of Acupuncture: A Complementary Therapy Framework*, page 25.)

Legislative Counsel observed that the intent language in the Acupuncture Act could "have any number of meanings," but none is sufficiently clear to warrant overriding or expanding the scope of practice as it is established by the operative provisions of the B&P Code Section 4937. Counsel asserts that an acupuncturist is not authorized to "engage in a broader scope of practice than is authorized by Section 4937 of the Business and Professions Code."

There are many definitions of "primary care provider," some of which were delineated in the LHC report in 2004. The LHC and prior sunset reports have thoroughly documented the discussion and evidence about primary care providers and its legislative history. In general, all agree that being a primary care provider allows acupuncturists to be first point of contact for patients. A patient does not need prior diagnosis or referral from a licensed physician in order to seek treatment from an acupuncturist.

However, some in the acupuncture community are still trying to push the definition to enhance the scope of practice toward western evidence based medicine and away from traditional Chinese medicine (TCM). Those efforts cloud almost every aspect of the Board's policy discussions. We note that, according to the LHC's report, "some of those advocating for greater Western training are seeking the

title of 'doctor' and access to insurance reimbursements making it difficult to sort out economic aspirations from medical issues." (*Little Hoover Commission, Regulation of Acupuncture: A Complementary Therapy Framework*, page 21.)

In 2005, an attempt to further define the scope of acupuncture was introduced in Assembly Bill 1113 (Yee). This bill proposed to authorize acupuncturists to diagnose within his or her scope of practice. The bill was vetoed by the Governor stating the term scope of practice is vague and leaves room for interpretation. The veto message went on to say the Governor would consider signing a bill that authorizes an acupuncturist to diagnose specifically for the purpose of providing acupuncture treatment. However, the Board uses the proposed language in their sunset report, "An acupuncturist may diagnose within their scope of practice and treat illnesses and injuries, in addition to prescribing herbs and herbal formulas, perform Oriental massage, electroacupuncture and moxibustion."

Staff Recommendation: ***It appears after many years of this ongoing dispute and continued efforts of the Board to somehow resolve this issue and now with the creation of a "Blue Ribbon Panel" to revisit this issue, it is time for the Board to relinquish its involvement in trying to clarify scope of practice for acupuncturists. Any scope of practice changes should be referred to the Legislature and certainly should not be attempted pursuant to regulations since there appears to be no authority for the Board to broaden scope of practice. It is only the prerogative of the Legislature to make such changes regarding scope of practice in statute.***

ACUPUNCTURE EDUCATION AND PROGRAM APPROVAL ISSUES

Issue #4: (ADDITIONAL IMPROVEMENTS NEEDED TO BOARD'S OVERSIGHT OF SCHOOLS.) Should the Board continue to be responsible for the approval of schools and colleges in offering education and training in the practice of acupuncture and should schools of acupuncture be required to be accredited?

B&P Code Section 4939, subsection (a) requires the Board, on or before January 1, 2004, to "establish standards for the approval of schools and colleges offering education and training the practice of an acupuncturist, including standards for the faculty in those schools and colleges and tutorial programs." Section 4939 subsection (b) states that the training program shall include a minimum of 3,000 hours of study.

There are approximately 60 acupuncture schools throughout the U.S., 36 of which are approved by the Board. Twenty of the California-approved schools are located in California and 16 in other states.

The Board approves the schools and their curriculum programs to ensure they meet the standards adopted by the Board. The school approval process requires review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and financial solvency. An onsite visit is performed to review implementation of policies and procedures, facilities and clinical training. According to the Board's Sunset Report, the Board and Bureau of Private Postsecondary Education (BPPE) "may perform a joint onsite visit, if the education institution has applied to both entities for approval."

However, the prior Bureau of Private Postsecondary and Vocational Education (BPPVE) was sunsetted in 2007, and reconstituted as the BPPE in 2010. During the time the Bureau was not in operation,

schools were permitted to operate without the oversight previously provided by the Bureau. The reconstituted Bureau is in the process of implementing its new oversight responsibilities and has published plans for review and approval of schools subject to its jurisdiction. The impact of the sunset and reconstitution of the Bureau on oversight of acupuncture schools is as yet unclear.

The Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) is the nationally recognized accrediting agency for the field of acupuncture and oriental (Asian) medicine. While many other states defer to ACAOM accreditation as being a sufficient condition for applicants to take the licensing exam in their states, California does not accept accreditation by ACAOM, nor does it require graduation from an accredited school as condition of being eligible to take the licensing exam. Instead, it conducts its own school evaluation and approvals.

In 2004, the LHC conducted a comprehensive comparative analysis of the school approval process of the ACAOM, the approval process of the BPPVE, and the Board approval process. The LHC's report concluded that the processes used by ACAOM appeared to be superior to the school approval process used by the Board and could be used by the state to ensure the quality of education for potential licensees.

In 2009, the Board sponsored legislation (Assembly Bill 1260 (Huffman)) that would have required accreditation by a national accrediting agency recognized by the United States Department of Education (such as ACAOM) and would have eliminated the tutorial program as an avenue to licensure. According to the Board, the bill was opposed by one of the acupuncture associations and eventually it was amended to remove all reference to acupuncture.

Because California performs its own school approvals, there are a number of consequences and problems. These include:

- Students who are educated in accredited schools that are not approved by California receive only partial credit for their training. If they wish to gain licensure in California, they must complete a Board approved training program.

- Applications for Board approval from schools located outside of California are not being processed due to budget constraints. The Board has not been able to process at least one out of state school application for four years.

- The Board is not conducting ongoing site reviews after a school is approved. According to the Board, "In 2010, the Board began scheduling and conducting annual onsite review of approved schools; however, because of staff vacancies and travel restrictions, this has temporarily been postponed."

Another indication of the Board's lack of appropriate school oversight and the possible need to utilize ACAOM for school approvals is the following:

- At the February 2009 Board meeting, the Board voted to approve a school despite a number of findings that included instructors did not meet minimum criteria, subject matter was missing, the curriculum and some classes were defined as electives which should have been mandatory, there was evidence that students were permitted to do needling, which is not allowed. Despite the evidence, the school was approved. Staff was instructed to conduct an unannounced site

visit within a year. It is unclear if the site visit has occurred.

- At the September 2009 Board meeting, an application for approval from a school in Hawaii was discussed. Board staff was unable to conduct an onsite visit, due to travel restrictions, so the application was not approved. During the discussion, it was revealed that another out of state school may have been approved without benefit of an onsite visit. As of February 2011, the board had still not obtained approval to conduct the onsite evaluations and the applications are still pending.

- At the Board meeting on February 24, 2011, there was an agenda item regarding a problem with teachouts at a school that had gone out of business. The Board became involved in negotiating between the new owners of the school and some of the students. The Board's authority to perform this function is unclear since the BPPE is generally responsible for dealing with issues surrounding school closures.

The National Guild of Acupuncture and Oriental Medicine (NGAOM) has argued that the low pass rates are a direct result of poor training in Board approved schools. NGAOM has also argued that the Board has refused to take action on low employment rates and low salaries earned by acupuncture school graduates. This is not, however, the responsibility of the Board. It is related more to the student protection provisions of the BPPE, and there may be a cause of action against the school for any misrepresentations it makes to students or for the failures of the school.

Staff Recommendations: ***For now, the Board should continue its overall responsibility to approve acupuncture schools and their educational programs, however, the Board should enter into a Memorandum of Understanding (MOU) with the BPPE to assure there is no duplication of site visits, or in the role that each agency has in both the approval and oversight of these schools. It should also be required that these acupuncture schools either have currently, or obtain within a reasonable time, accreditation from an accrediting agency recognized by the United States Department of Education. Especially since the accrediting process for these schools appears to be superior to that of the Board. At some time in the future, consideration could be given, based on the success of accreditation of these schools, to eliminating the Board's responsibility and need for approving acupuncture educational programs.***

ISSUE #5: (CE AUDITS NEEDED.) Does the Board provide sufficient oversight of its continuing education (CE) program?

Background: According to the Board's Sunset Report, the Board "tries to randomly select ten licensees" to be audited for CE compliance. The report also states that the Board's goal is to audit 25 licensees per month, but the staffing limitations have hampered the Board's ability to meet that goal. If the Board did meet this goal, it would only audit 300 out of 10,000 licensees every year, which is only 3% of the licensees.

The Board reports that 93% of CE audits show the licensees are compliant. Licensees who are not compliant are issued a citation and fine. Board statistics show that the number of citations issued has increased from 22 in Fiscal Year 2008/09 to 42 issued in 2010/11. It is unclear if the increase in citations and fines is related to the CE audits.

It appears that some approved CE courses may not comply with Board regulations. In January 2010, the National Guild of Acupuncture and Oriental Medicine issued a letter to the Board alleging that the Board had approved CE courses that were "grossly out of compliance" with the Board's regulations. NGAOM gave examples of approved classes in numerology, vitalism, and astrology. At that time, Board staff indicated that they would review the list of approved courses and correct any that were inappropriately approved. However, a recent review of the list of approved courses dated September 21, 2011 included courses in "The Capacity and Function of Love," Heaven, Man and Earth: Cosmology, Magic and Science in Chinese medicine, OHM Therapeutics: Sound Healing with Tuning Forks; "Reiki Level I and Level II and Four Energy Healing Theories." We also note that, although no more than five hours of CE may be obtained in the non-practice category, a course titled "Marketing Course You Never Got in School – But Need to Grow your Business" is approved as an online course on an ongoing basis for 6.5 hours of CE credit.

The Board reports that there are over 700 approved CE providers and that the Board receives an average of approximately 175 CE request for course approvals each month. However, the Board does not charge a fee for approving individual CE courses, which is a significant workload. There is precedence for charging a fee to CE providers for course approvals. The Board of Optometry charges $50. While the Board has authority to audit CE courses, limited resources, as claimed by the Board, do not permit the Board to perform this function.

Staff Recommendation: ***The Board should review its CE course approval and auditing processes to determine if it has sufficient resources to operate an effective CE oversight program. The Board should seek legislative authority to assess a fee for CE course approvals. If appropriate, the Board should submit a Budget Change Proposal to obtain staff dedicated to conducting increased CE audits.***

LICENSING AND EXAMINATION ISSUES

ISSUE #6: (ELIMINATE STATE-ONLY LICENSING EXAM?) Should the Board utilize the National Examination instead of the current California-only licensing examination?

Background: The Board develops and administers its own licensing exam. Conversely, most states automatically accept applicants who have passed a national exam administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). The national licensing exam is offered in English, Chinese, and Korean and is a computerized examination and offered at multiple locations in states in which it is provided. California is the only state that does not accept the national exam. The state exam is offered only twice a year once in northern California and once in southern California.

In 2007, the Board contracted with OPES to conduct an indepth study to define the practice of acupuncturists in terms of actual job tasks that new licensees must be able to perform safely and competently and the knowledge required to perform those tasks. The Validation Report of the Occupational Analysis of the acupuncture profession and the Test Plan was adopted by the Board on February 19, 2009. This report serves as the blueprint for the ongoing development of the state licensing exam. A new exam was administered for the first time in February 2011. The fact that the Board develops and administers its own exam has generated a number of challenges for the Board. We note that the Board struggles with these challenges with limited resources; not the least of which is the

translation of the exam into Chinese and Korean languages. As indicated, the Board offers the exam in Chinese, English and Korean. The Board's Sunset Report indicates that adapting the English examination into Chinese and Korean creates an "unstandardized exam and are not equivalent measures of minimum competency." The Board reports that the tests vary in terms of difficulty and equivalency when translated. The Board is considering a regulatory change to only administer the exam in English only. We note that the national licensing exam continues to be administered in Chinese and Korean.

One notable problem occurred with the translation of the exam to Chinese and Korean when it provided its new exam on February 2011. When the new exam was provided, applicants for licensure who registered to take the exam in Korean were given a test that contained many questions presented in Chinese not Korean. Only 30 percent of the applicants who took the Korean language exam passed; this is significantly lower than past pass rates (see below). Board representatives reported the exam was not translated into Korean in its entirety because it was believed that in the past Korean-language test takers had an unfair advantage due to the complexities of translating the test into Korean. Additionally, the Board believed Korean-speaking acupuncture students were taught in Chinese and, therefore, the Board expected that the students would understand the Chinese test questions. In response to an outcry from Korean-language applicants, the Board will permit the applicants to retake the test after it has been properly translated at no additional cost to the applicants.

Additional challenges include low pass rates and exam subversion. The average pass rate for the last exam was only 59% (see below). It appears that the integrity of the state exam has been compromised. According to a capitolwatch.org story on May 16, 2011, the Board has found that students could purchase "study guides" containing many of the answers from previously administered licensing exams.

Table 8. Examination Data				
California Examination (include multiple language) if any:				
	License Type	Acupuncture		
	Exam Title	California Acupuncture License Examination		
	Language	English	Chinese	Korean
FY 2007/08	# of Candidates *	686	187	250
	Overall Pass %	55%	60%	74%
FY 2008/09	# of Candidates *	602	201	245
	Overall Pass %	54%	56%	66%
FY 2009/10	# of 1st Time Candidates	422	124	200
	Overall Pass %	59%	55%	70%
FY 2010/11	# of 1st time Candidates	369	126	163
	Overall Pass %	66%	60%	50%
	Date of Last OA	December 2008		
	Name of OA Developer	Office of Professional Examination Services		
	Target OA Date	2013		

* The total number of candidates referenced in the above chart for FY 2007/08 and FY 2008/09 include all candidates, not just 1st time candidates. In 2005, the Board switched to a

new exam database, which did not capture the previous exam taking history. This prevented the Board from reporting statistics on 1st time candidates versus re-examinees for a couple of years.

In terms of costs of the examination, the Board spent approximately $660,000 (or 43% of its entire operating budget) in the last two fiscal years on its exam. This is more than it has spent on its entire enforcement program, which was about $590,000. This raises the question of whether the examination fee is sufficient to pay the cost of administering the exam.

Staff Recommendation: Because of the problems the Board has encountered with providing a state licensing examination for acupuncture, and the associated costs of this exam, and because of the existence of a national examination which appears to be adequate to test entry-level practitioners, the Board should justify to the Committee why it believes a state only examination for the practice of acupuncture in this state is necessary. If the national exam was adopted in California, would it not provide better reciprocity for applicants from other states who wish to practice in this state?

ENFORCEMENT ISSUES

ISSUE #7: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING TOO LONG.) Will the Board be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Background: The Board is responsible for regulating the practice of approximately 10,000 acupuncturists. The Board receives an average of 145 complaints per year (see table below). The Board also receives reports when an applicant or licensee is arrested or convicted. These reports have increased from 56 in 2008/09 to 92 in 2010/11. The increase may be due to a new requirement that all licensees are fingerprinted - not just those who were licensed in 2001 - as was previously the case. The Board reports that the majority of enforcement cases are cases relating to unprofessional conduct, ethical issues, practice management issues and sexual misconduct.

Complaints are categorized into 4 distinct groups: complaints received from the public, other governmental agencies, licensee/professional groups and complaints labeled as "other." Complaints classified as "other" include mandatory reports from specific entities; including settlements and malpractice judgments pursuant to Business & Professions Code Section. The table below summarizes the sources and number of complaints received by the Board from 2008-2011.

Source of Complaint	2008-2009	2009-2010	2010-2011
Public	74	53	59
Governmental Agencies	33	17	20
Licensee/Professional Groups	12	7	19
Other (does not include arrest/conviction reports)	29	74	37
Sub Total	**148**	**151**	**135**
Arrest/Conviction Reports	56	85	92
Total	**204**	**236**	**227**

The cycle time to process complaints is affected by several factors including the length of time it takes to process complaints, conduct investigations, file accusations by the AG's Office and schedule and hold hearings with the Administrative Law Judges. Lastly, the case goes back to the board for a final decision.

A complaint that has merit is referred to investigation and assigned an investigator with DCA's DOI. At the conclusion of an investigation, if it is determined that there has been a violation of the Acupuncture Act, the case is referred by the investigator to the Office of Attorney General (AG's Office) for preparation and review of the administrative accusation.

It takes an average of two and a half years for the Board to take discipline on its licensees. As with other health care boards, the biggest bottleneck in pursuing discipline occurs at the investigation and prosecution stages of the process.

	FY 2008/09	FY 2009/10	FY 2010/11
Average days to complete desk investigation	45	83	115
Average days to complete sworn investigation	608	660	467
Average days to accusation	1041	837	840
Average days to complete discipline	1105	711	706

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards.*" This hearing revealed that Deputy AGs within the AG's Licensing Section handle both licensing and health care cases in a similar fashion without any expertise devoted to the prosecution of those cases involving serious health care quality issues. Moreover, the AG's staff often allows respondents to file a notice of defense long after the 15-day time limit has ended, which lengthens the time a case is processed by the AG's Office.

The DCA's cases are not given a higher priority and are calendared according to available hearing dates and Administrative Law Judges (ALJs) assigned. Cases on average can take up to 12 months or more months to be heard. Also, the DCA's boards and bureaus have over 40 different laws and regulations with which ALJs must be familiar. This lack of specialization and training for the cases referred by the other health care boards creates a situation in which judges are issuing inconsistent decisions. A board is then placed in a position of non-adopting the decision of the ALJ and providing for a hearing of its own to make a different determination regarding the disciplinary action which should be taken against the dentist.

The Board points out that there is one CPEI position currently vacant in the Enforcement Unit. It should be noted that CPEI positions were created to expedite and maximize the efficiency of handling all pending disciplinary actions and are dedicated to tracking of AG cases. The goal of CPEI is to reduce timeframes for enforcement cases to 12 to 18 months. However, it is unclear if these positions will be filled and may be in jeopardy because of the recent hiring freeze ordered by the Governor. (It is unknown whether the hiring freeze may have been lifted for this Board.)

The Board's data shows that it is taking, on average, 70 days longer to complete desk investigations. On the other hand, the timeline for investigations conducted by the Department of Consumer Affairs Division of Investigations has decreased from 608 days in FY 2008-09 to 467 days in FY 2010/11.

According to data provided by the Board, in FY 2009/10 and FY 2010/11, the average days to file an accusation exceeds the average number of days it took to complete discipline. By definition, it should take longer to complete discipline than it takes to file an accusation. Therefore, the Board should explain its data to the Committee.

Staff Recommendation: ***In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling its disciplinary cases, the following recommendations should be considered:***

1) ***Continue to reduce the amount of time to process and close complaints.***
2) ***A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.***
3) ***Making Case Processing and Aging a major focus of the Board's improvement planning.***
4) ***Prioritize the review of aged cases.***
5) ***Establish reasonable elapsed time objectives for each step of the case processing.***
6) ***Monitor performance by establishing regular oversight of case progress and staff productivity.***
7) ***A policy or procedures for supervisory staff in performing case reviews should be established.***

The Board should develop a form to standardize 801 reports. The Board should explain why the data it provided indicates that it took longer to file accusations than it did to take formal discipline in 2009/10 and 2010/11.

CONSUMER NOTICE ISSUE

ISSUE #8: (NOTICE TO CONSUMERS NEEDED.) Should the Board promulgate regulations pursuant to a statute enacted in 1999, to require acupuncturists to inform patients that they are licensed by the Acupuncture Board?

Background: Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as the Acupuncture Board, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner.

Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, the Acupuncture Board should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.

Staff Recommendation: ***Pursuant to Section 138 of the B & P Code, the Board should adopt regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.***

BUDGETARY ISSUES

ISSUE #9: (ARE RECENT LICENSING FEES SUFFICENT TO COVER BOARD COSTS?) Is the Board adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: The Board is a self-supporting, special-und agency that obtains its revenues from licensing fees of acupuncturists, acupuncture schools and continuing education providers. The collection of fees supports the Board's ability to operate its enforcement, licensure, examination, renewal, its continuing education efforts. The Board's primary source of revenue is the biennial renewal for acupuncturists. The Board currently charges acupuncturists a $325 renewal fee. The statutory maximum is $325. There have been no fee increases to license or renewal fees since 1996.

The Board has had a healthy reserve the last five years. This led to a $1.5 million loan to the General Fund in 2003/2004. This loan was repaid in 2006. The Board again will make a $5 million loan to the General Fund in 2011/2012. This loan will drastically reduce the months in reserve to 2.1. The $5 million loan is to be paid back by FY 2013/14 with interest.

Acupuncture Board Updated Fund Condition Table

Table 3. Fund Condition						
(Dollars in Thousands)	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Beginning Balance	3,426	4,040	4,745	5,286	5,771	791
Revenues and Transfers	2,305	2,492	2,367	2,437	-2,395	2,557
Total Revenue	$2,305	$2,492	$2,367	$2,437	$2,605	$2,557
Budget Authority	2,681	2,519	2,457	2,558	$2,580	
Expenditures	1,707	1,787	1,901	1,952	2,667	2,721
Fund Balance	$4,040	$4,745	$5,286	$5,771	$791	$684

Staff Recommendation: The Board should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas.

ISSUE #10: (LACK OF STAFF CONTINUES TO HAMPER THE BOARD'S PRODUCTIVITY.) The Board should explain to the Committee the negative impact of staff vacancies to its overall functions.

Background: The Board is authorized 9 staff positions. As of February 2012, three of the nine positions were vacant – one OT in administration, one investigator in enforcement and one OT in licensing.

The Board has not submitted any requests to increase staff in the past several years. However, a Department-wide request for additional enforcement staff via the CPEI was approved for one non-sworn investigator. The Board has not obtained authority to fill that position due to the hiring freeze.

The Board has discussed the impact of the hiring freeze and staff vacancies on its CE program and its school approvals. Specifically, there is insufficient staff to conduct CE audits and they cannot travel to conduct onsite visit of acupuncture schools. It is unclear how the vacancies have affected other aspects of the Board's operations but does appear to cause problems with processing of consumer complaints and taking further disciplinary action in a timely fashion.

Staff Recommendation: ***The Board should explain to the Committee the impact of being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases and oversight of acupuncture schools.***

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
ACUPUNCTURE BOARD
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April 11, 2012

Senator Curren Price, Jr., Chair
Senate Business, Professions and
Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

Dear Senator Price and Committee Members:

Thank you for the opportunity to respond to your concerns addressed in the Committee's Background Paper for the Oversight Hearing held on March 12, 2012. The responses are in the order they are addressed in the Background Paper.

Issue #1: Board Lacking in its Overall Operation.

The report states that the Board struggles with decision making and lacks follow through. One of the examples given was that the Board approved six different regulation changes (transfer credit, independent study, clinical training, repeal of non-English exam and disciplinary guidelines) and none of these were mentioned in our sunset report and no further action was taken on these regulations. The regulation changes regarding transfer credit, independent study, and clinical training were all proposed amendments/changes that were decided at different meetings yet basically affected the same section of the regulations. In an attempt to avoid confusion and multiple regulatory packages affecting the same section, each time a new change/proposal was made, the regulatory process started over for that specific section. It was recently discovered that we could not make any of those changes until such time as legislation was passed amending section 4939 giving us authority to request those changes. Section 4939 states that on or before January 1, 2004, the Board shall establish standards for the approval of schools. The above regulatory changes are all standards for the approval of schools and therefore, cannot be changed until 4939 is amended removing the date.

The regulatory package for disciplinary guidelines which does include the Uniform Standards Related to Substance Abuse has been completed and is currently with legal. This package had been held up based on the issues surrounding the uniform standards, specifically conflicting legal opinions issued by legislative counsel and the attorney general's office.

At our August 2011 meeting, the Board voted to begin the regulatory process to repeal the multi-lingual exam. Proposed language was brought back to the Board at their November 2011 meeting. A vote on the proposed language did not occur and the matter was referred to a newly formed "English Language Exam Committee".

An error was made in not mentioning the above regulations in our Sunset Report; however, appropriate action and follow through has been taken on these proposals.

Another example given for lacks follow through was regarding a "Blue Ribbon Panel", which was established to look into important issues regarding primary care definition, scope of practice and related educational requirements. It is true that this Blue Ribbon Panel has not met; however, the issues had been delegated to the Education Committee, which did meet in a public forum in February 2012.

The majority of Committee Meetings have been held in a public setting. To my knowledge, the only time the committee meetings have not been public is when the members of the committee, which is comprised of less than 3 members, have met to plan for the meetings.

The background paper indicates that in 2009, the Board decided to make important changes to the law regarding school approvals but ended up deferring to a national acupuncture association and hasn't moved forward with dealing with problems surrounding school approval. I'm not sure what is meant by deferring to a national acupuncture association. The Board did sponsor legislation to require the approval of schools by an accrediting agency recognized by the U.S. Department of Education; however, the Board was retaining its authority over the training program/curriculum. This legislation was opposed and was subsequently amended to delete all reference to acupuncture

Another issue addressed is in regards to the Board's compliance or adherence to its Strategic Plan. The Board believes it is meeting or has attempted to meet the majority of it's goals and objectives. Attached is a copy of the Board's Strategic Goals and Objectives, which indicates which goals have been met and which have remained unresolved. It was a fairly new board when the strategic planning session was held with an outside contractor being the facilitator and I don't believe the facilitator guided the board correctly. A 2012 Strategic Planning Session is scheduled to be held on August 8, 2012 in Sacramento with the Department of Consumer Affairs being the facilitator and not an outside contractor.

The background paper also indicates that the Board has problems with its scheduled meetings. I am unaware of our meeting materials being insufficient to foster meaningful discussion or decision making by the Board. It's true that prior to posting our meeting materials on our website they were not available until the day of the meeting; however, since we started posting them, they are usually available somewhere between 3 and 7 days in advance of our meetings. The Board is in total agreement with having our meetings webcast and has done so and will continue to do so when feasible.

Issue #2: Quorum Problems.

In 2006, the Board was reconstituted creating a new Board of seven members, 4 public members and 3 licensed members. The quorum requirement was changed from a majority of

the members to 5 members. This did affect the Board's ability to conduct business. In 2009, legislation changed the quorum requirement to four members which included the requirement that at least one acupuncturist must be present to establish a quorum. Currently the Board has two licensed positions vacant and, therefore, it is critical for these vacancies to be filled so it does not affect our ability to conduct business. The Board is in total agreement with the Committee that the Governor should appoint two licensed acupuncturists as soon as possible.

Issue #3: Board Overly Involved in Scope of Practice Issues.

The Board is in total agreement with staff recommendations and all scope of practice changes will be referred to the Legislature.

Issue #4: Additional Improvements Needed to Board's Oversight of Schools.

The Board had previously worked closely with the BPPVE on school site visits as they had expertise on the overall school operations and the Board had expertise with the schools training program/curriculum. When the BPPVE was sunsetted, the Board sponsored legislation to require approval by an accrediting body of acupuncture schools recognized by the U.S. Department of Education; however, the Board was retaining its authority over the training program/curriculum. This legislation was opposed and was subsequently amended to delete all reference to acupuncture.

I am in agreement that consideration should again be given to require acupuncture schools to obtain approval from an accrediting agency recognized by the United States Department of Education. This could also provide for better reciprocity for applicants from other states who wish to practice in this state. This would require legislation.

Issue #5: CE Audits Needed.

The background paper questions whether the Board has sufficient oversight of its continuing education program. The Board believes that if we were fully staffed, there would be no issue with our ability to audit at least 25 licensees per month for CE compliance. On a biennial renewal cycle, an average of 400 licenses are renewed each month and 25 of that number is approximately 6.2% of renewed licenses. Our ultimate desire would be to audit at least 50 licensees per month, which would be approximately 12.5% of renewed licenses each month.

The background paper also discusses the number of CE course approvals that occur each month and that we do not charge for approving individual CE course requests. The Board agrees this is a significant workload and has just started researching other Boards that charge for individual course requests and the conditions surrounding that charge. The Board hopes to pursue legislative authority to assess a fee for CE course approvals.

Issue #6: Licensing and Examination Issues (Eliminate State-Only Licensing Exam?)

The Board is still of the belief that the California Acupuncture Licensing Examination (CALE) should remain the state's licensing exam. The background paper mentions the possible use of the national examination. I have been advised that it is a misnomer to state there is a national examination. There is no national standard and no uniform examination administration for acupuncture licensing. The National Commission for Certification of Acupuncturists exam is made up of five different modules to encompass the different states requirements. The cost for this examination is approximately $1,350 as compared to the Board's examination fee of $550. The adoption of a national examination would require legislation.

Issue #7: Enforcement Issues (Disciplinary Case Management Timeframe Still Taking Too Long)

The Board's enforcement program is our number one priority. The Board accepts staff recommendations and will take all steps necessary to meet our goal of reducing the timeframe for handling our disciplinary cases. The Board will develop a guideline for case assignments and a policy or procedures will be established for supervisory staff in performing case reviews. The Board will be developing a form to standardize 801 reports and we will be contacting other health care boards for some guidance.

Issue #8: Consumer Notice Issue (Notice to Consumers Needed).

Business and Professions Code section 4961(b) requires that an acupuncturist post his or her license in a conspicuous location in all places of practice. The license clearly states that the acupuncturist is licensed by the Acupuncture Board, Department of Consumer Affairs. However, I will bring this issue to the Board for them to consider adopting regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.

Issue #9: Budgetary Issues.

The Board has a total budget of $2.5 million. The Board has always had a healthy reserve, however, with the recent loan to the general fund and the required move of the Board (rent was $57,912 annually and in 2012-13 our rent will be $102,542 in which our rent almost doubled), we will

have to monitor our budget very carefully. It was projected that we could possibly be in the red by 2014; however, the $5 million is to be paid back by 2013/14.

Issue #10: Lack of Staff Continues to Hamper the Board Productivity.

The Board has been crippled with three vacancies over the last year and now has another position vacant due to a medical leave; however, these vacancies have not hampered our productivity. Long hours by the executive officer and the dedication of staff, has helped to keep the workload of all programs at a maintainable level. Processing of consumer complaints and taking further disciplinary action in a timely manner remains our number one priority. The one position that is vacant due to a medical leave is the enforcement position; however, the Department's Division of Investigation has offered their assistance in the processing of our complaints/investigations. The Division's assistance has played a major role in assuring that complaints are handled in a timely manner. In addition, the Board is happy to report that we have filled one of our vacancies to be effective April 16, 2012.

Our inability to fill these positions was a result of the hiring freeze; prohibited appointments of permanent, limited term, seasonal, permanent intermittent and temporary staff; prohibited increases to time bases; and prohibited interdepartmental transfers of employees.

Thank you for this opportunity and if you have any questions, please do not hesitate to contact me at 916-515-5208.

Sincerely,

JANELLE L. WEDGE
Executive Officer

STRATEGIC GOALS AND OBJECTIVES

1. Advance higher education standards.

- Clarify issues regarding the title of Doctor. Regulatory language had been developed a few years ago but further investigation was necessary. New regulatory language is being drafted to present to the Board for their review. (objective 1.1 in process of being met)
- Objective 1.2 - Upgrade MAc level practitioner standards

2. Review, clarify and disseminate the scope of practice.

- The Board has consulted with legal counsel regarding existing scope of practice and it is agreed that any changes need to be pursued via legislation and not regulation. Board needs to find an author to proceed with any changes. (objective 2.1 and 2.2 met)

3. Promote ethical conduct of licensees and students

- Depending on the degree of violation, the Board routinely sends letters to licensees to educate them on the laws and regulation. (objective 3.1 met)
- Information regarding filing a complaint has substantially improved. The information on our website as well as our consumer guides has assisted consumers. Our consumer guides are published in English, Chinese and Korean. (objective 3.2 met)
- Objective 3.3 - Enable spot inspections
- Addressing false and inappropriate advertising is an ongoing function of the Board. Numerous letters are sent to licensees to educate them on the laws and regulations (objective 3.4 met)
- Enforcement options were addressed through the CPEI (objective 3.5 met)

4. Reduce or Eliminate unlicensed activity.

- A Legislative Proposal Concept Paper 2008 was submitted to strengthen the penalties for unlicensed activity. The proposal did not proceed as one of the penalties included possible imprisonment in a county jail and we were informed that with the overcrowding in jails it was unlikely an author would be found. (objective 4.1 met)

5. Clarify the process of school approval.

- In 2009, the Board sponsored legislation to require approval by an accrediting body of acupuncture schools recognized by the U.S. Department of Education; however, the Board was retaining its authority over the training program/curriculum. This legislation was opposed and subsequently amended to delete all reference to acupuncture. (objective 5.1 met)
- Approval of online courses is currently being explored with the Bureau for Private Postsecondary Education (objective 5.2 in process of being met)

6. Re-evaluate and improve continuing education standards.

- In August 2008, regulations were amended simplifying the approval process for both on-site and distance learning courses. (objective 6.1 & 6.2 met).
- Unfortunately with budget constraints and travel restrictions an audit process for providers has not been fully developed. (objective 6.3 in process of being met)

7. Improve communication with industry and consumers.

- The Board has not been issuing a newsletter but instead posts important information on our website. This allows for immediate broadcasting of relevant information. (objective 7.1 met)
- The Board has translated and distributed it's Consumer's Guide to Acupuncture and Asian Medicine into Chinese and Korean. We have also posted these guides in all 3 languages on our website. (objective 7.2 met)
- In addition, the Board has either manned or supplied information for distribution at trade shows and consumer fairs (objective 7.3 met)