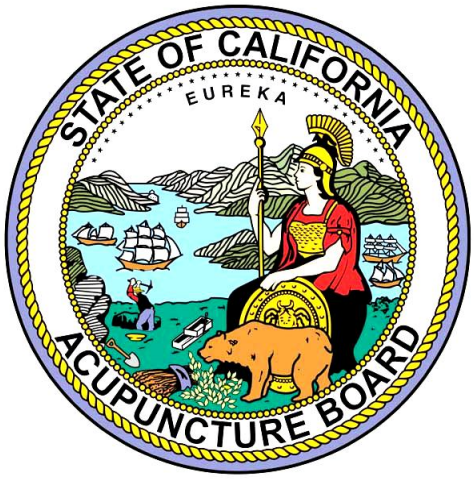
California Acupuncture Board

Sunset Review Report 2013

Submitted to the Senate Committee on Business, Professions and Economic Development

November 1, 2013



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CALIFORNIA ACUPUNCTURE BOARD
BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM
As of November 1, 2013

Executive Summary

The Acupuncture Board has undergone significant administrative change since the last Sunset Review Report. New leadership has made a tremendous difference in addressing the deficiencies highlighted by this committee two years ago. The new Executive Officer (EO) has set improving infrastructure, business operations and deficiencies as the Board's top priorities. Taking the advice of the committee recommendations, the new EO has implemented new systems that have eliminated highlighted deficiencies. While much of the progress and achievements were achieved under a past Board, the new Board is poised with a new vision, mission and strategic plan that position the Board to improve its operations and regulatory oversight of acupuncture.

The Board still suffers from some of its critical functions such as education oversight and enforcement, enforcement, licensing and regulatory implementation being largely understaffed. This chronic understaffing continues to be a barrier to the Board's performance of its mission critical duties. While there are pending Budget Change Proposals (BCP) request for additional staff, the majority of the Board's request for the staffing it needs to perform its statutorily mandated duties have largely been delayed or rejected. This one issue determines the Board's performance of its duties remains outside the control of the Board since it is not able to hire staff without position and budget authority. However, one major improvement is that the Board submitted two BCPs requesting staff.

Over the past decade the Board's number of licensees has nearly tripled, yet its staff levels have steadily decreased from 11 Personnel Years (PYs) in 2000 to 7.5 PYs in 2013. This was a decade of chronic and severe budget deficits that caused cuts, freezes and furloughs – budget tools that put the budget on a track for recovery, but left the Acupuncture Board understaffed and in distress. The continued frustration for the Board has been that as a

Special Fund supported program, it has the revenue to add additional staff, but it lacks the authority to do so.

The Board enters this Sunset Review in an improved position. The new EO has brought desperately needed executive level administrative experience that has turned this Board around in one year. Among the key improvements is resuming school oversight and enforcement with licensed board members. She filled vacancies and re-classed a position to create a policy and regulatory position that has resulted in moving forward with implementing SB 1441 and the Consumer Protection Enforcement Initiative (CPEI) and other pending regulatory packages. She submitted multiple BCPs for more staff. She leveraged the resources of the Department of Consumer Affairs' (DCA) call center to handle call volume that exceeded staffing levels. She has brought a tough consumer protection mindset to enforcement and all of the Board's decision-making. She provides strong leadership and support for both staff and Board members.

The Affordable Care Act (ACA) has provided acupuncture a new role in California's health care system – an "essential benefit." Acupuncture, as an "essential benefit," now must be included as a benefit in all health plans offered under the California Health Benefits Exchange. The Board has an important role to play in coming years to ensure acupuncture education standards and training programs are producing competent practitioners that can readily integrate into the mainstream health care system in which is now included.

Section 1
Background and Description of the Board and Regulated Profession

Mission Statement

To protect, benefit, and inform the people of California by exercising the licensing, regulatory, and enforcement mandates of the Acupuncture Licensure Act and Acupuncture Regulations.

Brief History

The Board of Medical Examiners (now called the Medical Board of California) 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 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: abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that Asian massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the Medical Board'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. 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. This legislation further provided that, until January 1, 1995, the California Acupuncture Licensing Examination (CALE) would be developed and administered by an independent consultant, which was later extended to June of 2000.

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).

In 1988, legislation was signed into law (Chapter 1496), which included acupuncturists as “physicians” only in the Workers” Compensation system for purposes of treating injured workers. The bill permitted acupuncturists to treat workplace injuries without first obtaining a referral, but limited the role of acupuncturists by not authorizing them to evaluate disability. The bill went into effect in 1989 with a four-year sunset clause. AB 400 (Chapter 824, Statutes of 1992) extended the inclusion of acupuncturists as “physicians” in the Workers’ Compensation system until December 1996 and AB 1002 (Chapter 26, Statutes of 1996) further extended the inclusion of acupuncturists as “physicians” in the

Workers' Compensation system until January 1, 1999. Legislation passed in 1997 (Chapter 98, Statutes of 1997) deleting the 1999 sunset date on the Workers' Compensation system.

In 2002, AB1943 was signed into law that raised the curriculum standard hour requirements to 3,000 hours, which included 2,050 hours of didactic training and 950 hours of clinical training. The Board promulgated regulations to implement this bill, which became effective January 1, 2005. In 2006, SB 248 (Chapter 659, Statutes of 2005) repealed the nine-member Board and reconstituted it as a seven-member board with four public members and three licensed acupuncture members. The quorum requirements were changed to four members including at least one licensed member constituted a quorum.

Function of the Board

The Acupuncture Board's (Board) legal mandate is to regulate the practice of acupuncture and Asian medicine in the State of California. The Board established and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. 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 primary responsibility of the 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 promotes safe practice through the improvement of educational training standards, continuing education, enforcement of the B&P Code, and public outreach.

1. *Describe the make-up and functions of each of the board's committees (cf., Section 12, Attachment B).*

Committees of the Board

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 four committees as follows:

Education Committee – address issues related to acupuncture educational standards, school application and approval process, tutorial programs, and continuing education.

Examination Committee – address issues related to development and administration contracts, administration, and miscellaneous issues.

Enforcement Committee – address issues related to scope of practice, complaints, disciplinary decisions, probation monitoring, reinstatements, and miscellaneous issues.

Executive Committee – address issues related to expenditures/revenue/fund condition, executive officer selection/evaluation, legislation/regulations, committee policy/procedures, and special administrative projects.

Table 1a. Attendance			
[Enter board member name]			
Date Appointed:	[Enter date appointed]		
Meeting Type	**Meeting Date**	**Meeting Location**	**Attended?**
PLEASE SEE APPENDIX 1a			

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Brewer, Robert	09/14/06		06/01/13	Senate	Public
Kim, Charles	03/14/08	07/13/09	06/01/13	Governor	Public
Wedemeyer, George	06/18/09		06/01/13	Assembly	Public
Weisman, Paul	07/31/09		06/01/13	Governor	Public
Lee, Anyork	07/31/09		06/01/13	Governor	Professional
Shi, Michael	12/3/12	07/02/13	06/01/17	Governor	Professional
Priebe, Ted	01/05/13			Senate	Professional
Hsieh, Francisco	06/01/13		06/01/17	Assembly Speaker	Public
Aguinaldo, Hildegarde	08/21/13		06/01/17	Governor	Public
Chan, Kitman	08/21/13		06/01/17	Governor	Public
Kang, Jeannie	08/21/13		06/01/17	Governor	Professional
Zamora, Jamie	08/21/13		06/01/17	Senate Rules Comm.	Public
Vacant			06/01/17		Professional

2. *In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?*

Over the past two years, the Board has not had to struggle with quorum issues. However, when the terms of the Board expired this past June 1, 2013, there was a delay in Board appointments which caused the Board to have to cancel the August meeting due to lack of a quorum. As a result, enforcement action was delayed four-to-five months. The delays in appointments continue to be problematic for the Board conducting its business. As a result of the late appointments, the new Board was given little time to create a new strategic plan and prepare for the sunset review. To optimally function, the Board needs all three of its licensed member appointments. Licensed members provide critical policy and regulatory perspectives, which are required for the Board to move forward on addressing key issues.

The Board has one remaining vacancy for a licensed member, which needs to be filled for the Board to operate effectively.

3. Describe any major changes to the board since the last Sunset Review, including:

- *Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)*

A. Change in Leadership: Executive Officer and Board members.

New Executive Officer. A new EO was hired September 2012 to replace an interim EO. The new EO has focused on infrastructure, increasing staffing, resources, improving operational systems and business functions. Changes include:

1) **Shifting Calls to Department of Consumer Affairs Call Center**. This improved customer service, increased staff efficiency and productivity, and compensated for staffing shortage. Previous to shifting calls to the call center, daily call volume kept the existing staff busy on phones to the extent that staff was faced with the tough choice of neglecting calls or mission critical work. Customer service has improved because now all callers talk to a live person for assistance.

2) **Attempted to Address Staffing Shortage.** Submitted a BCP for additional staffing in October 2012 to be able to obtain staff and hire them in time to make a difference for sunset review, but it was rejected by DCA because it was beyond the deadline. Submitted second BCP in Spring 2013 — outcome pending.

3) **Filled Existing Vacancies.** Created Regulatory and Policy staff to staff what had been an unstaffed function that caused a regulatory backlog. To address this, EO reclassified existing administrative support vacancy into a policy and regulatory position and created two part-time temporary administrative support positions to assist with administrative support. A general administrative support position was created to assist with phones, filing, compliance with record retention policy, and support all functions. An assistant to the EO and Board was created to assist EO and Board members with meetings, travel, and other administrative support needed.

4) **Upgrade Aging Infrastructure**. Attempted to replace aging infrastructure such as copiers, printers, and computers. This is still in the process of completion.

5) **Education Oversight and Enforcement**. Resumed school approval site visits and education enforcement visits.

6) **Exam Investigation**. Conducted investigation into CALE and found it was valid, reliable and accurate. Independent Review confirmed findings.

7) **Regulatory Implementation**. Created regulatory staff position to ensure there is dedicated staff to implement regulatory changes. Created regulatory list for board meetings that provides list of pending regulatory packages and the status. Resumed regulatory implementation on all pending regulatory packages.

8) **Webcast board meetings.** Webcast all Board meetings if logistics feasible.

9) **Instituted Succession Planning**. Each employee is creating a “how-to” training manual by function and job.

10) **Updated Website and Forms.** All forms on the website have been updated. Dated materials have been removed from the website. Frequently Asked Questions have been updated. All exam statistics have been posted.

B. New Board members appointed August 2013. Changes include:

1) Created and adopt new Strategic Plan 2013-2017 and evaluate achievements from former strategic plan.

2) Adopted administrative procedure manual.

3) Approved 2013-14 Sunset Review Report.

4) Approved an out-of-state school.

5) Conducted a series of meetings to gather input for the 2013 CALE Occupational Analysis.

6) Restructured committee structure to be public committees with three or more members that hold public meetings.

- *All legislation sponsored by the board and affecting the board since the last sunset review.*

Current legislation				
Bill #	**Author**	**Subject**	**Status**	**Board position**
ABX 1	Perez	Medi-Cal: Eligibility. Affordable Care Act (ACA) implementation.	6/27/13—approved by Governor. Chaptered into law June 2013.	None taken.
AB 808	Fong	Acupuncture: practical exam. Would require practical exam as part of CALE.	5/24/13—held in Assembly appropriations committee. Dead for rest of legislative year.	None taken.
SBX 1	Hernandez and Steinberg	Medi-Cal Eligibility. Adds acupuncture as a covered benefit to Medi-Cal.	6/27/13— approved by Governor. Chaptered into law June 2013.	None taken.
SB 218	Yee	Traumatology. Adds traditional Chinese medicine traumatologist certification.	8/6/13—held in Assembly B&P committee. Dead for rest of legislative year.	Oppose. (5-1 vote taken 5/23/13)
SB 305	Lieu	Healing arts: boards.	9/18/13—sent to Governor. Awaiting signature.	None taken.
Previous legislation				
AB 1431	Assembly Committee.	Government reports	1/31/12—to Senate Rules committee. Dead.	None taken.
AB 1889	Fong	Practical Examination. Would require practical exam as part of CALE.	5/25/12—held in Assembly appropriations committee. Dead.	Oppose. (3-2 vote taken 5/17/2012)
SB 628	Yee	Acupuncture: Use of the term "doctor".	9/14/12—approved by Governor. Chaptered into law September 2012.	Oppose version as amended 6/29/2011. (4-1 vote taken 11/17/11)
SB 1236	Price	Sunrise legislation. Authorizes CAB operation until sunset in 2013.	9/14/12— approved by Governor. Chaptered into law September 2012.	None taken.
SB 1488	Yee	Traumatology. Adds traditional Chinese medicine traumatologist certification.	7/3/12—in Assembly B&P committee. No hearing scheduled. Dead.	Oppose (3-2 vote taken 5/17/2012)

- All regulation changes approved by the board the last sunset review. Include the status of each regulatory change approved by the board.

Regulations. The list of pending regulations reported in the 2011 Sunset Review Report submitted by the Board was incorrect. In conducting a comprehensive review of the board meeting minutes to determine the exact status of the reported list of pending regulations, only the following list of pending regulations received the appropriate Board approval of both the proposed language and approval to commence with the regulatory implementation. In consultation with Board legal counsel, we corrected the list of pending regulations and created the following table. In addition, in following the committee's recommendation, we have created a list of pending regulations with status that will be included in the Board packets as a regulatory update.

Pending regulations				
	Subject	**B&P code sections referred**	**Date authorizing vote taken (vote)**	**Status**
1	Advertising guidelines – display of license numbers in advertising	Adopt section 1399.455	2/19/2013 (5-0) Commence rule making	Planned for board submittal and public comment Spring 2014
2	Continuing education ethics requirement – change of "medical ethics" to "professional ethics"	Adopt section 1399.482.2	11/15/2012 (5-0) Commence rule making	Planned for board submittal and public comment Spring 2014
3	Department of Consumer Affairs – Consumer Protection Enforcement Initiative (CPEI). Amends regulations to strengthen board enforcement program pursuant to DCA's CPEI initiative (SB 1111)	Amends section 1399.405, 1399.419, 1399.469, 1399.469.1, 1399.468.2	Approved Language 8/19/2010 (5-0) Directed staff to Commence Rulemaking process 10/25/13 (5-0)	Planned for Office of Administrative Law (OAL) submission November 2013
4	Sponsored Free Health-Care Events (AB 2699)	Add Article 7 and Sections 1399.480, 1400.1, 1400.2 and 1400.3	11/17/2011 (5-0) Commence rule making	Planned for Office of Administrative Law (OAL) submission November 2013
5	Uniform Standards related to substance abuse and recommended disciplinary guidelines (SB 1441)	adopt sections 1399.469.1 and 1399.469.2; amend sections 1399.405, 1399.419 and 1399.469	Approved Language (5-0) 10/25/13 Directed staff to commence rulemaking (5-0) 10/25/13	Planned for Office of Administrative Law (OAL) submission November 2013

4. *Describe any major studies conducted by the board (cf. Section 12, Attachment C).*

The EO conducted a comprehensive investigation of the August 2012 to determine whether the exam itself was the cause of the low pass rate. The findings found that the exam did not cause the low pass rate. These findings were then upheld by an independent exam expert hired by DCA to independently evaluate the findings. Statistics from the exam indicated that the cause of the low pass rate was the low pass rate among repeat test-takers that brought down the overall pass rate (See Attachment C).

List the status of all national associations to which the board belongs.

- *Does the board's membership include voting privileges?*
- *List committees, workshops, working groups, task forces, etc., on which board participates.*
- *How many meetings did board representative(s) attend? When and where?*
- *If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?*

The Board does not belong to any national associations. The Board has not pursued membership in any professional organizations due to travel restrictions related to conference attendance. Until these restrictions are lifted, the Board will be unable to attend any conferences.

The Board does not use a national exam; it develops and administers its own state licensing examination.

Section 2
Performance Measures and Customer Satisfaction Surveys

5. *Provide each quarterly and annual performance measure report as published on the DCA website* **See Appendix C**

6. *Provide results for each question in the customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.* **See Appendix D**

Section 3
Fiscal and Staff

Fiscal Issues

7. *Describe the board's current reserve level, spending, and if a statutory reserve level exists.*

The current reserve level for the Board is 7.9 Million. The current spending level is $2,797,000.

8. *Describe if/when a deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.*

The Board's current budget is roughly equivalent to the annual revenue levels, however, the expenditure levels are significantly lower than the budgeted amount so there is no immediate concern regarding the need to raise fees. However, the expenditure levels have remained low due to understaffing and vacancies. As the Board fills vacancies and adds staff, its expenditures will increase to close to its revenues levels. As it has more enforcement staff, enforcement expenditures will increase. Similarly, overhead expenditures are expected to increase when on "BreEZe" is implemented. For now, the Board's fiscal outlook is healthy and balanced.

Table 2. Fund Condition

(Dollars in Thousands)	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Beginning Balance	4785	5279	5830	1404	2090	1881
Revenues and Transfers	2367	2437	-2594	2637	2601	3114
Total Revenue	2367	2437	2406	2637	2601	3114
Budget Authority	2434	2535	2564	2751	2797	2853
Expenditures	1864	1945	1860	1935	2797	2853
Loans to General Fund	0	0	-5000	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	5286	5764	1367	2090	1881	2142
Months in Reserve	32.5	37	8.4	8.9	7.9	8.8

9. *Describe history of general fund loans. When were the loans made? When were payments made? What is the remaining balance?*

The Board has had a healthy reserve. This led to a $1.5 million loan to the General Fund in 2003/2004. This loan was repaid in 2006. The Board again made a $5 million loan to the General Fund in 2011/12*. The $5 million loan is to be paid back by FY 2015/16* with interest.

*Fiscal Year (FY) for the state is July 1 through June 30.

10. *Describe the amounts and percentages of expenditures by program component. Use Table 3. Expenditures by Program Component to provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.* *See table 3*

Table 3. Expenditures by Program Component

	FY 2009/10		FY 2010/11		FY 2011/12		FY 2012/13	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	$51,427	$515,044	$82,734	$555,055	$85,786	$509,966	$58,284	$513,111
Examination	$102,854	$426,687	$91,927	$462,489	$85,786	$425,567	$97,140	$473,193
Licensing	$51,427	$60,478	$45,963	$62,673	$42,893	$54,859	$48,570	$67,601
Administration	$224,693	$181,433	$214,275	$188,018	$243,692	$165,228	$217,682	$203,243
Education	$51,427	$60,478	$45,963	$62,673	$42,893	$54,859	$38,856	$54,081
DCA Pro Rata		$149,690		$155,198		$174,655		$182,667
Diversion (if applicable)								
TOTALS	$481,828	$1,393,810	$480,862	$1,486,106	$501,050	$1,385,134	460,532	$1,493,896

11. *Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.*

The Board derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees. Fee authority is provided by CA B&P code section 4970-4974. The normal license renewal cycle is every two years with the exception of first time renewals whose initial license period ranges from 13-23 months. All acupuncturists renewing their license are required to complete and list 50 hours of board-approved continuing education (CE) courses on their renewal application and sign under penalty of perjury. If they are renewing their license for the first time, the hours vary from 35-45 units required.

The Board has not had a fee change in the last ten years. Table 4 lists all of our current fees.

Table 4. Fee Schedule and Revenue							
Fee	Current Fee Amount	Statutory Limit	FY 2009/10 Revenue	FY 2010/11 Revenue	FY 2011/12 Revenue	FY 2012/13 Revenue	% of Total Revenue
Other Regulatory Fee							**1.5%**
Duplicate Renew Receipt	$10	$10	$1	$1	$1	$1	
Endorsement	$10	$10	$1	$1	$1	$1	
Duplicate Cert – Add'l Office	$15	$15	$5	$5	$5	$5	
CE Approval Fee	$150	$150	$32	$29	$42	$40	
Licenses & Permits							**33%**
App Fee - Schools	$1,500	$3,000	$5	$3	$6	$3	
App Fees – Acupuncture	$75	$75	$67	$54	$59	$69	
Re-Exam Fee – Acupuncture	$550	$550	$212	$179	$189	$221	
App Fee – Tutorial Supvr	$200	$200	$3	$3	$3	$3	
App Fee – Tutorial Trainee	$25	$25	$0	$0	$0	$0	
Exam Fee – Acupuncture	$550	$550	$422	$339	$366	$424	
Initial Cert – Acupuncture	$325	$325	$161	$159	$144	$156	
Renewal Fees							**65%**
Biennial Renewal Fee – Acupuncture	$100	$100	$1,445	$1,640	$1,590	$1,720	
Annual Renewal – Tutorial Supvr	$280	$280	$1	$1	$1	$1	
Annual Renewal – Tutorial Trainee	$280	$280	$0	$0	$0	$0	
Delinquent Fees							**.5%**
Delinquent Renewal – Acupuncture	$25	$25	$11	$12	$12	$13	
Delinquent Renewal – Tutorial Trainee	$25	$25	$0	$0	$0	$0	
Delinquent Renewal – Tutorial Supvr	$25	$25	$0	$0	$0	$0	

** Fee is pro-rated based on the date the license is issued and the birth month of the applicant. Fee varies from $176.00 for 13 months to 325.00 for 24 months.*

12. *Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.*

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	$ Requested	$ Approved	$ Requested	$ Approved
Rejected as late	13/ 14	Request for increased staff	3 AGPA, 1OT	none				
1110-06	14/ 15	Request for increased staff	1 SSMI, 3 AGPA, 2 OTs	2 AGPA and 1 OT	256,000	Pending	$0	Pending

Staffing Issues

13. *Describe any staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.*

The Board has been chronically understaffed for over a decade without relief. The number of staff has eroded from 11 PYs to 7.5 PYs despite the workload tripling. The Board is understaffed for all of its major functions. The board has endured chronic vacancies rates in the majority of its functions that have been made worse by hiring freezes. The Board also lost critical institutional memory when the EO and Exam Coordinator retired in 2012, taking with them the knowledge of the data base software that each of the functions rely on for data input and running statistical data and performance reports. There were no handbooks or training manuals created to assist the new generation of staff who now struggle to learn a system without any assistance.

Since the hiring freezes ended and a new EO was hired, all vacancies have been filled. One of the underlying problems that cause vacancies to be a serious problem for the Board's operation is that with the exception of the exam function, all other functions are performed by one staff with no back-up. Similarly, there is no other manager to act as back-up to the EO. Thus, when staff is out, there is no one to perform that function. The only function that is adequately staffed is Exams, which has two staff. In fact, the exam is well staffed because it has a bilingual Chinese staff to assist with foreign applicants and it has two interagency contracts to develop and administer the exam.

The key enforcement functions have only one staff person to perform the entire mission critical workload. When the Enforcement staff person was out on leave for a year, it created an enormous backlog and delayed overall enforcement for the entire year, which in turn has had a negative impact on the Board's performance targets. In Education, site visits have been severely limited due to lack of staff to conduct the site visits. It is impossible for the education staff to keep up with both the school oversight

and continuing education workload and conduct enforcement site visits. As a result, much of the Board's education enforcement workload is unable to be performed.

Regulatory implementation has been backlogged for years because there has been no dedicated staff to handle the regulatory workload. Given the critical role regulatory implementation plays for regulating the acupuncture profession and protecting the public, the Board created a regulatory and policy position by reclassifying the administrative OT position into an AGPA position; then, created two part time OT positions to handle administrative support needs of the office. One OT provides administrative support to the EO and Board, while the other OT position provides the office with administrative support including answering phones. Creating additional support staff was somewhat helpful because one administrative support staff was unable to handle the high volume administrative support work for the entire office. However, these two newly created positions are part-time, so they did not result in creating a net gain in administrative support, just better operational organization. These two administrative positions were included in the current BCP requesting they become authorized as full time and permanent.

The Board needs additional staff to perform its mission critical functions. In the short term the Board has created permanent intermittent positions that are part-time. These positions have produced mixed results. From a recruitment and retention perspective, the permanent intermittent position are part-time when the Board needs full-time; there is heavy turnover as staff leaves for full-time permanent jobs elsewhere. The net result is it is an inefficient way to hire staff. When the retraining and recruitment time is factored into the analysis, staff productivity of new and existing staff decreases. The Board's recruitment and retention strategy is to encourage staff to work long-term for the Board. Part of this strategy includes offering promotional opportunities when available. The Board filled two of its initial three vacancies with internal promotions.

The Board has the revenue to support the additional staff that it needs. However, the Board's requests for additional staff have been mostly rejected through the BCP process. In the past two fiscal year's BCP cycles, the Board has requested a total of 10.5 staff and all but 3 have been rejected. Increasing the Board's staffing capacity is a Board priority reflected in the strategic plan. This is an area the Legislature could provide some much needed relief.

Over the past year, the Board has instituted succession planning by having each staff create a staff handbook that describes in detail their duties and how to perform them. This handbook has been partially completed and remains a work in progress. The lack of succession planning has left the Board with a loss of institutional memory on major functions and no training manuals for computer database software. The Board

overcame enormous obstacles this past year when it managed to figure out the database software that was used for all data reports. This issue has been resolved.

14. *Describe the board's staff development efforts and how much is spent annually on staff development (cf., Section 12, Attachment D).*

Staff training and development is another area of succession planning the new EO has prioritized. The EO sets aside time to personally train staff as needed. All staff is granted the opportunity to take time out of their busy schedules for training. Our training budget is $1,129.00. Generally, DCA's training division has a robust array staff development trainings that are available to staff. While there is no charge by training, the cost of having training available is included in Department overhead. For training that goes beyond what the Department offers, the Board pays for individual trainings out of our training budget.

Section 4
Licensing Program

15. *What are the board's performance targets/expectations for its licensing[1] program? Is the board meeting those expectations? If not, what is the board doing to improve performance?*

The Board has been erratic in meeting its performance targets and the average processing time has actually increased over the past two years due to staff vacancies and increasing licensing workload. To improve performance the Board has implemented job related efficiencies, filled the vacancy in licensing, is in the process of creating training manual for new staff and requesting additional staff in the current BCP.

The Board's current performance time frame for processing licensing applications is 40 days with a performance target to reduce that processing time by 5% over the next year to 38 days. The board has suffered vacancies and turnover in this position over the past two years, which has increased the processing time from the past sunset review report when it was 34 days. We anticipate further reduction in processing time for licensing once the staff learns the job and additional staff is hired.

There are, however, significant non-staff related delays in completing applications that are beyond the Board's control such as rejected live- scan reports. Following up on these rejected live-scans reports is time consuming and challenging. The Board must work with applicants to notify them of rejected live-cans reports and advise them on next steps. One quarter of all new applications have some Issues with

[1] The term "license" in this document includes a license certificate or registration.

rejected live-scan reports. Some are resolved with a single re-application while others can take multiple reapplications and name searches to resolve. Only a handful encounter time-consuming rejections that can take as long as three-to-six months to resolve before the applicant has a completed licensing application and a license can be ordered.

The Board is working to reduce its processing time and if the current BCP is approved, the Board will be well positioned to dramatically improve its processing time for licensing.

The Board has a very tech-savvy staff. In evaluating what efficiencies the board could utilize, the use of web-based technology was identified. In particular web-based payment systems and web-based submission forms were explored. The Board has requested to be able to accept credit cards, but was told to wait until the Board has the new computer system that DCA is currently implementing with other Boards. Similarly, being able to utilize more convenient web based form submission is an efficiency currently not available to the Board until they are they are on "BreEZe" which is not going to be until 2015 or later. The aged “Legacy” system creates significant inefficiencies for licensing. The system lacks robust query capacity that leaves staff having to create work-arounds or simply conduct manual searches for needed information. There are many job efficiencies that could be leverage with the right technology, but for now that is beyond the control of the Board.

16. *Describe any increase or decrease in average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?*

The Board achieved a decrease in average time to process license renewals or initial license applications last year, but the processing time increased this year. There has been a steady growth in the number of licensing applications over the past four years. In FY 2009-10 the daily average of licensing applications received was 12 per day. In FY 2013-14 the daily average of licensing applications has grown to 29 per day. This workload increase and no increase in staffing have impacted the achievement of the performance target. The Board has requested an additional licensing staff person to address this workload increase in their current pending BCP. If approved, we anticipate significant reduction in processing time.

One efficiency measure the Board implemented this past December 2012 was redirecting all calls through the DCA call center. The daily call volume was over 100 calls and the vast majority of calls were related to licensing. This high volume of calls was a significant drain on staff productivity and job efficiency. It was difficult for the licensing staff person to keep up with the calls, emails and process licensing

applications and renewals on a daily basis. Redirecting calls decreased the number of calls by 50-60 percent. This reduction in daily call volume increased staff productivity and job efficiency. The licensing staff person still receives licensing related calls, but the overall volume is significantly lower than before the shift to the call center.

Licensing has only one staff person with no back-up, so huge delays occur when this position is vacant. This position has experienced turnover and vacancies over the past two years, which has led to an increase in process time when vacancies occur. In addition, the high call volume reduced staff productivity. In December 2012, calls were shifted to the call center, which allowed for a reduction in processing time. However, the position become vacant in February of 2013 and processing time increased. Now the position is filled and we estimate that processing time has decreased once again and will continue to decrease.

17. *How many licenses or registrations does the board issue each year? How many renewals does the board issue each year?*

Table 6. Licensee Population

		FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Acupuncturist	Active	9689	10066	10313	10706
	Out-of-State	733	775	895	1041
	Out-of-Country	208	228	249	271
	Delinquent	776	842	893	1026

Table 7a. Licensing Data by Type

	Application Type	Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
						Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2010/11	(Exam)	1021	1041	7	-	-	-	-	-	-	-
	(License)	633	633	-	633	-	-	-	-	-	-
	(Renewal)			n/a		-	-	-	-	-	-
FY 2011/12	(Exam)	1173	1083	0							
	(License)	570	570	0	570						
	(Renewal)			n/a							
FY 2012/13	(Exam)	1342	1232	0							
	(License)	600	600		600						
	(Renewal)			n/a							

* Optional. List if tracked by the board.

Table 7b. Total Licensing Data			
	FY 2010/11	FY 2011/12	FY 2012/13
Initial Licensing Data:			
Initial License/Initial Exam Applications Received	1279	1173	1342
Initial License/Initial Exam Applications Approved	1262	1083	1232
Initial License/Initial Exam Applications Closed	7	0	0
License Issued	633	570	600
Initial License/Initial Exam Pending Application Data:			
Pending Applications (total at close of FY)	n/a	n/a	n/a
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):			
Average Days to Application Approval (All - Complete/Incomplete)	34	38	37
License Renewal Data:			
License Renewed	**3552	4721	5215

18. *How does the board verify information provided by the applicant?*

a. *What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?*

An applicant is required to report prior disciplinary actions or a criminal history on their application for examination/licensure. Each applicant is required to be fingerprinted prior to obtaining a license. If an applicant has a criminal record, then the report of that information is sent to the Board. The Board then requests further information from the applicant to review. Records will be requested from the agency that took the prior disciplinary action for review. Certified court records and law enforcement arrest/incident reports are also obtained. If an applicant failed to disclose a conviction that shows up after they are fingerprinted, the Board requires that the applicant explain why there was an omission. The omission is taken into consideration in determining whether to grant or deny a license.

b. *Does the board fingerprint all applicants?* Yes, all applicants are required to complete live-scans or finger print checks that are submitted to the Board. The licensure application is not complete until the Board has received a completed finger print report. Since implementing the fingerprint requirement for licensees that were licensed before January 2001, the Board is seeing many licensure renewals that must fulfill this new finger print requirement as a condition of renewal.

c. *Have all current licensees been fingerprinted? If not, explain.*

Yes. Title 16, California Code of Regulations section 1399.419.2 requires licensed acupuncturists that were licensed prior to January 1, 2001 or for whom a record of the submission of fingerprint no longer exists, to submit a complete set of fingerprints to the California Department of Justice (DOJ) as a condition of license renewal.

d. *Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?*

Yes, there is a national databank relating to disciplinary actions. No, the Board does not check the national databank prior to issuing or renewing a license because we do not have authorized query capability, which we must pay to obtain. We are currently looking into the cost and contracting associated with running continuous queries versus enrolling in a monitoring service. There are some complexities with contracting and a huge price difference between looking up a few licensees versus enrolling in their monitoring service for our entire licensee database. We are also exploring how other boards use the national data base services. To simply check a set number of licensees per year would not be a significant increase in enforcement costs. To enroll in a monitoring service that would notify the Board of any actions taken from other states against any of our licensees could cost as much as $70,000. That is an increase the Board may not be able to absorb and may need a BCP to implement. We are still at the exploration stage in assessing costs and benefits and logistics.

19. *Does the board require primary source documentation?*

Yes, all diplomas and transcripts must be original documents submitted from the issuing institution when submitted to the Acupuncture Board. The Board does not accept school transcripts from the applicants to avoid the potential of fraudulent documents.

All foreign language documents must be accompanied by an English translation certified by the translator as to the accuracy of such translation under penalty of perjury. Foreign transcripts go through a foreign evaluator that verifies the school accreditation and translates the transcript.

20. *Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.*

To be eligible for licensure in California, applicants must obtain a passing score on the CALE. There are three ways to qualify to take the CALE:

1) Graduation from a Board-approved school;

2) Equivalent Training and Clinical Experience;

3) Completion of a Board-approved Tutorial Program.

Graduation from Board Approved School. Graduates from a Board approve school can be graduates from either a California state approved school or an out-of-state Board approved school. All graduates of Board-approved schools either in-state or out of state must have completed the required course work to be eligible to sit for the CALE. Only graduates from Board approved schools are eligible to sit for the CALE. There are several acupuncture colleges outside of California that are Board-approved. All approved schools/Training Programs must meet course requirements listed in Laws

and Regulations Relating to the Practice of Acupuncture, Sections 1399.434 and/ or 1399.436.

Equivalent Training and Clinical Experience. Out-of Country applicants may apply to sit for the examination using 1399.416 Equivalent Training and Clinical Experience qualifying for Licensure. Their foreign college or university transcripts must meet the same course conditions we have for Acupuncture Schools listed in Laws and Regulations Relating to the Practice of Acupuncture, sections 1399.434 and/ or 1399.436.

Board Approved Tutorial Training Program. Graduates of Board approved Tutorial Training programs are eligible to sit for the CALE. The Tutorial Training programs must comply with requirements of section 1399.425, 3800 total hours with 588 hours course work at a school. The Board must approve each Tutorial for both the Supervisor and the proposed training program course work and clinical work. Once the Tutorial is completed, the Board must approve Tutorial completion.

21. *Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.*

Yes, the Board sends No Longer Interested notifications to DOJ on an ongoing basis when subsequent arrest or conviction notices are received for cancelled or revoked licenses. It is sent using a form via facsimile. There is a backlog of cancelled licenses that need to be purged from the system using the No Longer Interested notification system. The Board is working with the DOJ to determine the best way to merge a list of all cancelled licenses for purposes of indicating the Board is no longer interested.

EXAMINATION

Table 8. Examination Data					
California Examination 1st time candidates (include multiple language) if any:					
	License Type	Acupuncture			
	Exam Title	CALE Total	English	Chinese	Korean
FY 2009/10	# of 1st Time Candidates	746	304	84	165
	Pass %	74%	72%	68%	83%
FY 2010/11	# of 1st Time Candidates	659	368	127	176
	Pass %	75%	79%	72%	61%
FY 2011/12	# of 1st Time Candidates	597	273	96	79
	Pass %	75%	76%	73%	75%
FY 2012/13	# of 1st time Candidates	642	313	140	100
	Pass %	78%	78%	80%	78%
	Date of Last OA	Dec 2008		Feb 2007 Oct 2008 Work groups	
	Name of OA Developer	OER			
	Target OA Date				
California Examination Retakers (include multiple language) if any:					
	License Type	Acupuncture			
	Exam Title	CALE Total	English	Chinese	Korean
FY 2009/10	# of Retaker Candidates	377	217	86	74
	Pass %	34%	34%	36%	34%
FY 2010/11	# of Retaker Candidates	369	228	76	65
	Pass %	39%	45%	37%	22%
FY 2011/12	# of Retaker Candidates	399	178	87	134
	Pass %	35%	29%	37%	40%
FY 2012/13	# of Retaker Candidates	448	237	115	448
	Pass %	29%	30%	34%	29%
National Examination (include multiple language) if any: Non Applicable					

22. *Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required?*

To attain an acupuncture license in California, an applicant must pass the CALE, which is a one-day, multiple-choice exam offered twice a year in Sacramento and Southern California. This is the only exam required for licensure in California. California does

not accept the national certification exam that is accepted by other states.

What are pass rates for first time vs. retakes in the past 4 fiscal years? (Refer to Table 8: Examination Data)

For first time examinees the pass rates for following fiscal years are:

2009/2010: 74%

2010/2011: 75%

2011/2012: 75%

2012/2013: 78%

For re-takers of the examination the pass rates for the following fiscal years are:

2009/2010: 34%

2010/2011: 39%

2011/2012: 35%

2012/2013: 29%

23. *Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?*

Currently, the Board does not use computer based testing. However, the Board is exploring the option of using computer based testing in the future.

24. *Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.*

There are not any existing statutes that are hindering effective processing of applications or examinations.

SCHOOL APPROVALS

25. *Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?*

The Board establishes standards for approval and "approves," rather than accredits, institutions and colleges offering education and training programs in the practice of acupuncture and oriental medicine. B&P Code Section 4938 establishes the Board's authority to approve acupuncture schools. Section 4939 also requires schools in California to be approved by the Bureau of Private Postsecondary Education (BPPE) and for out-of-state schools, an appropriate "governmental" educational authority using equivalent standards. The Board does not accredit acupuncture schools, but

approves the school and its curriculum program to ensure it meets the standards adopted by the Board to ensure competency and protect public safety.

The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, along with financial solvency. Following the review of the application, a full on-site visit is performed to review implementation of application policies and procedures, facilities and clinical training.

The Board is currently exploring the feasibility of a Memorandum of Understanding (MOU) with BPPE. In the meantime, the Board continues to work closely with BPPE on school enforcement and school approvals.

26. *How many schools are approved by the board? How often are schools reviewed?*

There are currently 36 schools/training programs approved by the Board (21 in California and 15 in other states). Approved Training programs are reviewed every year through their Annual Report to monitor changes to the institution, faculty and curriculum. Currently, due to a staffing shortage, the annual review is a desk audit of the annual reports submitted to the Board. The Board has requested additional staff in order to conduct follow-up site visits as necessary and to conduct school approval site visits.

27. *What are the board's legal requirements regarding approval of international schools?*

The Board does not have the authority to approve international schools.

There is however an avenue for applicants to qualify for examination by way of foreign equivalency without their school needing to be approved by the Board.

CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

28. *Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.*

a. *How does the board verify CE or other competency requirements?*

At the end of a licensee's two-year renewal period, the licensee must submit a declaration under the penalty of perjury that they have completed the minimum requirement of 50 CE hours. At this stage there is no verification of completion of the required CE credits. They are not required to submit certificates of completion. The reason for not requiring certificates was space issues – the volume of files exponentially increase with inclusion of certificate every two years. License renewals are only approved with completion of the minimum number of required CE hours.

Those who fail to submit this declaration of 50 CE hours have a hold put on their license that is not removed until they have submitted their renewal form with appropriate fee. If they fail to renew, they are notified by letter that they are no longer licensed to practice acupuncture and must cease from practicing acupuncture until they renewal is completed.

b. *Does the board conduct CE audits on its licensees? Describe the board's policy on CE audits.*

Auditing is the stage in which the Board verifies actual completion of the required CA credits.The board randomly audits five percent of the licensee population annually. This year 600 licensees were audited. This is a significant increase from past years. Increasing the number of audits has been a challenge without any increase in staffing. This will be alleviated with if the pending BCP is approved.

c. *What are consequences for failing a CE audit?*

Licensees found to not be in compliance are served with a disciplinary accusation alleging perjury and unprofessional conduct.

d. *How many CE audits were conducted in the past four fiscal years? How many fails?* The Board conducted 600 desk audits for continuing education. The Board has not completed all of the audits but so far 85 percent of licensees audited are in full compliance with CE requirements.

e. *What is the board's course approval policy?*

All CE courses must be approved by the Board. Courses must be offered by Board-approved CE providers. The policy restricts distance-learning courses to no more than 50 percent. Courses are categorized into two categories which delineates courses that deal with patient care from courses that do not. No more than five hours of non-patient care course work can be approved. The focus of the Board's continuing education policy is on course work that deals with patient care.

f. *Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?*

Providers may not offer a course for CE hours without prior approval from the Board. Continuing education providers are evaluated for compliance with the following Board requirements:

1) Must be licensed acupuncturists or authorized as a "guest acupuncturists in accordance with section 4949 of B.P code.

2). The licensee must have a "current valid license" that has not been subject to revocation, suspension or probation.

3) The provider must hold a B.A degree or higher from a college or university and written documentation of experience in the subject matter of the course or two years experience teaching the course within the last five years preceding the course.

To obtain approval for a course, a provider must first be approved by the Board to offer CE. In order to be a provider, those persons, organizations, schools or other entities seeking approval must submit a Continuing Education Provider Application to the Board accompanied by the fee. Once approved, the provider may offer as many classes as he/she wishes within a two-year period; however, each class must be approved by the Board. The approval of the provider by the Board shall expire two years after it is issued by the Board and may be renewed upon the filing of the required application and fee.

Once approved, providers must submit an application for course approval at least 45 days prior to the course being offered. The Board requires that all course content be relevant to the practice of acupuncture and Asian medicine. If Board staff questions any content of a CE course, an expert is contacted for their input prior to approval or denial.

g. How many applications for CE providers and CE courses were received? How many were approved?

There are currently 855 approved continuing education providers.

FY 2011/12: 74 new CE providers approved

FY 2012/13: 60 new CE providers approved

FY 2013/14: 85 new CE providers approved (in first 5 months.)

<u>FY 2011/12</u>
2,071 Total applications
1,980 Approved
91 Denied

<u>FY 2012/13</u>
2,185 Total applications
2,050 Approved
135 Denied

As long as the provider meets the requirements for being a provider and the provider is offering courses within the scope of Acupuncture Practice or in Biomedicine, the Board approves the provider. The Board reviews and approves each course for approval as a CE course, and denies courses and providers that do not meet the Board's guidelines.

The Board receives on an average 150-200 CE course requests a month. The Board is required to post an updated course list on its website, which it does on a monthly basis.

h. *Does the board audit CE providers? If so, describe the board's policy and process.*

Pursuant to CCR 1399.482 (g) the Board retains the right and authority to audit or monitor courses given by any provider. However, with staff shortages, the Board has not recently audited any provider. In an effort to still provide oversight, during the Board's audits of licensees CE records, we review Provider certificates to ensure they are in compliance with our requirements. If violations are found, they are referred to enforcement for disciplinary action.

i. *Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensees' continuing competence.*

The Board's Education Committee is continuing to look at "continuing competency" for the purpose of moving toward performance-based assessments.

Section 5
Enforcement Program

29. *What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?*

The Board has the following targets set: 10 days average for complaint intake cycle time; 200 days average for days to complete cases not resulting in formal discipline; 540 days average for days to complete cases resulting in formal discipline; 10 days average for a probation monitor to make first contact; and 10 days average for the Board to take appropriate action on a probation violation. In the FY 2012/13 Performance Measures Annual Report, it shows that we are meeting our performance targets for intake cycle time and probation violation response time. We are just over the performance target on the intake and investigation cycle time. The formal discipline times range from a year to approximately three years. The average days are not representative of average because the amount of disciplinary cases closed each quarter is so small. This means some of our averages in a particular quarter could be

one or two of our outliers in a year's time. Additionally, some of the process times found in the enforcement data of the report are anomalies due to enforcement staff on leave during the last half of FY 2011/12 and the first half of FY 2012/13. The process times are not entirely reflective of lengthy work processes; rather, they are skewed by the absence of adequate enforcement staff. Halfway through FY 2012/13 retroactive complaint data was entered in the database and the complaints were then assigned for investigation.

As enforcement staff work through older investigations and close-out older disciplinary cases, the Board's cycle times will be over our target, but will eventually get back down to our performance target. Staff meets with the EO weekly to prioritize cases. Staff is mindful of process times and is prioritizing complaint intake in addition to working older cases first. Staff is also prioritizing checking on the status of disciplinary cases pending with the DOJ on a regular basis. Direction has been given to all deputy attorney generals to set cases for hearing as soon as a Notice of Defense is received. Additionally, negotiations are started on cases suited for stipulated settlements soon after a Notice of Defense is received. Once the backlog of disciplinary cases works their way to closure or final action, the Board will be within our performance targets.

30. *Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?*

Enforcement data is showing a trend in consumer complaints decreasing and convictions/arrests steadily increasing over time. Accusation process times, which are reflective of the DOJ's process time to prepare an accusation, has improved. More investigations were assigned in FY 2012/13. This includes complaints from the prior fiscal year and complaints received within FY 2012/13. More investigations assigned versus complaints received or closed in a year shows caseload for staff is varied and increasing. Staff is working more desk investigations than in recent fiscal years, and that is another reason why there is an increase in process time for desk investigations.

The biggest performance barrier is the lack of adequate enforcement staff to function efficiently and oversee every stage of enforcement. Currently, the Board only has one enforcement analyst that does complaint input, desk investigations, all case analysis, process disciplinary cases, monitor probationers, prepare citations in addition to other functions. A BCP was submitted requesting additional enforcement staff.

Another barrier is the time it takes for thorough analysis and review after an investigation is completed. Cases are first reviewed by enforcement staff, the EO, and expert consultant, and then a deputy attorney general to determine acceptance for case prosecution. To expedite this process, staff meets regularly with the Executive Officer, and combines analysis efforts. Staff is utilizing a mix of expert consultants and

is requesting that experts expedite their reviews to allow staff's second review in a more timely fashion. Staff prioritizes checking on the status of disciplinary cases pending with the DOJ on a regular basis as a way to try to impact the time the case is with a deputy attorney general.

The other barrier is the arrest cases that can span months to years before a conviction results. The Board only has jurisdiction over convictions, not arrests. The Board can only commence an enforcement action once a licensee has been convicted. However, the Board has the authority and ability to bring an accusation in the event a licensee has been arrested and charged with crime that may pose risk to public safety. In this type of case the Board can seek to have the DOJ appear in the matter representing the Board to request the assigned Administrative Law Judge to issue an order to suspend the license pending the outcome of the criminal matter.

Finally, staff continues to streamline its processes by implementing systems and updating the Enforcement Procedural Handbook.

Table 9a. Enforcement Statistics			
	FY 2010/11	FY 2011/12	FY 2012/13
COMPLAINT			
Intake (Use CAS Report EM 10			
Received	135	85	73
Closed	10	9	3
Referred to INV	124	61	87
Average Time to Close	9	8	78
Pending (close of FY)	3	18	1
Source of Complaint (Use CAS Report 091			
Public	59	53	39
Licensee/Professional Groups	19	9	13
Governmental Agencies	20	18	4
Other	129	117	142
Conviction / Arrest (Use CAS Report EM 10			
CONV Received	92	112	126
CONV Closed	90	46	196
Average Time to Close	8	9	132
CONV Pending (close of FY)	4	70	0
LICENSE DENIAL (Use CAS Reports EM 10 and 095)			
License Applications Denied	3	1	0
SOIs Filed	7	1	0
SOIs Withdrawn	0	1	0
SOIs Dismissed	0	0	0
SOIs Declined	0	0	0
Average Days SOI	0	484	0
ACCUSATION (Use CAS Report EM 10)			
Accusations Filed	14	22	4
Accusations Withdrawn	0	0	0
Accusations Dismissed	0	0	0
Accusations Declined	3	3	2
Average Days Accusations	840	597	528
Pending (close of FY)	9	17	11

Table 9b. Enforcement Statistics (continued)			
	FY 2010/11	FY 2011/12	FY 2012/13
DISCIPLINE			
Disciplinary Actions (Use CAS Report EM 10			
Proposed/Default Decisions	4	9	7
Stipulations	15	8	4
Average Days to Complete	706	622	988
AG Cases Initiated	33	19	6
AG Cases Pending (close of FY)	30	25	17
Disciplinary Outcomes (Use CAS Report 096			
Revocation	2	8	4
Voluntary Surrender	7	3	0
Suspension	0	0	0
Probation with Suspension	2	0	2
Probation	2	0	3
Probationary License Issued	5	4	0
Other	1	0	0
PROBATION			
New Probationers	9	4	5
Probations Successfully Completed	6	4	6
Probationers (close of FY)	25	21	18
Petitions to Revoke Probation	1	0	0
Probations Revoked	1	0	0
Probations Modified	0	1	0
Probations Extended	0	0	0
Probationers Subject to Drug Testing	5	8	8
Drug Tests Ordered	109	137	141
Positive Drug Tests	2	0	0
Petition for Reinstatement Granted	1	0	0
DIVERSION			
New Participants	n/a	n/a	n/a
Successful Completions	n/a	n/a	n/a
Participants (close of FY)	n/a	n/a	n/a
Terminations	n/a	n/a	n/a
Terminations for Public Threat	n/a	n/a	n/a
Drug Tests Ordered	n/a	n/a	n/a
Positive Drug Tests	n/a	n/a	n/a

Table 9c. Enforcement Statistics (continued)			
	FY 2010/11	FY 2011/12	FY 2012/13
INVESTIGATION			
All Investigations (Use CAS Report EM 10			
First Assigned	211	101	282
Closed	215	146	129
Average days to close	180	188	216
Pending (close of FY)	99	58	211
Desk Investigations (Use CAS Report EM 10			
Closed	175	102	117
Average days to close	115	108	204
Pending (close of FY)	49	10	125
Non-Sworn Investigation (Use CAS Report EM 10			
Closed	n/a	n/a	n/a
Average days to close	n/a	n/a	n/a
Pending (close of FY)	n/a	n/a	n/a
Sworn Investigation			
Closed (Use CAS Report EM 10	40	44	12
Average days to close	467	371	333
Pending (close of FY)	50	48	86
COMPLIANCE ACTION (Use CAS Report 096)			
ISO & TRO Issued	1	0	0
PC 23 Orders Requested	2	1	0
Other Suspension Orders	1	0	1
Public Letter of Reprimand	0	1	2
Cease & Desist/Warning	5	0	0
Referred for Diversion	n/a	n/a	n/a
Compel Examination	0	0	0
CITATION AND FINE (Use CAS Report EM 10 and 095)			
Citations Issued	42	15	0
Average Days to Complete	152	268	0
Amount of Fines Assessed	$26,440	$8,902.75	0
Reduced, Withdrawn, Dismissed	$7,330	$1,150	0
Amount Collected	$9,960	$7,102.75	$15,158.25
CRIMINAL ACTION			
Referred for Criminal Prosecution	3	2	1

Table 10. Enforcement Aging						
	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year	6	4	2	0	12	19%
2 Years	5	8	11	2	26	42%
3 Years	1	4	3	5	13	21%
4 Years	2	1	0	3	6	10%
Over 4 Years	1	2	1	1	5	8%
Total Cases Closed	15	19	17	11	62	
Investigations (Average %)						
Closed Within:						
90 Days	101	83	51	29	264	38%
180 Days	52	71	37	33	193	28%
1 Year	21	32	40	46	139	20%
2 Years	13	25	17	19	74	11%
3 Years	8	3	1	2	14	2%
Over 3 Years	7	1	0	0	8	1%
Total Cases Closed	202	215	146	129	692	

31. *What do overall statistics show as to increases or decreases in disciplinary action since last review.* There has been a decrease in disciplinary action since last review. However, more of the disciplinary actions are resulting in revocations. Additionally, suspension is being utilized in probation orders more prevalently.

32. *How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's Complaint Prioritization Guidelines for Health Care Agencies (August 31, 2009)? If so, explain why.*

The Board uses DCA's Complaint Prioritization Guidelines policy. Cases are prioritized by the nature and severity of the complaint. The priorities are assigned during complaint intake and follow the following labels: routine, high priority, and urgent. Cases are then prioritized by age of the case.

33. *Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report actions taken against a licensee. Are there problems with receiving the required reports? If so, what could be done to correct the problems?*

Under Business and Professions Code section 801, insurers and uninsured licensees are required to report malpractice settlements and judgments of $3,000 or more. The Board continues to receive reports from insurers using the National Practitioner Databank report. Staff has created a section 801 report form which will go up on the Board's website. An announcement about the new form will be placed on the home page of the website.

34. *Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases were lost due to statute of limitations? If not, what is the board's policy on statute of limitations?*

No, the Board does not have a statute of limitations. The Board uses the complaint prioritization policy to address more urgent cases and cases involving criminal offenses. These cases are expedited with higher priority.

35. *Describe the board's efforts to address unlicensed activity and the underground economy.*

Unlicensed complaints are submitted to the Division of Investigation (DOI) for formal investigations. If a case rises to a prosecutory level, DOI submits the case to the District Attorney's Office for criminal prosecution. In addition, or if a criminal conviction doesn't occur, the Board issues citations and fines for the unlicensed practice. Since DCA has ended its Unlicensed Activity Program, the Board does not have the resources to proactively seek out unlicensed activity. Instead, the Board is reactive to complaints and information provided to the Board.

CITE and FINE

36. *Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and last time regulations were updated. Has the board increased its maximum fines to the $5,000 statutory limit?*

The Board uses its cite and fine authority in cases where there is no risk to the public and the violation can be remedied through an order of abatement and fine. The Board has authority to issue a citation with a maximum fine of $5,000.

37. *How is cite and fine used? What types of violations are the basis for citation and fine?*

The Board uses citations for the purpose of educating the recipient and bringing him or her into compliance with the laws and regulations. A fine is most often used as a deterrent for future violations. Citations cannot be used for any cases involving patient harm; therefore, citations are generally issued for more administrative type violations, i.e. failure to register a business address, failure to keep adequate records, etc. The Board also uses citations to address minor probation violations. In addition, citations are used for unlicensed practice or an individual holding him or herself out as engaging in the practice of acupuncture through advertisements.

38. *How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals in the last 4 fiscal years?*

There have been 38 informal administrative hearings, formal administrative hearings, and written appeal reviews conducted in the last four fiscal years.

39. *What are the 5 most common violations for which citations are issued?*

In the past, citations were issued most commonly for continuing education. The more recent common violations are for failure to register business locations, unlicensed activity, false/misleading advertising, failure to keep adequate records, and probation violations.

40. *What is average fine pre and post appeal?*

The average fine pre-appeal is $660 and the average fine post-appeal is $550.

41. *Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.*

In cases involving unlicensed individuals, who we have social security numbers for, the Board sends three collections letters, with the last being certified. If no payment is received, then the Board sends the person's information to the accounting office to forward to the Franchise Tax Board's (FTB) Interagency Interception Program (IIP). In cases involving licensees, the Board sends one courtesy collection attempt and if no payment is received, then the outstanding fine is affixed to the licensee's next renewal fee.

COST RECOVERY and RESTITUTION

42. *Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.*

In probationary cases, the Board's probation monitor ensures that cost recovery is paid in full by the end of the licensee's probation term. If there is any unpaid balance, the Board can file a petition to revoke the probationer's license for a violation of the terms and conditions of their probation. In revocation and surrender cases where cost recovery was also ordered and respondent has failed to pay, the Board submits his or her information to the accounting office to forward to the FTB's IIP

43. *How many and how much is ordered for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.*

In FY 2012/13 nine cost recovery cases were established that amounted to $54,911. These were cases involving probation, revocation, and public admonishments. In addition to the nine cost recovery cases established in FY 2012/13, there are 24 prior established cases. Outstanding cost recoveries are sent to the FTB IIP. Even with having submitted the majority of our outstanding cost recoveries to FTB, so far we have only received four percent of our outstanding total through the program. Based upon our total outstanding cost recovery with a four percent reimbursement rate, it is estimated that approximately $171,853.81 is uncollectable.

44. *Are there cases for which the board does not seek cost recovery? Why?*

Business and Professions Code section 4959(a) authorizes cost recovery only in cases where a licensee has been found guilty of unprofessional conduct. It does not allow it for statements of issues. Therefore, the Board does not seek cost recovery for decisions involving applicants for licensure. Business and Professions Code section 125.3 also only allows cost recovery for violations of the Acupuncture Licensure Act.

45. *Describe the board's use of Franchise Tax Board intercepts to collect cost recovery*.

The Board has submitted all outstanding cost recovery cases to the FTB IIP for collection purposes. Future outstanding cases will be submitted to FTB IIP on a continual basis.

46. *Describe the board's efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.*

The Board does not have legal authority to order restitution.

Table 11. Cost Recovery

	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Total Enforcement Expenditures	$477,567	$485,956	$509,966	$513,111
Potential Cases for Recovery *	32	43	30	33
Cases Recovery Ordered	8	11	8	9
Amount of Cost Recovery Ordered	$55,387.20	$76,741.90	$48,428	$54,911
Amount Collected	$19,616	$27,070.40	$29,051.17	$31,534.05

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

Table 12. Restitution

	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Amount Ordered	n/a	n/a	n/a	n/a
Amount Collected	n/a	n/a	n/a	n/a

Public Information Policies

47. *How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?*

Yes, the Board uses the website as its primary source for educating and informing the public. Board materials, reports, new policies and Frequently Asked Questions (FAQs) are posted on the website. Board materials are posted prior to meetings. Approved Board minutes are posted once approved following the meeting. Without adequate administrative support staffing levels, this is an area that the Board still struggles to achieve consistency and timeliness.

48. *Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings?*

The Board webcasts its Board meetings and will begin webcasting its committee meetings. This is a change of policy for the Board to have public committee meetings and webcast all of its meetings. The Board understands that there is lots of interest in Board meetings throughout the state and nationally. Webcast meetings provide an excellent outreach opportunity to the public.

49. *Does the board establish an annual meeting calendar, and post it on the board's web site?*

No, the Board does not establish an annual meeting calendar. The Board schedules three-to-four meetings ahead of time to provide advance notice of meetings. Board meetings dates are posted on the website with their location.

50. *Is the board's complaint disclosure policy consistent with DCA's Recommended Minimum Standards for Consumer Complaint Disclosure? Does the board post accusations and disciplinary actions consistent with DCA's Web Site Posting of Accusations and Disciplinary Actions (May 21, 2010)?* Yes the Board's complaint disclosure policy is consistent with DCA's recommended Minimum Standards for Consumer Complaint Disclosure. Yes, all accusations and decisions are posted to the Board's website.

51. *What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?*

The Board shares a limited but useful amount of information with the public. Typically, the Board makes name, address of record, license number, license issue date and expiration, current license status and certain disciplinary actions available. This information is freely available to the public via the Board's website, via telephone or through U.S. mail.

52. *What methods are used by the board to provide consumer outreach and education?*

The Board uses its website as it source for consumer outreach and education. It posts all of its forms, answers to FAQs, alerts regarding new policies related to licensees and spouses on active duty in the military. It also has its exam statistics and all of its sunset review reports, Little Hoover Reports and Occupational Analysis. The Board held a town hall meeting in March 2013 in San Francisco on the issue of shifting to an English-Based CALE. The Board would like to hold more town hall meetings around the state on a wide variety of issues including the current 2013 Occupational Analysis for the CALE.

The Board would like to do more consumer outreach and education for licensees but has been unable to get additional staff for that purpose.

Section 7
Online Practice Issues

53. *Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate Internet business practices or believe there is a need to do so?* Acupuncturists are not allowed to practice online due to the methods of Traditional Chinese Medicine (TCM) examinations/diagnosis, along with other standards of practice that must be performed prior to providing treatment. The Board regulates online practice when a complaint is received and the allegations involve online practice or a review of the acupuncturist's business website is necessary in the investigation of a complaint. We have addressed online practice in the past by issuing a citation and fine. The prevalence of online practice is low.

Section 8
Workforce Development and Job Creation

54. What actions has the board taken in terms of workforce development?

The Board is planning to include questions on the occupational analysis that gathers information about income, job status using the Bureau of Labor Statistics questions. Acupuncture has not been included among the allied health professions in the Bureau of Labor Statistics. All occupational statistics have been unofficial by non-governmental organizations. This is an important area the Board could play a key role is producing official income data for California to better understand the workforce situation in the State.

55. Describe any assessment the board has conducted on the impact of licensing delays.

The Board has not had the staff to conduct an assessment.

56. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.

The Board is in regular communication with schools to answer their questions and make corrections to inaccurate counseling they may be providing students related to licensing requirements. Generally, schools prefer to refer students to the Board to answer licensing questions. Schools are very good at contacting the Board with questions about licensing, enforcement and education requirements.

57. Provide any workforce development data collected by the board, such as:

a. Workforce shortages

b. Successful training programs.

No such data has been collected. We hope to have some good data after the completion of the 2013 Occupational Analysis.

Section 9
Current Issues

58. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?

The Board approved proposed regulatory language at their October 25, 2013 Board meeting. At that meeting, the Board also voted to authorize staff to commence the rule making process. The Board plans to file the notice with the Office of Administrative Law (OAL) in November 2013.

59. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?

The prior Board had approved the proposed CPEI regulatory language in 2010 but had not authorized staff to commence the rule making process. At the October 25, 2013, the Board voted to direct staff to commence the rule making process for CPEI. The Board plans to file the notice with the Office of Administrative Law (OAL) in November 2013.

60. *Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.*

The Board implementation has been delayed to the third implementation group. The implementation date has been pushed back to 2015 or later. The Board was involved initially in being interviewed in 2011 about the needs and structure of the Board's data base needs. The EO monitors the progress of implementation.

Section 10
Board Action and Response to Prior Sunset Issues

Include the following:

1. *Background information concerning the issue as it pertains to the board.*
2. *Short discussion of recommendations made by the Committee/Joint Committee during prior sunset review.*
3. *What action the board took in response to the recommendation or findings made under prior sunset review.*
4. *Any recommendations the board has for dealing with the issue, if appropriate.*

2012 Sunset Review Issues

Issue #1: Board Administrative Issues:

Committee Concerns:

- *Board struggles with decision-making*
- *Six regulatory changes were approved by board, but not acted on or mentioned in Sunset Review Report: transfer credits; clinical training; repeal of non-English exam; and disciplinary guidelines.*
- *In 2009 the Board decided to make important changes regarding schools but ended up deferring to national organization and hasn't moved forward with dealing with problems surrounding schools.*
- *Board meeting materials insufficient, not available in timely manner for the public.*
- *Unclear whether committees meet.*
- *Board doesn't appear to follow or adhere to its 2007-12 Strategic Plan.*
-

Recommendations:

- *The Board should establish a tracking mechanism for approved regulatory changes and other instructions given to staff.*
- *The Board should use its committees in a more open and productive manner and explain history of cancelling meetings.*
- *The Board should update its strategic plan with specific action items and realistic target dates for how each of the objectives will be met.*
- *The Board should be given a written status report on the action plan at each board meeting.*
- *Board meetings should be webcast when feasible*
- *Board materials should provide sufficient information to permit board members to make informed decisions and the public's ability to understand issues discussed.*

BOARD RESPONSE. The Board has taken several of the committee's recommendations and implemented them. The Board has created a regulatory tracking system that lists all pending regulatory packages including the status of each regulatory package. This list was first introduced at the October 25, 2013 Board meeting and will be included at every meeting as a regulatory update. This list corrects an earlier list provided in the last sunset review, which did not accurately reflect Board approved regulatory packages. The prior list did not have a board action record that reflected Board approval of regulatory process. Now the Board has a system that keeps track of all board actions including regulatory actions.

The Board is implementing the committee's recommendation to have committees meetings be public. The Board agrees with the committee recommendation that committees function better with more members and when they are conducted in public. The Board held one Special Examination Committee meeting publicly to provide an open forum for the presentation of the Independent Review findings related to the August 2012 CALE. Although at the time of submitting this report, the new Board has not held any public committee meetings, it is the intention of the Board to do so moving forward.

The Board agrees with the committee's recommendation to have an action plan with regular updates that is incorporated into public meetings and materials. The newly appointed Board just completed and approved its new strategic plan that has a new mission, vision and strategic focus for the next five years. The Board will be working with its strategic planning consultants to create an action plan in February that will be a public document included in the Board packet with regular updates.

The Board webcasts all of its Board meetings to the extent that webcast capacity is available. It has webcast all of its Sacramento based Board meetings and is trying to webcast its other Board meetings around the state.

The Board agrees with the committee recommendation that informational materials need to be provided to facilitate informed Board policy discussion. Over the past year, the Board has increasingly provided issue memos for agenda items that provide background, overview and issue specific information. These memos provide both Board members and the public with key information needed to have an informed policy discussion that provides accurate terminology, explanation of policy issues and policy consequences or impact.

Chronic understaffing is a major barrier to improving the Board's overall performance in its functions and operations and ability to assist the Board members. Increasing staff so that

all functions are appropriately staffed is the top priority for the Board. The Board has the revenue to support the increase in staff, but just needs the position authority and expenditure authority to move forward. Board members continue to be frustrated with this process that is out of their control.

BOARD RECOMMENDATION: The Legislature should assist the Board in securing the staff it needs to perform its duties.

Issue #2: Quorum Problems:

Concerns: *Why is Board constantly in peril of losing it quorum?*

Recommendation:

- *Governor should appoint board members as soon as possible.*

BOARD RESPONSE. The quorum issues that occurred prior to the last Sunset Review in 2011 were the result of vacancies on the Board. The Governor subsequently made appointments and for a few months the Board was fully appointed without vacancies. The vacancies appear to occur with licensed members, which has a significant and negative impact on the Board's ability to conduct business and have meaningful policy discussions related to acupuncture. To function optimally, and move forward with committee work and regulatory and policy work; the Board needs all three of its licensed members appointed to conduct its business appropriately and optimally.

Issue #3: Board overly involved in scope of practice issues: is there a need for Board to be constantly involved in efforts to redefine scope of practice?

Recommendation*: Board should relinquish its role in trying to clarify scope of practice issues. Any scope of practice issues should be referred to Legislature since it appears the Board does not have the authority to broaden its scope of practice—that is the prerogative of the legislature.*

BOARD RESPONSE. The Board agrees that any scope of practice clarification must be done by the Legislature through legislation. While California has a robust Acupuncture Act, past Boards have struggled with trying to clarify the ambiguity in the Act when it comes to answering scope of practice issues. In the past, there has been confusion about the Board's authority to clarify scope of practice issues. Additionally, there has been some reliance on a legal opinion interpreting the scope of practice authorized by the Acupuncture Act. The Board agrees that it does not have the authority to make scope of practice changes or clarifications.

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 training in the practice of acupuncture and should schools of acupuncture be required to be accredited?

Recommendations:

Board should enter into MOU with BPPE.
At some future date, consideration could be given to eliminating CAB's school oversight role.

BOARD RESPONSE. The newly appointed Board has not had the time to discuss this issue. Most members were appointed in August 2013 and the Board has only had the opportunity to meet to create a new strategic plan. The former Board's terms expired June 1, 2013. So, the Board does not have a position at this time.

The Board has begun preliminary discussions about creating an MOU between BPPE and the Board.

Issue #5: Does Board have sufficient oversight of its continuing education program?

Concern: *Insufficient staffing has limited audit of CE credits only 300 out of 10,000 licensees.*

Recommendation:

- *The Board should review its CE approval and auditing process to determine if it has sufficient resources to operate effective oversight.*
- *Board should submit a BCP to obtain dedicated staff to conducting increased CE audits.*

BOARD RESPONSE. To address the deficiency cited in the last Sunset Review, the Board has in fact increased its oversight since the last sunset review by auditing 5% of the licensees. In FY 2012-13, the Board audited 600 licensees for the period that included the past four years. This conforms to the expectation the committee expressed was needed at the time of the last Sunset Review in 2011.

The Board followed the recommendation of the Legislature to submit a BCP for additional staff. The Board submitted two BCPs this past fiscal year requesting additional education oversight and enforcement staff. The first BCP, submitted in October 2012 for FY 13/14, was rejected by DCA. The second BCP, submitted in the spring 2013 for FY 2014/15, is pending. If approved, the Board will be able to hire an additional education staff to handle

the education oversight and enforcement duties of the Board. This additional staff will solve the workload barriers currently facing the Board.

The Board's new strategic plan has a strong focus on evaluating and improving continuing education oversight and requirements to improve competency of practitioners and protect the public safety of Californians. With additional staff, a new Board, and new strategic plan, the Board is poised to improve overall education oversight.

BOARD RECOMMENDATION: The legislature assist the Board in securing the additional staff it needs to perform its duties.

Issue #6: Should Board Utilize National Exam instead of the Current California only exam?

Concern:

Other states accept NCCAOM certification exam, CA is the only state that does not.

- *Exam translation compromises the standardization of the exam.*
- *Integrity of exam compromised through study guide.*
- *Is exam fee sufficient to cover exam costs?*

Recommendation:

- *Board needs to justify why CA only exam should continue to be used and why national exam is not sufficient.*
- *Address would national certification exam provide better reciprocity for out of state applicants wishing to practice in California.*

BOARD RESPONSE. The newly appointed Board has not had the time to discuss this issue. Most members were appointed in August 2013 and the Board has only had the opportunity to meet once to create a new strategic plan. The former Board's terms expired June 1, 2013. So, the Board does not have a position at this time.

The Board addressed several of the committee concerns in its August 2012 Exam Investigation and Independent Review of the findings. See Attachment C

The Board has already committed to conducting an audit of the NCCAOM exam to compare it to the CALE. That audit cannot be done prior to the completion of the Occupational Analysis. Discussion and decisions should be informed by this audit.

Issue # 7: Enforcement: Disciplinary Timeline Taking Too Long: Will Board be able to reach its goal of reducing the average disciplinary case time frame from 2.5 years to 12 months to 18 months?

Concern:

Enforcement time line taking too long.

Recommendation:

- *Continue to reduce the amount of time to process and close complaints*
- *A guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors*
- *Making case processing and Aging a major focus of the Board's Improvement plan*
- *Prioritize review of aging cases*
- *Establish reasonable elapsed time for each process*
- *Monitor performance by establishing regular oversight of case progress*
- *A policy or procedure for supervisory staff in performing case reviews should be established*
- *Board should develop a form to standardize 801 reports. The Board needs to explain why it took longer to file accusations than it did to take formal discipline action in 2009/10 and 2010/11.*

BOARD RESPONSE. Last year, with an interim EO, followed by a new EO and no enforcement staff person, the enforcement timeline dramatically increased. The Board has been playing catch-up with its enforcement time over the past year. Upon the return of enforcement staff, the backlog of cases and follow-up on all cases to ensure that old cases are not left in limbo and disciplinary action is actively being pursued was completed. A Staffing shortage has hampered enforcement. To improve both the enforcement timeline and expand enforcement, the EO has requested additional enforcement staff in two BCPs discussed earlier. The EO plans to have this new position focus on intake investigations, probation monitoring, and proactive enforcement actions such as searching the web for unlicensed activity as other Boards have had success at doing.

To improve enforcement, the EO has set up weekly meetings with enforcement staff to prioritize aging cases and make enforcement decisions on cases as they arise. This has resulted in eliminating any time delays in either referring cases for further investigation or evaluation or referring cases to the DOJ to commence disciplinary action. As the backlog cases get resolved, the performance measures should dramatically decrease. This EO has significantly decreased decision-making time for enforcement cases, which has also helped decrease overall enforcement time. One area of improved enforcement that will delay cases is the EO's decision to complete all needed investigation and expert review or pursue

disciplinary action on all old cases. All cases are viewed through the lens of doing what it takes to protect public safety even if that takes longer to accomplish.

The Board voted to direct staff to commence the rule making process to implement CPEI at the October 25, 2013 Board meeting. At this meeting, the Board also approved proposed language for the Uniform Standards for Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation, which replace the current disciplinary guidelines. The Board also voted to direct staff to commence the rule making process for this regulatory package as well. Once implemented these regulatory changes should streamline and improve the Board's enforcement.

The enforcement staff person has developed a standardized Form 801 and it will be posted on the website.

BOARD RECOMMENDATION: The Legislature assist the Board in authorizing additional enforcement staff and budget authority.

Issue # 8: Notice to Consumers Needed: Should Board Promulgate regulations Pursuant to a Statute Enacted in 1999, to require acupuncturists to inform patients that they are licensed by the Acupuncture Board?

Concern:

Recommendation:

- *Pursuant to Section 138 of the Business and Professions Code, the Board should adopt regulations to require acupuncturists to inform their patients that they are licensed by the Acupuncture Board.*
- *MBC recently promulgated regulations that require physicians and surgeons to inform their patients that they are licensed by the MBC and includes the Board's contact.*

BOARD RESPONSE. The Board intends to promulgate regulations to post such required notice pursuant to the BP section 138.

BUDGETARY ISSUES

Issue #9: Are Recent Licensing Fees Sufficient to Cover Board Costs?

Concern: *Once the loan is repaid, operating reserves will be reduced, does the Board need to consider fee increases to for ongoing budget support?*

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 programs.*

BOARD RESPONSE. The Board will at some future point have to consider raising fees for either renewals and/or the licensing examination, but currently the Board continues to operate with a surplus. While the Board does not currently have a structural deficit between revenues and expenditures, it may in the future. The Board's reserve and under-spending has been the result of being understaffed for the past decade. As staffing levels increase, staffing expenditures will increase, and it is anticipated that enforcement costs will increase as well and both may push expenditures beyond current revenues. If enforcement cost rise, there may need to consider a fee increase if the Board reaches a point in which its expenditures exceed its revenues. Currently, the Board's budget exceeds its revenues but because it does not expend its entire budget, it has not run into a deficit yet.

The other area that could increase expenditures is the licensing examination. The language translation and adaption accounts for two-thirds of exam costs. Since it appears the exam will continue to be offered in three languages, that will continue to be an expensive cost center for the board moving forward with any future changes to the exam. In exploring computer based testing, the Board is evaluating the cost of doing so in three languages. Additionally, computer based testing may require a significant increase in the item bank and exam development costs. The impact on staffing levels may also add to the cost of computer based testing.

There has been no increase in either the exam fee or renewal fee since they were set decades ago. The next two budget cycles will be key in determining the budget and fee considerations.

Issue #10: Lack of Staff Continues to Hamper the Board's Productivity. The Board should explain the negative impact of staff vacancies to its overall functions.

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.

BOARD RESPONSE. Understaffing has been an issue for the Board for the past decade. The Board has always had the revenue to add the staff it needs to perform its operations, but has never been given the position and expenditure authority to resolve this problem. The Board has weathered years of consecutive rounds of budget cuts, staffing-reduction drills and hiring freezes, all which were beyond the Board's control. Each year the Board has been reviewed by the Committee, staffing levels have been an issue that has remained unresolved.

Section 11
New Issues

This is the opportunity for the board to inform the Committee of solutions to issues identified by the board and by the Committee. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., legislative changes, policy direction, budget changes) for each of the following:

1. Issues that were raised under prior Sunset Review that have not been addressed.
2. New issues that are identified by the board in this report.
3. New issues not previously discussed in this report.
4. New issues raised by the Committee.

No new issues.

Section 12
Attachments

Please provide the following attachments:

A. Board's administrative manual.

B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).

C. Major studies, if any (cf., Section 1, Question 4**). Exam Investigation, Independent Review**

D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).

Appendices

Appendix A

Appendix A

BOARD OF ACUPUNCTURE

BOARD MEMBER ATTENDANCE REPORT 11/2011 – 11/2012

	2011	2012			
Board Member Name	NOVEMBER *Board Meeting (Sacramento)*	FEBRUARY *Board Meeting (Sacramento)*	MAY *Board Meeting (Sacramento)*	AUGUST *Board Meeting (Sacramento)*	NOVEMBER *Board Meeting (Sacramento)*
	11/17	2/16	5/17	8/9	11/15
BREWER, Robert	X	X	X	X	A
KIM, Charles	X	X	X	X	X
LEE, Anyork	X	X	X	X	X
SHI, Michael					X
WEDEMEYER, George	X	X	X	X	X
WEISMAN, Paul	X	X	X	X	X

X = Present
A = Absent
R = Retired

Appendix A

BOARD OF ACUPUNCTURE

BOARD MEMBER ATTENDANCE REPORT 01/2013 – 10/2013

	2013						
Board Member Name	**FEBRUARY** Board Meeting (Sacramento)	**APRIL** Notice of Exam Review Committee Meeting (Sacramento)	**MAY** Board Meeting (San Francisco)	**AUGUST** Board Meeting	**SEPTEMBER** Strategic Planning Meeting (Sacramento)	**OCTOBER** Board Meeting (Sacramento)	**NOVEMBER** Board Meeting (Los Angeles)
	2/19	**4/22**	**5/23**	**8/22**	**9/13**	**10/24-10/25**	**11/14**
BREWER, Robert	X	A	A	CANCELLED – No New Board Appointed			
KIM, Charles	X	X	X				
LEE, Anyork	X	X	X				
PRIEBE, Ted	X						
SHI, Michael	X	X	X		X		
WEDEMEYER, George	X	A	X				
WEISMAN, Paul	X	A	X				
AGUINALDO, Hildegarde					X		
CHAN, Kitman					X		
HSIEH, Francisco					X		
KANG, Jeannie					X		
ZAMORA, Jamie					X		

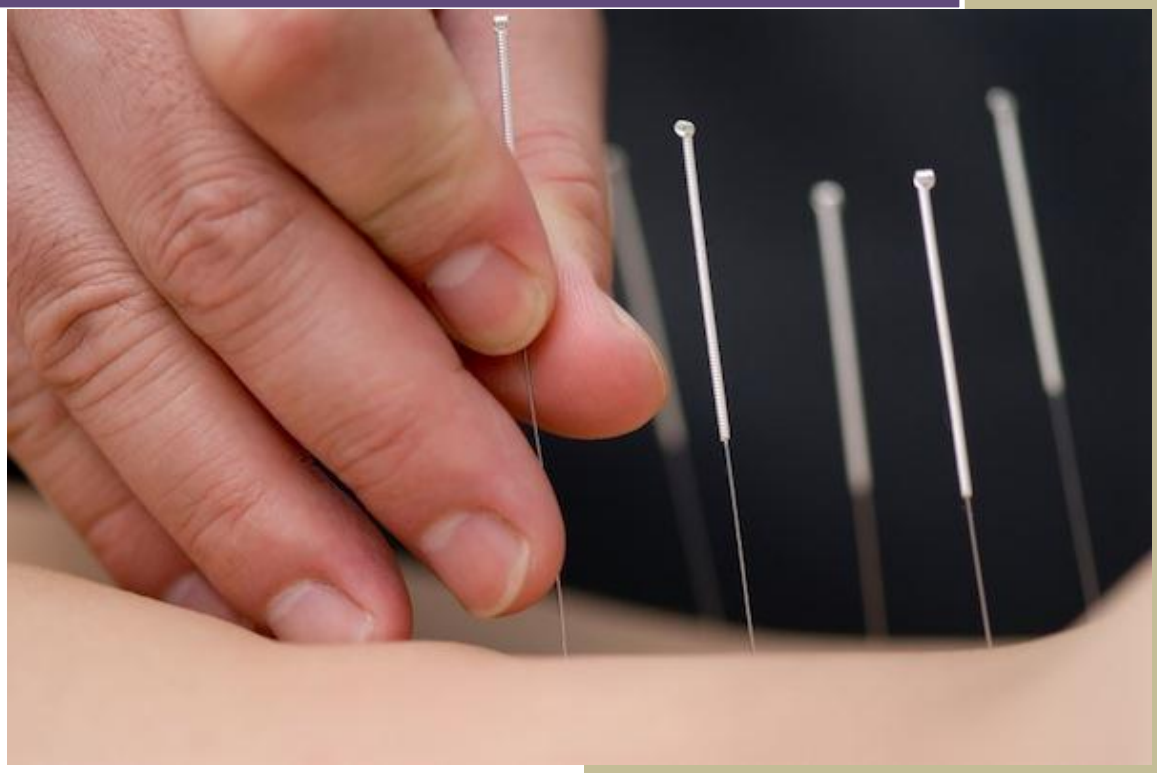
X = Present
A = Absent
R = Retired

Appendix B

State of California

Board of Acupuncture

2013-2017



Strategic Plan

MEMBERS OF THE CALIFORNIA ACUPUNCTURE BOARD

Nian Peng "Michael" Shi, L.Ac., Chair

Kitman Chan, Vice-Chair

Hildegarde Aguinaldo, J.D., Public Member

Jeannie Kang, L.Ac., Licensed Member

Francisco H. Hsieh, Public Member

Jamie Zamora, Public Member

Terri A. Thorfinnson, J.D., Executive Officer

MESSAGE FROM THE BOARD CHAIR

On behalf of the California Acupuncture Board (CAB), I want to thank everyone involved in the strategic planning development process for their vision, strong effort and commitment to the CAB's role as regulator, facilitator, and leader in the field of Acupuncture in the State of California.

This plan reflects the CAB's commitment to work in partnership with the Acupuncture community including, the public, licensees, government, as well as educational providers. It is the result of input from and consultation with the Board staff, the public, and the profession.

This Strategic Plan is the cornerstone for the CAB as we move into the next five years of our mission as one of the leading regulatory agencies of the Acupuncture profession. It builds on some of the foundations of our Strategic Plan 2007-2012, which guided the CAB's work up until now. We believe the new plan offers a roadmap to the future with clear focus on building the basic framework for the regulation and oversight of the Acupuncture profession. We look forward to the mission ahead as we deliver on our Strategic Plan for 2013-2017 and meet the challenges and opportunities that are ahead.

NIAN PENG “Michael” SHI, L.Ac.

CHAIR

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ABOUT THE CALIFORNIA ACUPUNCTURE BOARD

The California Acupuncture Board (CAB) has evolved over the years as a state licensing entity for acupuncturists and progressed into a semi-autonomous decision-making body. Initially, in 1972, acupuncture was regulated by the Acupuncture Advisory Committee under the jurisdiction of The Board of Medical Examiners (i.e., Medical Board of California). In 1980, the Committee was replaced with the Acupuncture Examining Committee within the Division of Allied Health Professions. In 1999, the Committee became the Acupuncture Board, solely responsible for licensing and regulating the practice of acupuncture and Oriental medicine in the State of California.

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. Under the Department of Consumer Affairs, the Board promotes safe practice through the improvement of educational training standards, continuing education, administering the California Acupuncture License Examination (CALE), enforcement of the Business and Professions (B&P) Code, and public outreach. The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. The Acupuncture Licensure Act commences with the B&P Code, Section 4925 et seq., and the Board is authorized to adopt regulations that appear in Title 16, Division 13.7, of the California Code of Regulations (CCR). The Board regulates over 11,000 licensed acupuncturists and establishes standards for approval of institutions and colleges that offer education and training programs in the practice of acupuncture and Oriental medicine.

The Board consists 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. 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, which assists Board members in their critical role as policy and decision makers in disciplinary hearings, approval of new schools, contracts, budget issues, legislation and regulatory proposals.

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 at least two Board members who are charged with gathering public input, exploring alternatives to the issues, and making a recommendation to the full Board.

The Acupuncture Board has four committees as follows:

Committee	Responsibilities
Executive Committee	Address issues related to expenditures/revenue/fund condition, executive officer selection/evaluation, legislation/regulations, committee policy/procedures, and special administrative projects.
Education Committee	Address issues related to acupuncture educational standards, school application and approval process, tutorial programs, and continuing education.
Examination Committee	Address issues related to development and administration contracts, administration, and miscellaneous issues.
Enforcement Committee	Address enforcement issues, propose regulations, policies, and standards to ensure compliance with the Board's statutes and regulations.

The Board appoints an Executive Officer to oversee a staff of seven full-time staff and three part-time staff that support six major Board functions: licensing, exam, education – enforcement and school oversight, enforcement, and regulatory.

- Licensing Unit is responsible for issuing licenses and processing initial applications and renewals, fingerprint/live scans, ensuring continuing education compliance and other related functions.
- Exam Unit processes and evaluates all exam applications from graduates of California approved schools and accredited foreign schools, processes ADA special accommodations, oversees exam development and actual exam offered twice a year, releases exam results, analyzes results and posts to

the Board's website exam statistics by school, first time, and repeat test takers.

- Education has two units: School Oversight and Enforcement. The School Oversight Unit approves and monitors schools and conducts site visits. The Education Enforcement Unit monitors schools for compliance, approves continuing education courses and providers, and conducts audits of continuing education compliance among licensees.
- Enforcement Unit processes and investigates complaints or conviction reports. Cases are referred for further investigation and evaluation by subject matter experts (SMEs) for standards of care and patient safety. The Executive Officer determines which disciplinary actions to pursue or issues citations based on the results of investigations. Disciplinary actions are posted on the website for consumer protection.
- Regulatory unit prepares regulatory packages, monitors legislation, and pursues Board sponsored legislation.
- Administration unit handles purchasing, personnel, fiscal duties, and travel reimbursement for the office.

Together, all of these functions protect the health and safety of Californians. Enforcement efforts protect consumers from licensed and unlicensed individuals who engage in fraudulent, negligent, or incompetent acupuncture practice. Education oversight and enforcement protects consumers from unqualified licensees providing care that may harm health and public safety. Similarly, the California Acupuncture Licensing Exam protects the public by evaluating the competence of those seeking to be licensed to practice in the California.

The Board's acupuncture curriculum requirements include completion of 3,000 hours of theoretical and clinical training from a Board approved school within the United States or accredited foreign school or completion of the Board approved Tutorial Training Program.

To be eligible to sit for the CALE, applicants must demonstrate that they have either graduated from a Board approved tutorial program or completed the required coursework from either a Board approved school or accredited foreign school.

Consumers are also protected by the Board's ongoing professional requirements for licensees. Licensees are required to renew their license every two years and are

required to complete 50 hours of continuing education as a condition of licensure renewal.

The Board is committed to fulfill its statutory and regulatory mandates, mission and vision. The Board continually re-evaluates its business operations and systems, improves its infrastructure and explores new ways of doing business and delivering its services. The Board is continually committed to increasing the quality and availability of services it offers to stakeholders.

SIGNIFICANT BOARD ACCOMPLISHMENTS

As a part of strategic planning, the Board evaluated its previous strategic plan goals and identified which objectives were accomplished. The following are the significant Board accomplishments since the 2007 strategic plan was adopted.

Adopted Regulations Improving Continuing Education Standards
In 2007-2008, the Board evaluated continuing education standards and implemented the following regulatory changes:

- Categorized all continuing education coursework requirements into two categories. Category one are coursework requirements related to clinical matters or the actual provision of health care to patients. Category two is coursework unrelated to clinical matters or the actual provision of patient care. There is no limitation in the number of category one coursework that can be counted towards the continuing education requirement. Category two coursework is limited to five hours that can count toward the requirements.

- Increased the number of continuing education hours from 30 to 50 hours every two years. Although this change was approved by the Board in 2006, the work was completed and implemented during 2007-2008.

- Clarified and defined eligible distance learning coursework that would meet continuing education requirements. A streamline application process for distance learning was created that required an online course for providers to submit the exam in addition to the regular C.E. application requirements. Distance learning was allowed to account for 50% of continuing education requirements.

Enforcement and Licensure Regulatory Changes

- In 2010, the Board implemented retroactive fingerprinting requirements for licensees who were initially licensed prior January 1, 2001, as a condition of license renewal.

- The Board adopted regulations in 2011 to create a licensure exemption for Sponsored Free Health Care Events. This is a pending regulation package.

- In 2013, the Board approved the regulatory requirement that Acupuncturists must include their license number in all of their advertisements. This is a pending regulatory package.

- In 2012, the Board adopted continuing education requirements that licensees must take no less than four hours of professional ethics coursework. This is a pending regulatory package.

Improved the Board's Education Enforcement Process

- The Board resumed site visits for schools seeking initial program approval and education enforcement. The site visit team was reengineered to include a licensed subject matter expert or licensed Board member to assist in the evaluation of curriculum standards compliance.

- The Board increased the number of continuing education desk audits to a random sampling of 5% of licensees to ensure compliance.

- The Education Enforcement Unit is collecting data by school on exam application irregularities including questionable transcripts, transfer credit violations, and abuse of course-in-progress credits.

Improved Administration of the California Acupuncture Licensing Exam (CALE)

- The Board conducted a comprehensive evaluation of the August 2012 California Acupuncture Licensing Exam (CALE) and determined it to be validated, credible, and reliable, and not the cause of the low pass rate.

- The Board adjusted the exam calendar to allow more time to evaluate transcripts to ensure accuracy and to meet exam administrators' preparation timeline.

- The Board tightened exam security to ensure fair testing.

- The Board posted multi-lingual exam guides to the website to ensure applicant understanding of the exam process and security protocols.

Improved Board Administration

- The Board improved customer service to Board callers by shifting call center responsibility to the Department of Consumer Affairs (DCA)'s Consumer Information Center. This allows the Board to better handle the high call volume and provide callers with improved service by minimizing voicemail overflow and call wait times.

- In November 2012, the Board expanded stakeholder accessibility to Board meetings by webcasting all Sacramento-based public meetings to maximize licensee and consumer access to Board discussions, decisions, and actions.

OUR VISION

A California with the greatest health and well-being through access to excellent primary health care in acupuncture.

OUR MISSION

To protect, benefit, and inform the people of California by exercising the licensing, regulatory, and enforcement mandates of the Acupuncture Licensure Act and Acupuncture Regulations.

OUR VALUES

CONSUMER PROTECTION
We make effective and informed decisions in the best interest and for the safety of Californians.

EXCELLENCE
We support outstanding achievement in our employees, driven by a passion for quality, as we strive for continuous improvement. Teamwork is demonstrated at all levels through cooperation and trust by working with and soliciting the ideas and opinions of stakeholders, consumers, and staff.

RESPECT
We value and celebrate California's ever-changing cultural and economic diversity. We are responsive, considerate, and courteous to all stakeholders.

LEADERSHIP
We strive to set the standard for professional regulation by creating, communicating, and implementing inspirational visions for results.

SERVICE
We serve the needs of the public with integrity and through meaningful communication. We are professional and responsive to the needs of our stakeholders.

ACCOUNTABILITY

We operate transparently and encourage public participation in our decision-making whenever possible. We accept personal responsibility for our actions, exemplifying high ethical standards, always striving to improve our effectiveness.

INTEGRITY

We are honest, fair, and respectful in our treatment of everyone by honoring the dignity of each individual. We foster long-term relationships with stakeholders and employees through open, authentic communication, earning trust by demonstrating a commitment to ethical conduct and responsibility.

GOAL 1: LICENSING

Promote licensing standards to protect consumers and allow reasonable access to the profession.

1.1 Work with the Department of Consumer Affairs executive team to resolve cashiering issues causing licensing delays.*

**Objectives for each goal area are listed in order of priority.*

GOAL 2: ENFORCEMENT

Protect the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.

2.1 Review disciplinary guidelines and regulatory standards to determine if standards need revision.

2.2 Strengthen the Board's enforcement authority through Implementation of Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Probation, and the Consumer Protection Enforcement Initiative.

2.3 Seek legislation to expand non-complaint based clinic inspection authority to further public protection.

2.4 Determine feasibility of strengthening the recertification process for reinstatement of an inactive license to further public safety. Promulgate regulations to do so, if found feasible.

GOAL 3: EDUCATION

Advance higher education standards to increase the quality of education and ensure consumer protection.

3.1 Evaluate curriculum standards to ensure professional qualification and public safety. The Board will evaluate whether financial standards for schools are needed.

3.2 To ensure that students are qualified to successfully complete Acupuncture training programs, the Board will explore increasing initial licensure qualifications to a Bachelor's degree or set a score for the Medical College Admission Test (MCAT).

3.3 The Education Committee will evaluate school courses and course materials to ensure compliance with the Board's curriculum requirements.

3.4 Promulgate regulations to require international applicants and students attending non-English track schools to pass the TOEFL exam before being eligible to sit for the California Acupuncture Licensing Exam (CALE).

3.5 The Education Committee will evaluate the feasibility of enhancing school curriculum regulations by adding a required course in Standardized Acupuncture terminology.

GOAL 4: PROFESSIONAL QUALIFICATIONS

Improve continuing education and examination standards to ensure excellence in practice and promote public safety.

4.1 Evaluate the approved continuing education course list and create a defined scope for continuing education coursework that focuses on improving practice knowledge, best practices, and updated research.

4.2 Formalize the continuing education audit process of the Education Committee's review of potentially non-compliant continuing education courses and providers.

4.3 Review past occupational analysis studies to identify improvements to the evaluation process and implement those improvements during the next analysis.

4.4 Evaluate the CALE exam to ensure continued test validity and security.

GOAL 5: OUTREACH

Inform consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.

5.1 Form a Licensee Education Committee to create educational materials for licensees and a "What You Need to Know" educational series that will be accessible from the website.

5.2 Increase outreach to interested stakeholders by leveraging cost-effective technology to increase understanding of the Acupuncture profession and the Board.

5.3 Work collaboratively with state and national professional associations to increase awareness of the Board's functions.

5.4 Educate stakeholders on requirements of the Affordable Care Act and the implications for electronic records management.

5.5 Modify the Board's website to ensure accessibility and increase usability.

GOAL 6: ADMINISTRATION

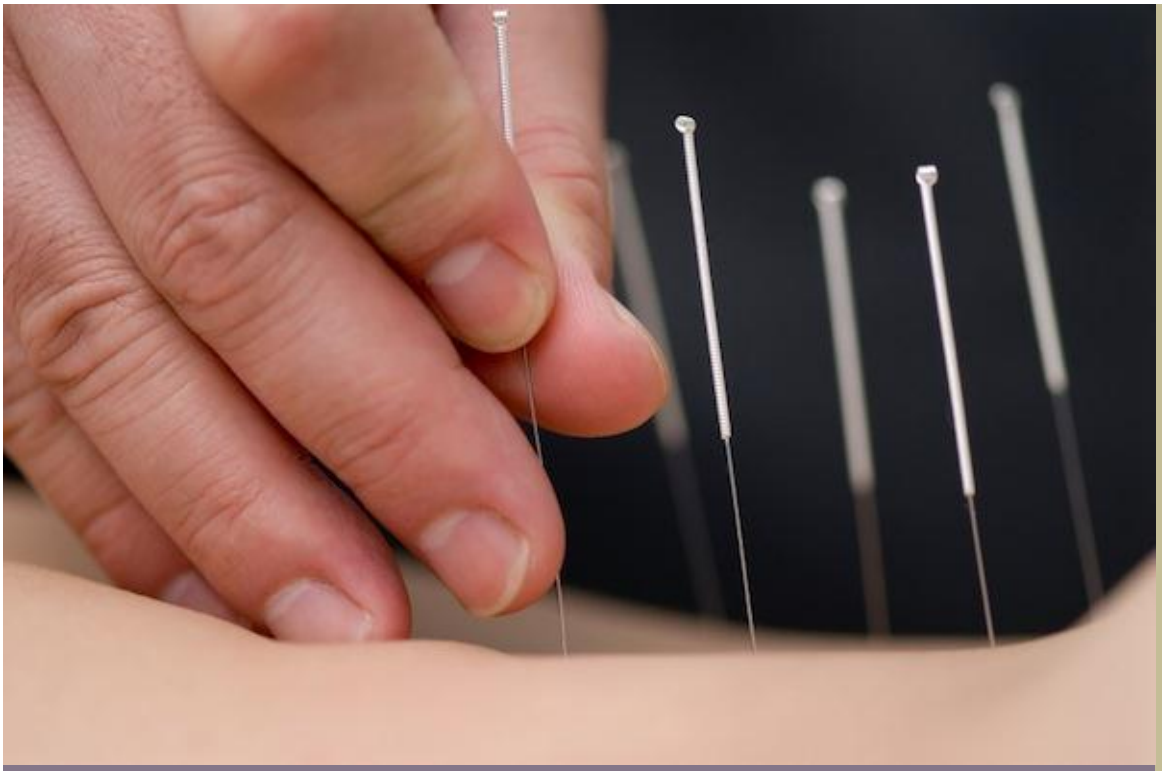
Build an excellent organization through proper Board governance, effective leadership, and responsible management.

6.1 Ensure adequate staffing levels within all areas of the Board to fulfill the Board's mandate and achieve Board goals.

6.2 Establish an ongoing working report of pending regulatory projects and priorities to inform the Board, the legislature, and the public of the ongoing status of these projects.

6.3 Create targeted training for new Board members to provide further details on Board and government processes.

6.4 Develop desk manuals for all Board functions to ensure proficiency, performance, and for succession planning.



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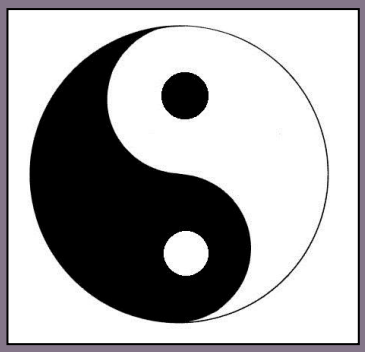


Appendix C

Department of Consumer Affairs

State of California
Acupuncture Board

Performance Measures

Annual Report *(2010 – 2011 Fiscal Year)*

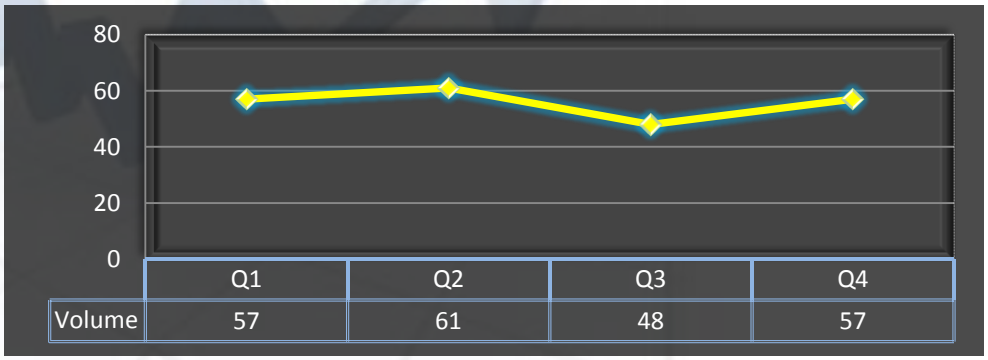
To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures are posted publicly on a quarterly basis.

This annual report represents the culmination of the first four quarters worth of data.

Volume

Number of complaints and convictions received.

The Board had an annual total of 223 this fiscal year.

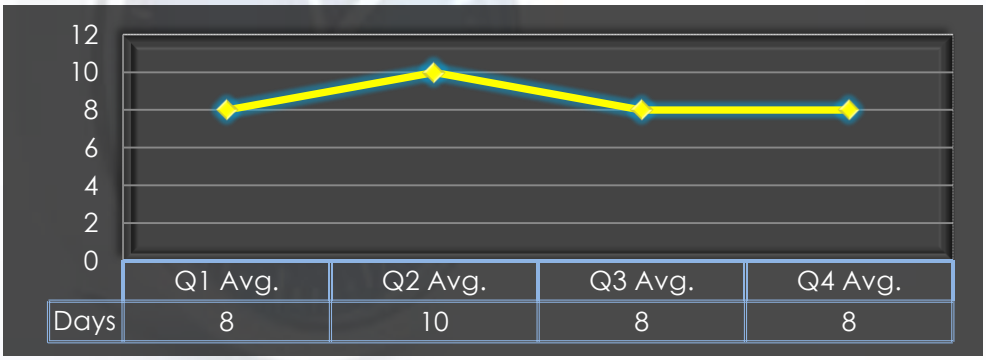


	Q1	Q2	Q3	Q4
Volume	57	61	48	57

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

The Board has set a target of 10 days for this measure.

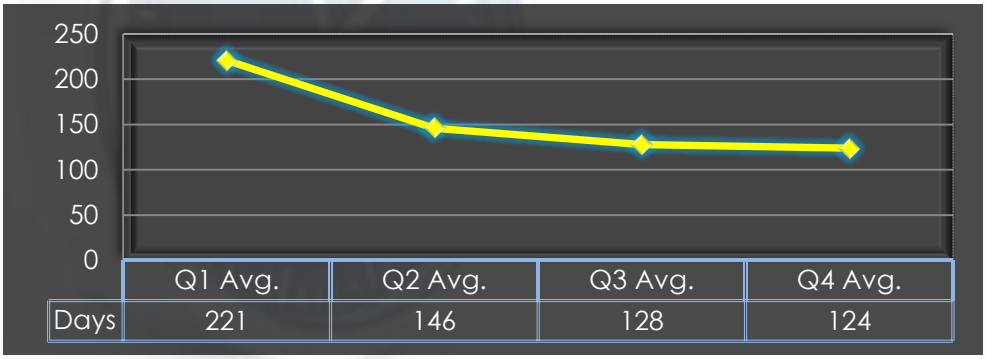


	Q1 Avg.	Q2 Avg.	Q3 Avg.	Q4 Avg.
Days	8	10	8	8

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

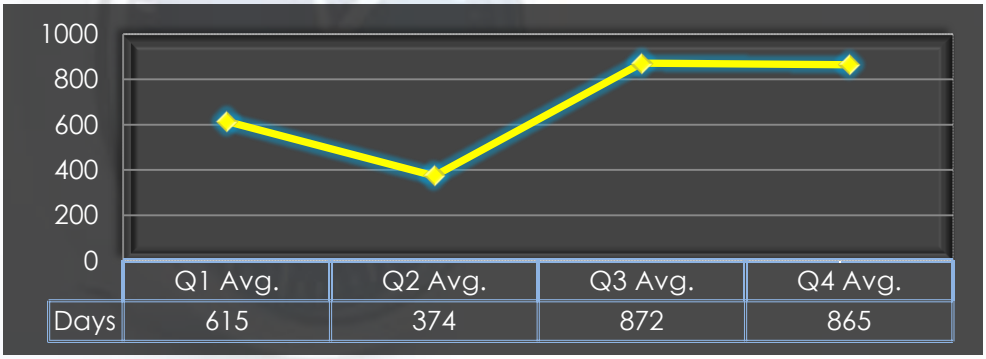
The Board has set a target of 200 days for this measure.



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

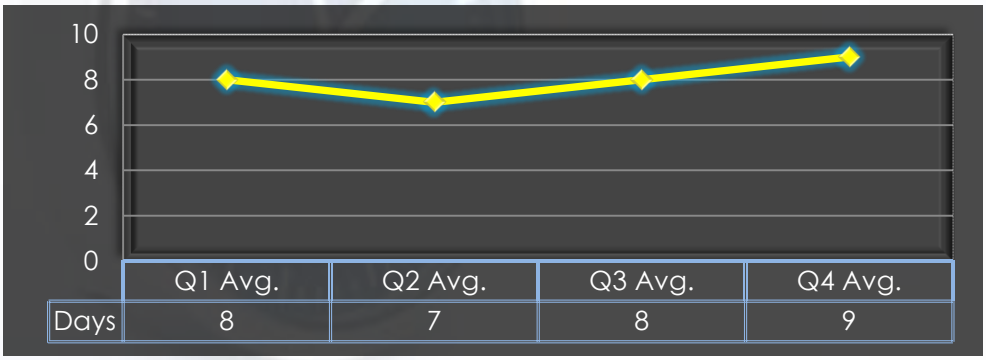
The Board has set a target of 540 days for this measure.



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

The Board has set a target of 10 days for this measure.



Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board has set a target of 10 days for this measure.

Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q4 Report *(April - June 2011)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These measures are being collected internally and will be released once sufficient data is available.

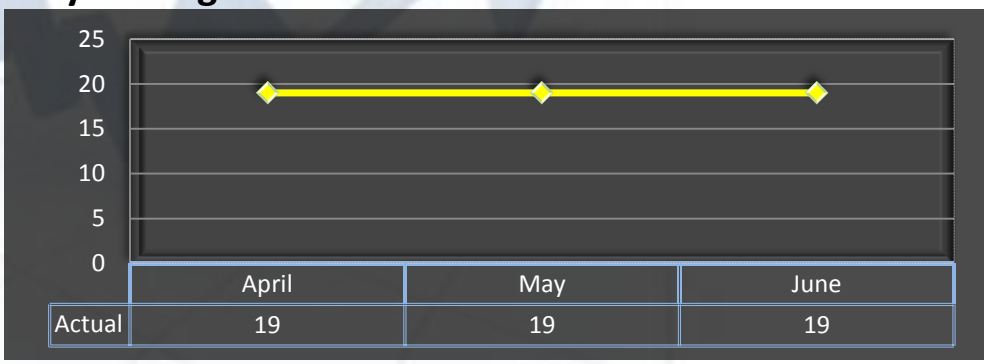
Volume

Number of complaints and convictions received.

Q4 Total: 57

Complaints: 30 Convictions: 27

Q4 Monthly Average: 19

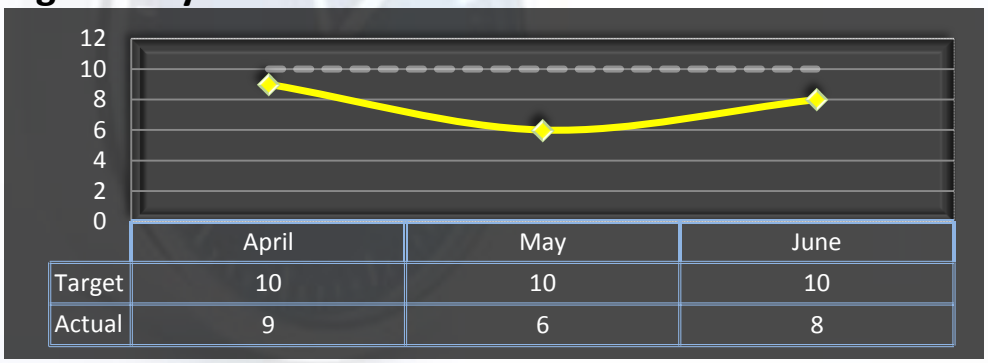


Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q4 Average: 8 Days

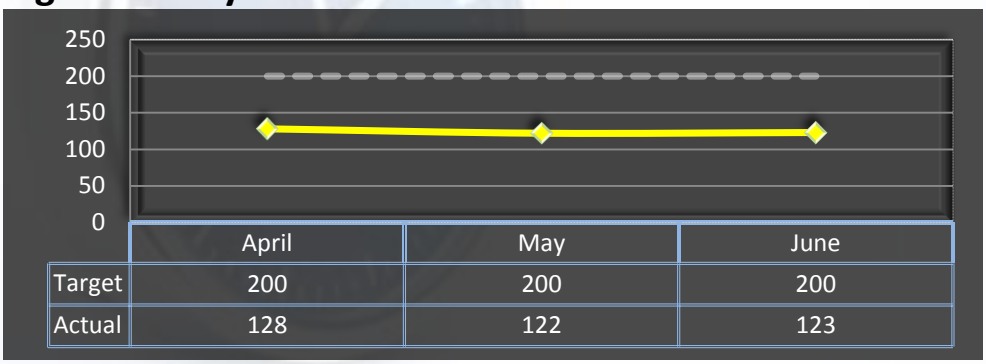


Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q4 Average: 124 Days



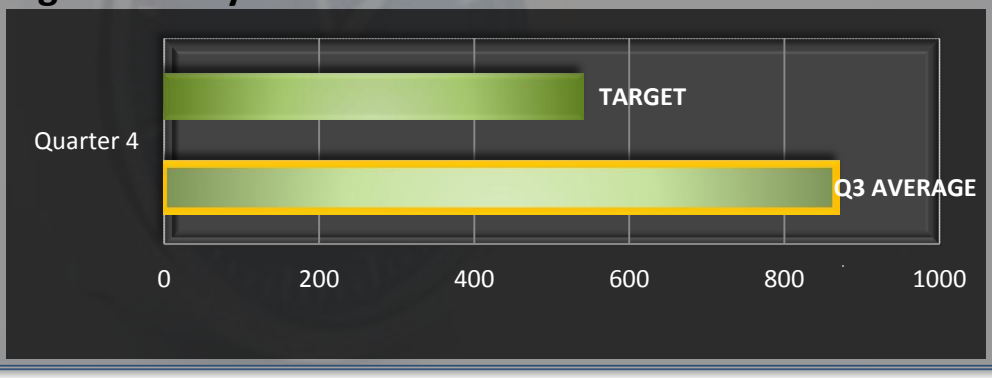
	April	May	June
Target	200	200	200
Actual	128	122	123

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q4 Average: 864 Days

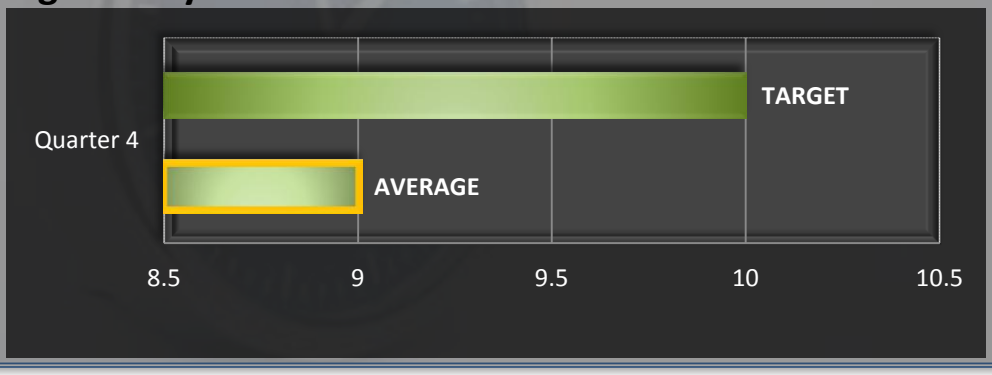


Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q4 Average: 9 Days

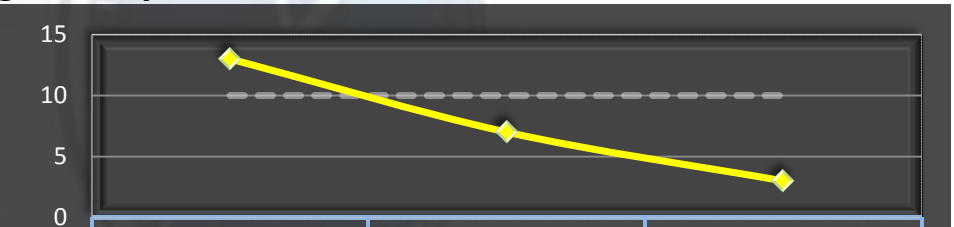


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q4 Average: 9 Days



	April	May	June
Target	10	10	10
Actual	13	7	3

Department of Consumer Affairs

Acupuncture Board

Performance Measures

Q3 Report *(January - March 2011)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These measures are being collected internally and will be released once sufficient data is available.

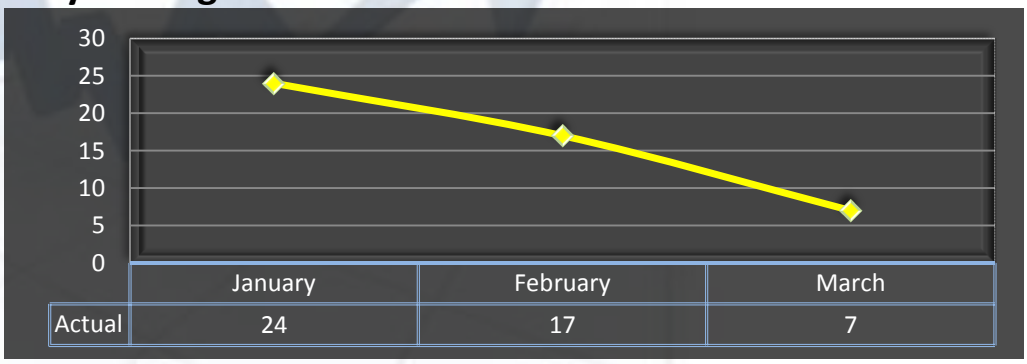
Volume

Number of complaints and convictions received.

Q3 Total: 48

Complaints: 27 Convictions: 21

Q3 Monthly Average: 16



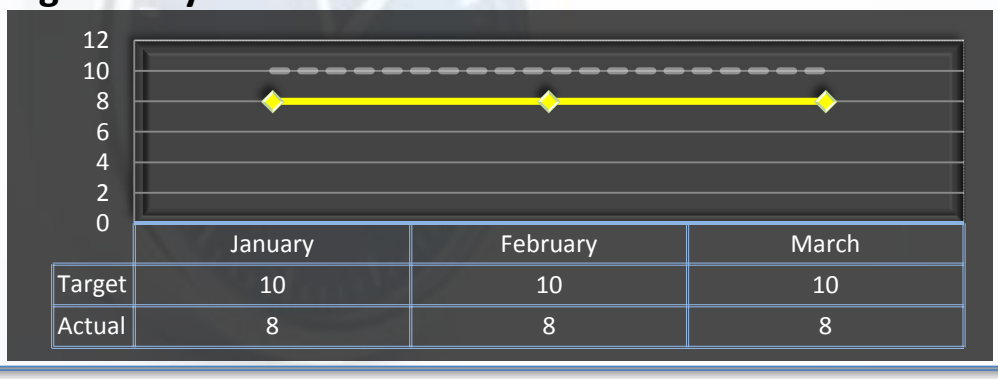
	January	February	March
Actual	24	17	7

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q3 Average: 8 Days



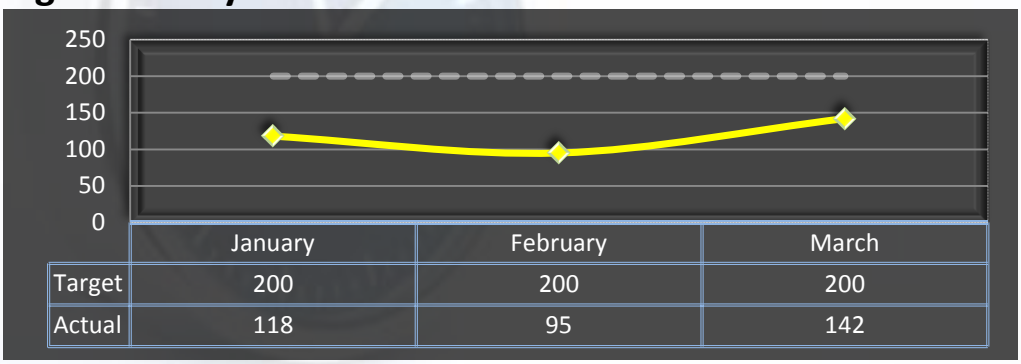
	January	February	March
Target	10	10	10
Actual	8	8	8

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q3 Average: 128 Days



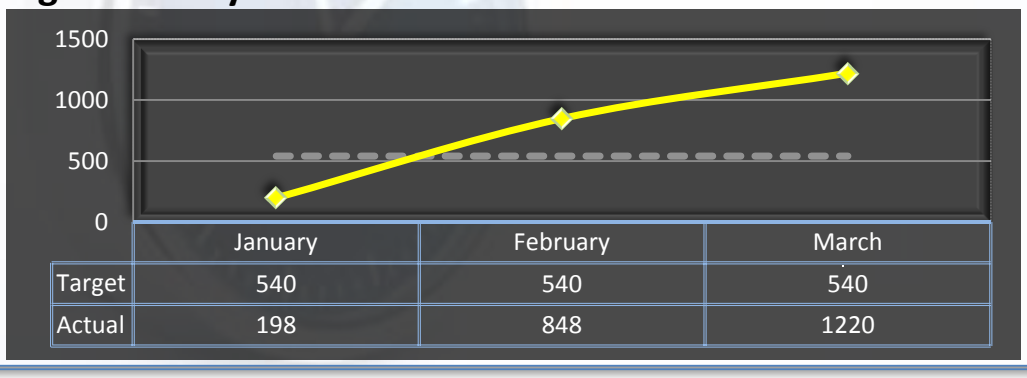
	January	February	March
Target	200	200	200
Actual	118	95	142

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q3 Average: 872 Days



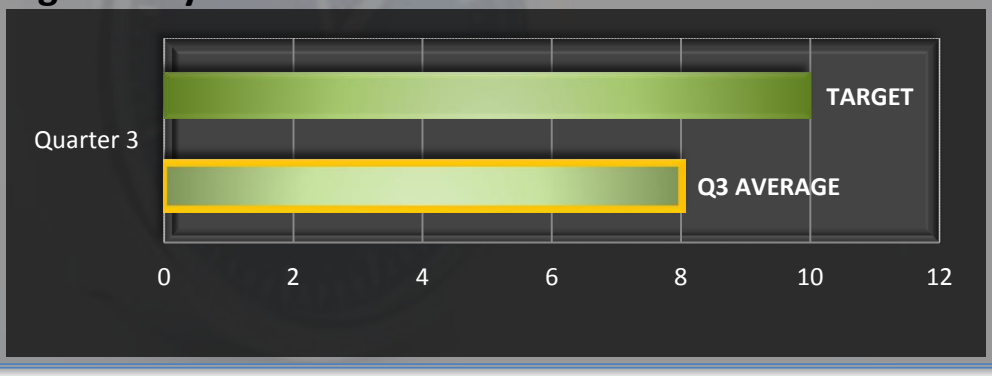
	January	February	March
Target	540	540	540
Actual	198	848	1220

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q3 Average: 8 Days

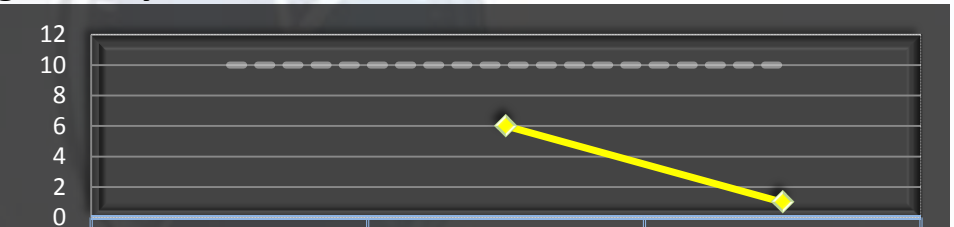


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q3 Average: 4 Days



	January	February	March
Target	10	10	10
Actual		6	1

Department of Consumer Affairs

Acupuncture Board

Performance Measures

Q2 Report *(October - December 2010)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These measures are being collected internally and will be released once sufficient data is available.

Volume

Number of complaints and convictions received.

Q2 Total: 61

Complaints: 42 Convictions: 19

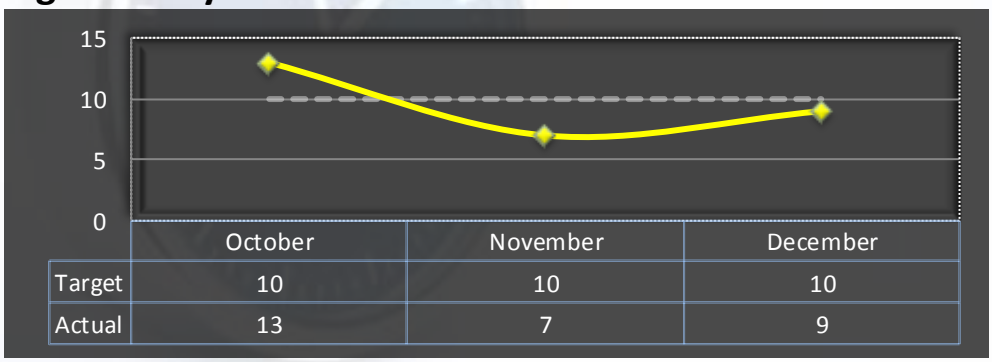
Q2 Monthly Average: 20

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q2 Average: 10 Days



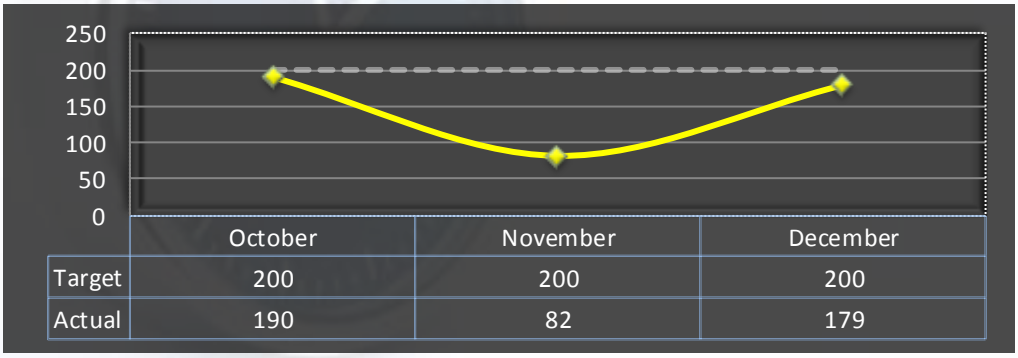
	October	November	December
Target	10	10	10
Actual	13	7	9

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q2 Average: 146 Days



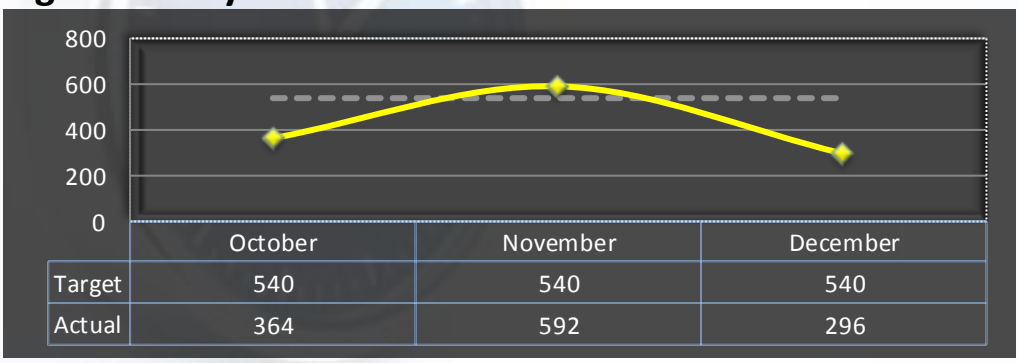
	October	November	December
Target	200	200	200
Actual	190	82	179

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: 374 Days



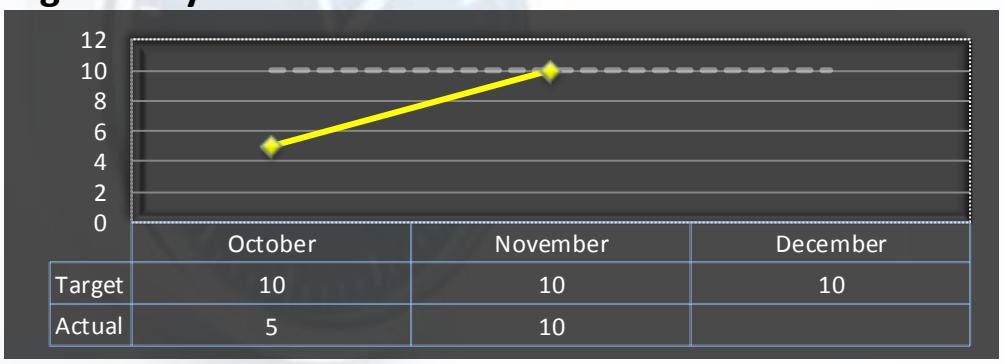
	October	November	December
Target	540	540	540
Actual	364	592	296

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q2 Average: 7 Days



	October	November	December
Target	10	10	10
Actual	5	10	

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q2 Average: 1 Day

	October	November	December
Target	10	10	10
Actual		2	1

Department of Consumer Affairs

Acupuncture Board

Performance Measures

Q1 Report *(July - Sept 2010)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement.

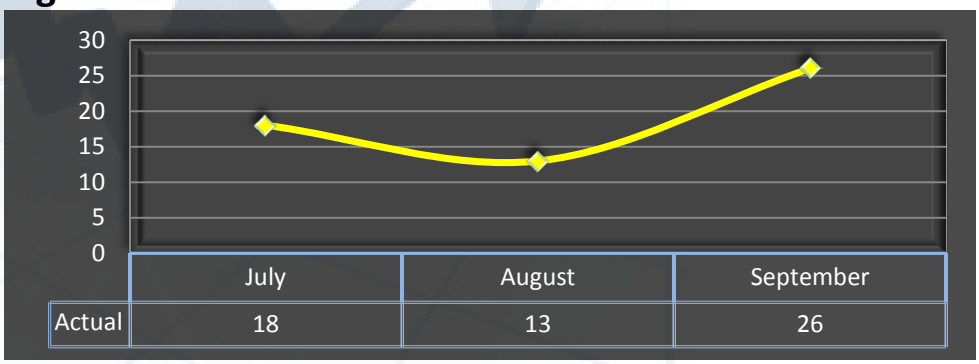
These measures will be posted publicly on a quarterly basis. In future reports, additional measures, such as consumer satisfaction and complaint efficiency, will also be added. These measures are being collected internally and will be released once sufficient data is available.

Volume

Number of complaints received.*

Q1 Total: 57 ***(Complaints: 34 Convictions: 23)***

Q1 Average: 19



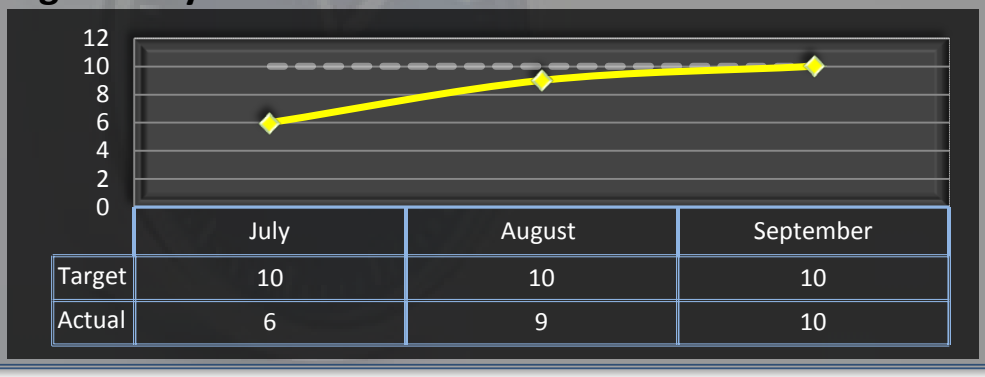
	July	August	September
Actual	18	13	26

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q1 Average: 8 Days



	July	August	September
Target	10	10	10
Actual	6	9	10

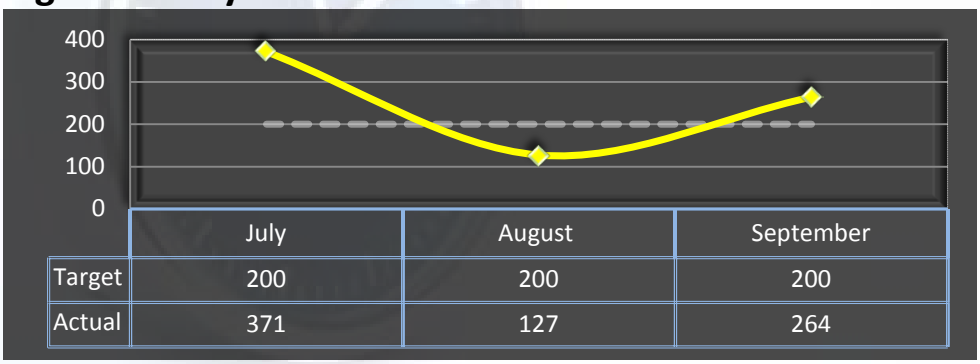
***"Complaints" in these measures include complaints, convictions, and arrest reports.**

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q1 Average: 221 Days



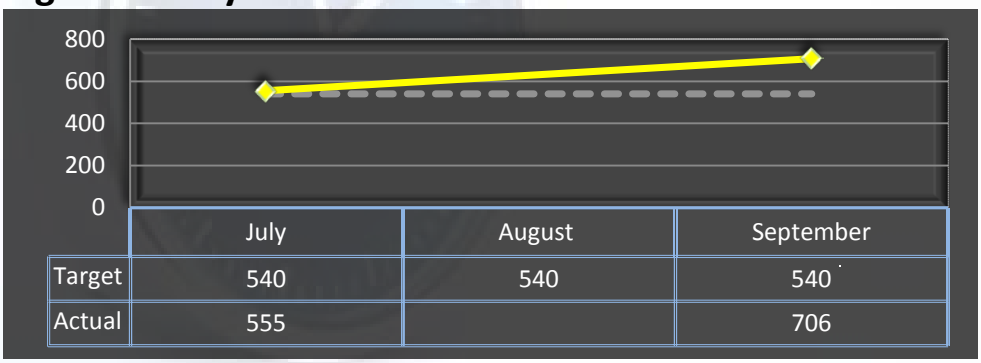
	July	August	September
Target	200	200	200
Actual	371	127	264

Formal Discipline

Average cycle time from complaint receipt to closure, for cases sent to the Attorney General or other forms of formal discipline.

Target: 540 Days

Q1 Average: 615 Days



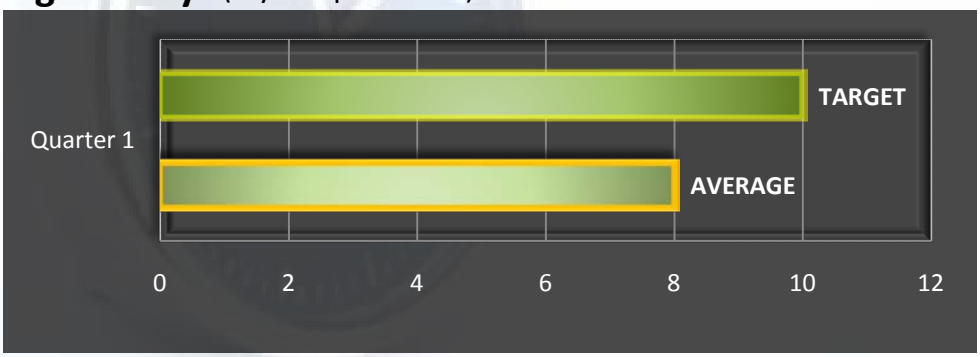
	July	August	September
Target	540	540	540
Actual	555		706

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q1 Average: 8 Days **(only 1 data point available)**

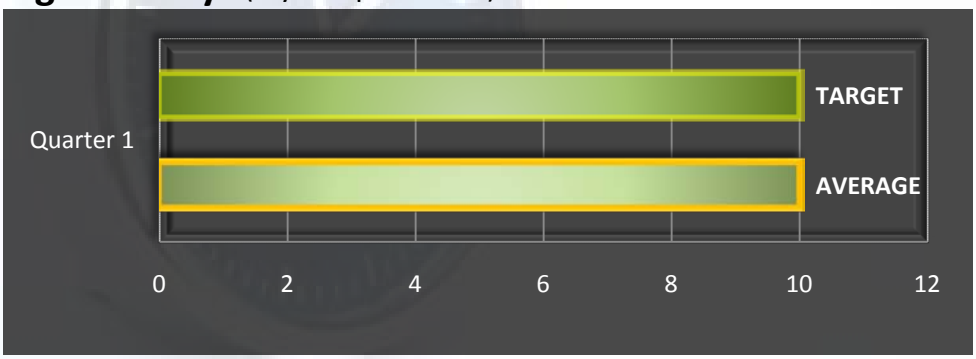


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q1 Average: 10 Days **(only 1 data point available)**



Department of Consumer Affairs

State of California

Acupuncture Board

Performance Measures

Annual Report *(2011 – 2012 Fiscal Year)*

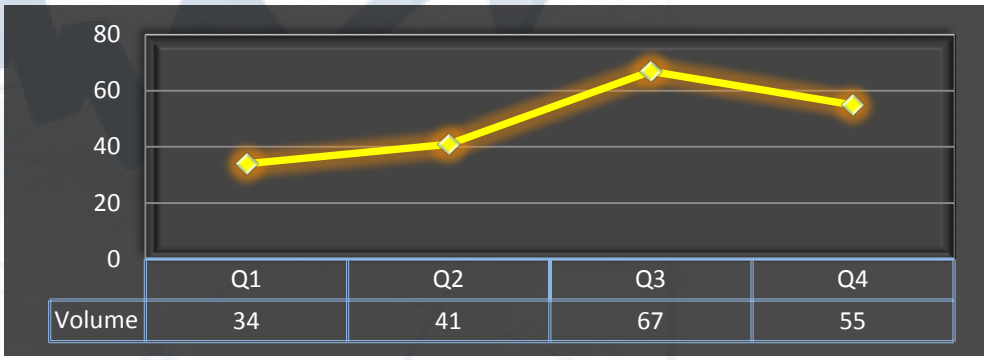
To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures are posted publicly on a quarterly basis.

This annual report represents the culmination of the first four quarters worth of data.

Volume

Number of complaints and convictions received.

The Board had an annual total of 197 this fiscal year.

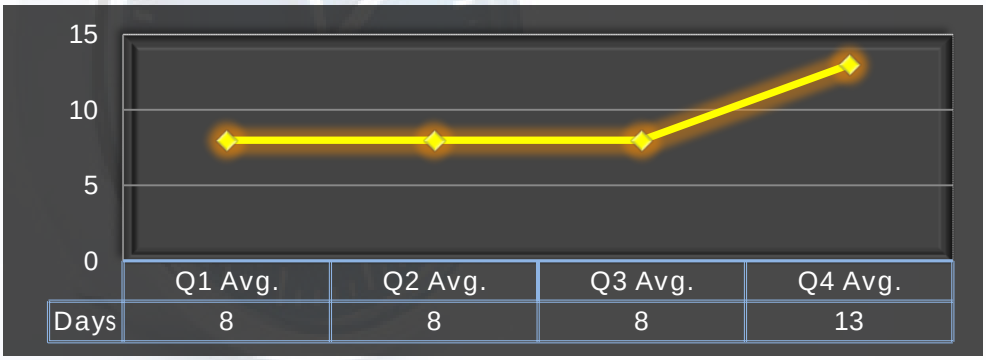


	Q1	Q2	Q3	Q4
Volume	34	41	67	55

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

The Board has set a target of 10 days for this measure.

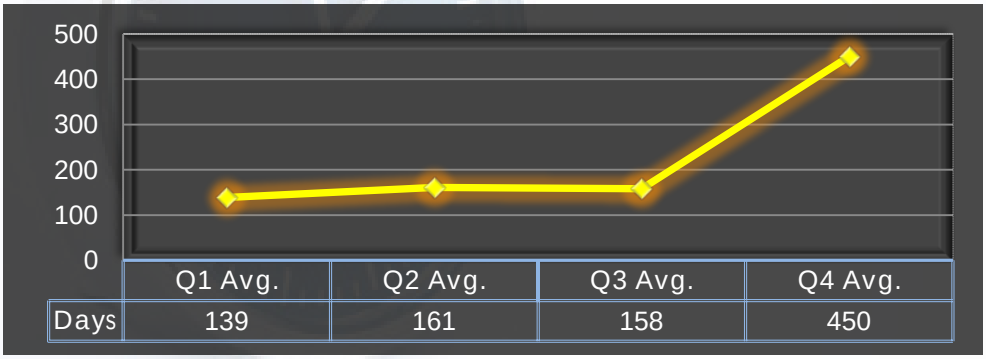


	Q1 Avg.	Q2 Avg.	Q3 Avg.	Q4 Avg.
Days	8	8	8	13

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

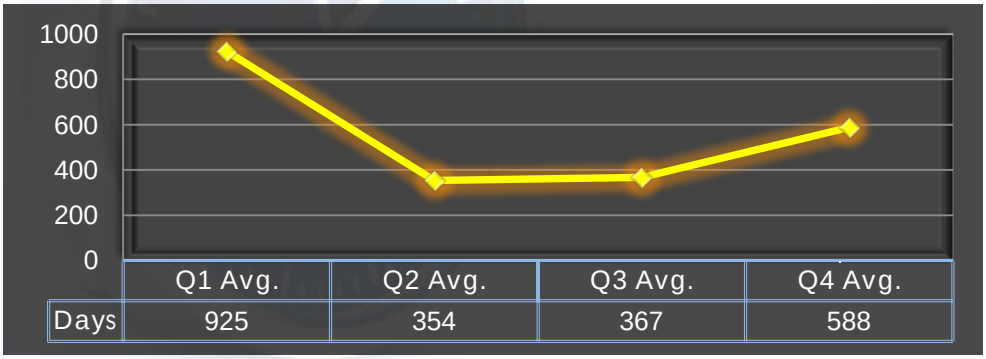
The Board has set a target of 200 days for this measure.



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

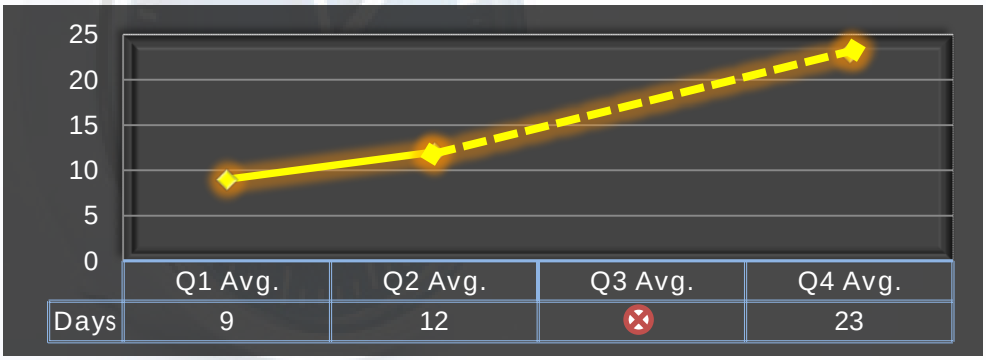
The Board has set a target of 540 days for this measure.



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

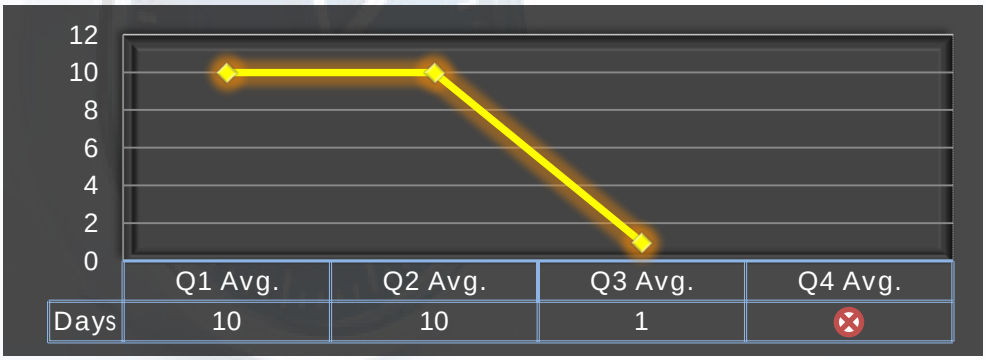
The Board has set a target of 10 days for this measure.



Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board has set a target of 10 days for this measure.



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q4 Report *(April - June 2012)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

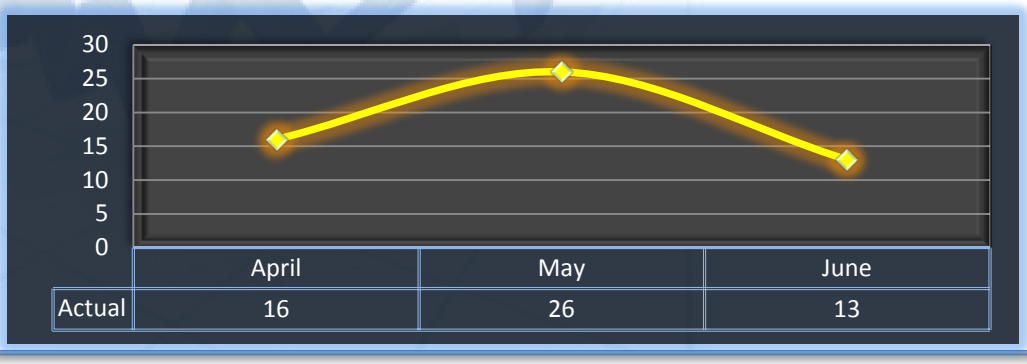
Volume

Number of complaints and convictions received.

Q4 Total: 55

Complaints: 19 Convictions: 36

Q4 Monthly Average: 18

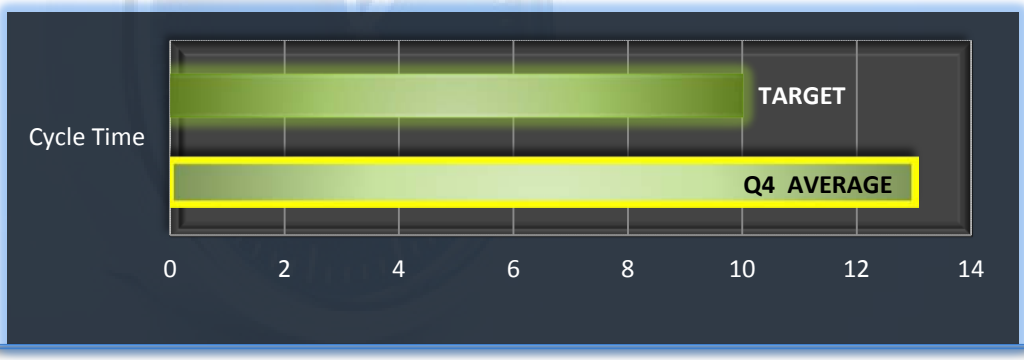


Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q4 Average: 13 Days

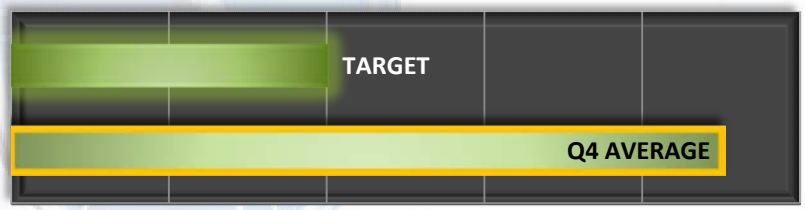


Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q4 Average: 450 Days



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q4 Average: 588 Days

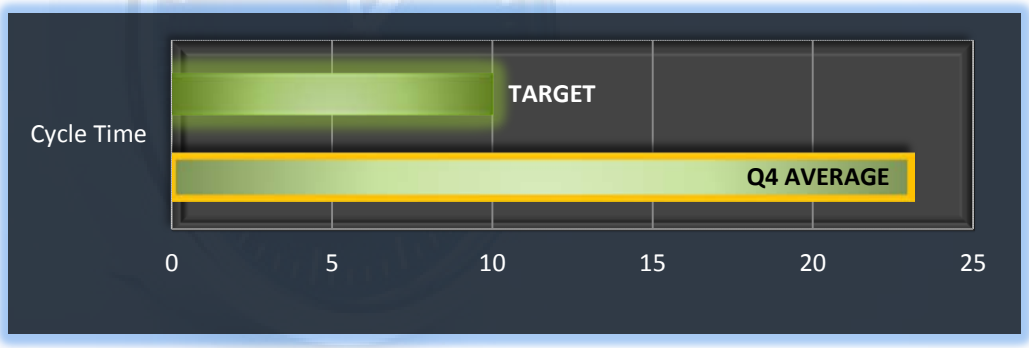
	April	May	June
Target	540	540	540
Actual	553	549	846

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q3 Average: 23 Days



Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q3 Average: N/A

The Board did not handle any probation violations this quarter.

Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q3 Report *(January - March 2012)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

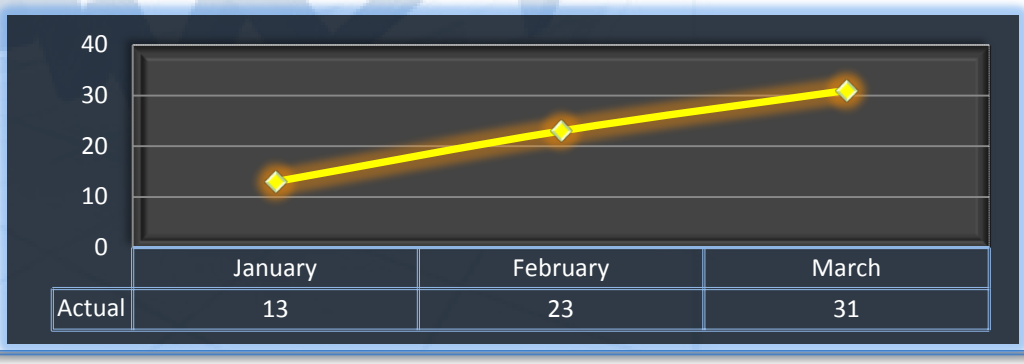
Volume

Number of complaints and convictions received.

Q3 Total: 67

Complaints: 25 Convictions: 42

Q3 Monthly Average: 22



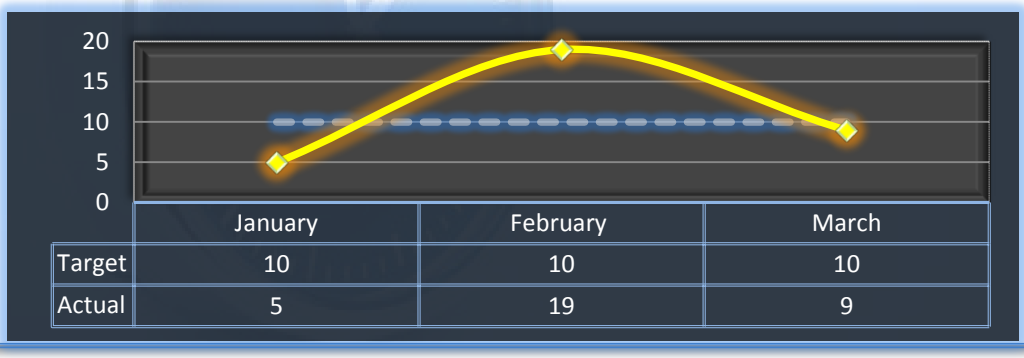
	January	February	March
Actual	13	23	31

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q3 Average: 8 Days



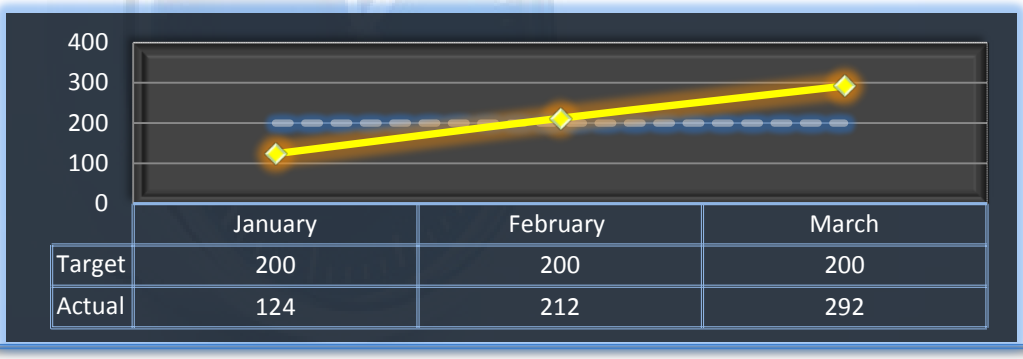
	January	February	March
Target	10	10	10
Actual	5	19	9

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q3 Average: 158 Days



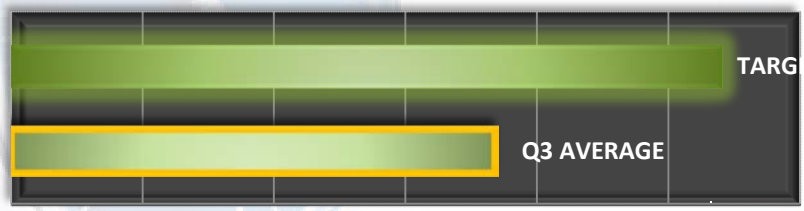
	January	February	March
Target	200	200	200
Actual	124	212	292

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q3 Average: 367 Days



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q3 Average: N/A

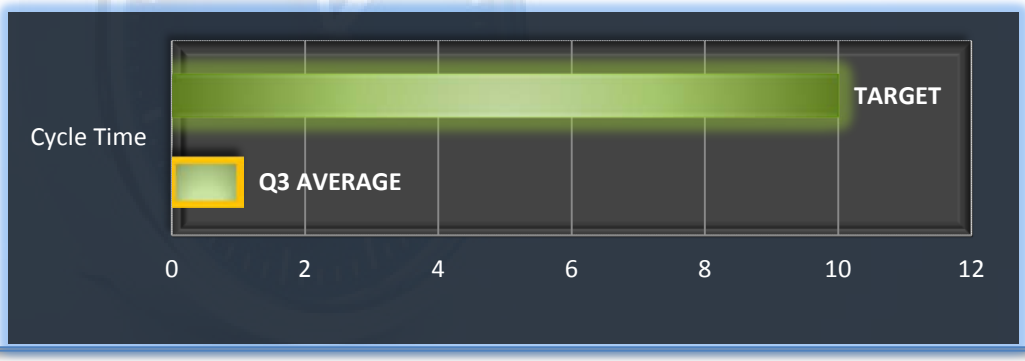
The Board did not contact any new probationers this quarter.

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q3 Average: 1 Day



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q2 Report *(October - December 2011)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

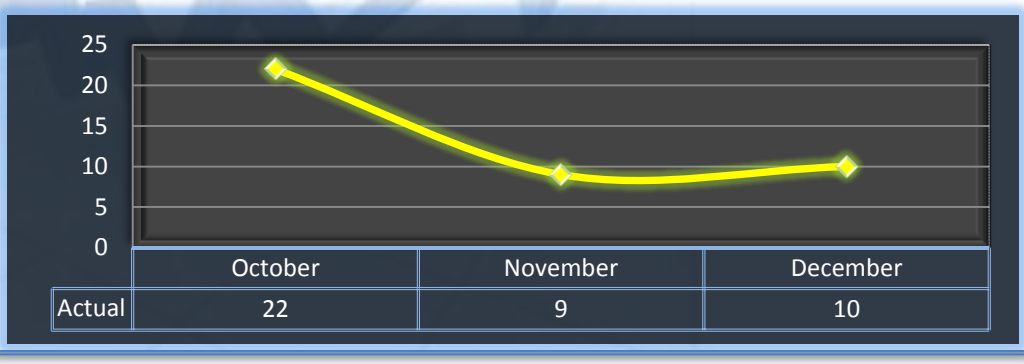
Volume

Number of complaints and convictions received.

Q2 Total: 41

Complaints: 23 Convictions: 18

Q2 Monthly Average: 13



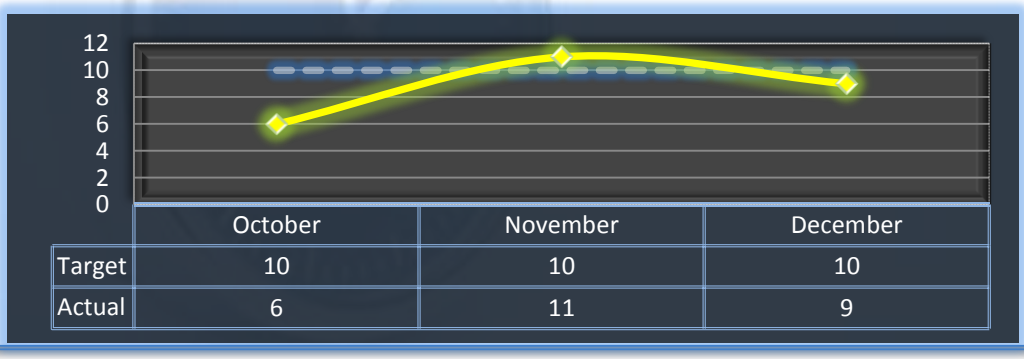
	October	November	December
Actual	22	9	10

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q2 Average: 8 Days



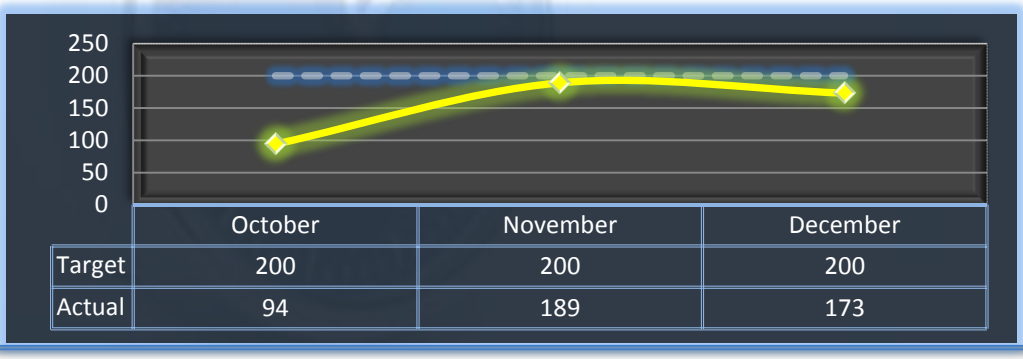
	October	November	December
Target	10	10	10
Actual	6	11	9

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q2 Average: 161 Days



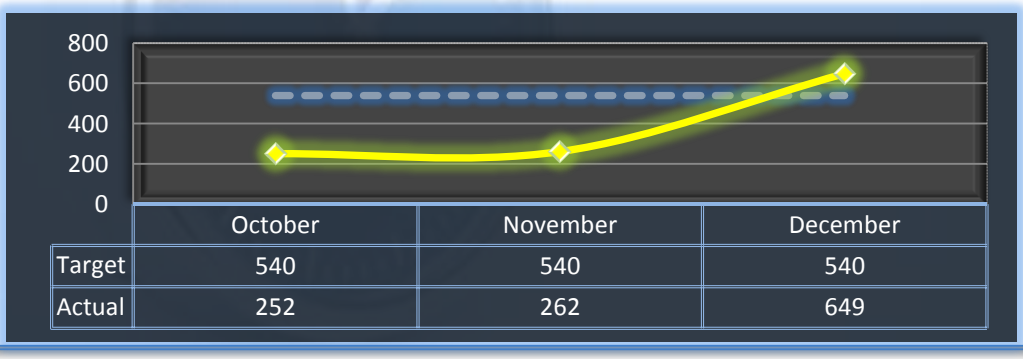
	October	November	December
Target	200	200	200
Actual	94	189	173

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: 354 Days



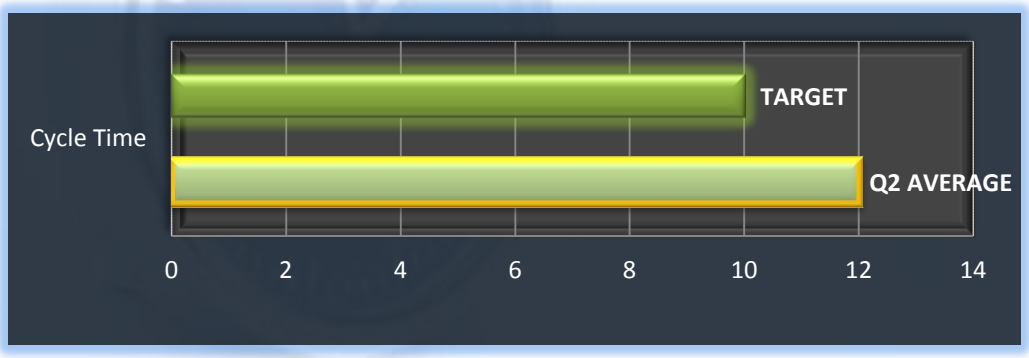
	October	November	December
Target	540	540	540
Actual	252	262	649

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q2 Average: 12 Days

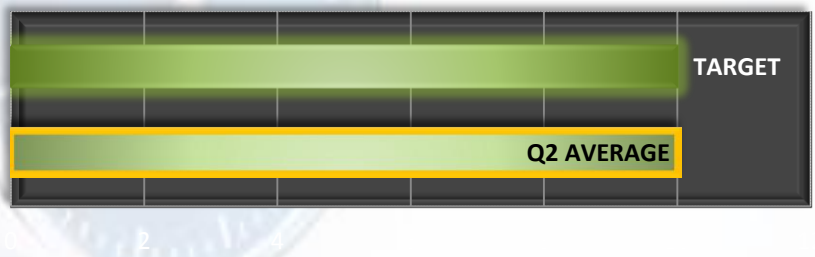


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q2 Average: 10 Days



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q1 Report *(July - September 2011)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

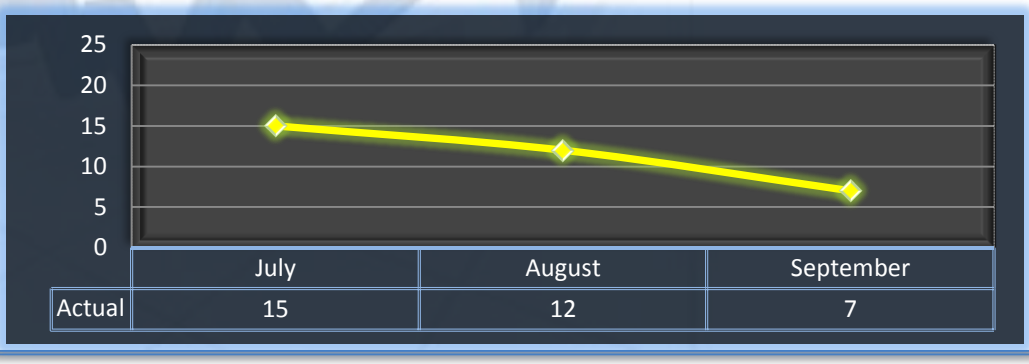
Volume

Number of complaints and convictions received.

Q1 Total: 34

Complaints: 18 Convictions: 16

Q1 Monthly Average: 11



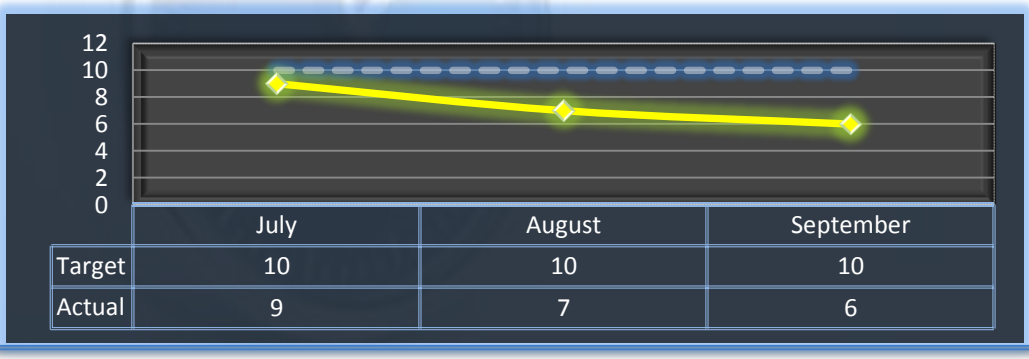
	July	August	September
Actual	15	12	7

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q1 Average: 8 Days



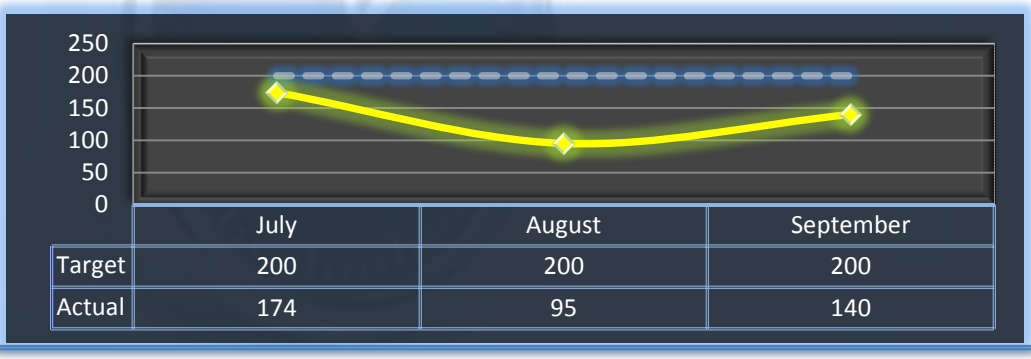
	July	August	September
Target	10	10	10
Actual	9	7	6

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q1 Average: 139 Days



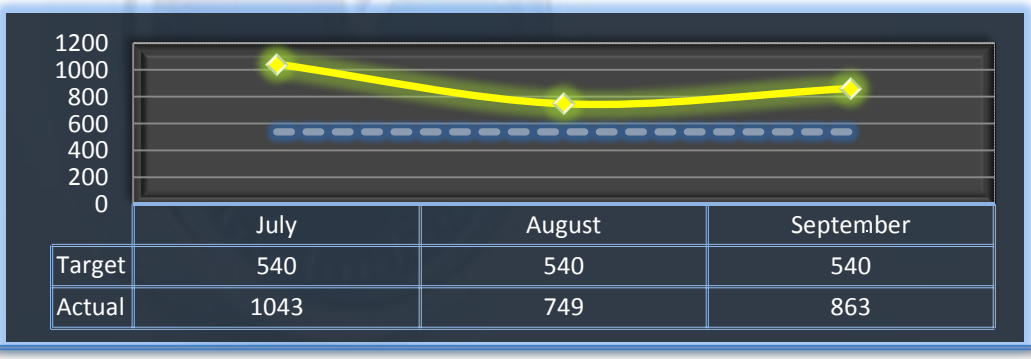
	July	August	September
Target	200	200	200
Actual	174	95	140

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q1 Average: 925 Days



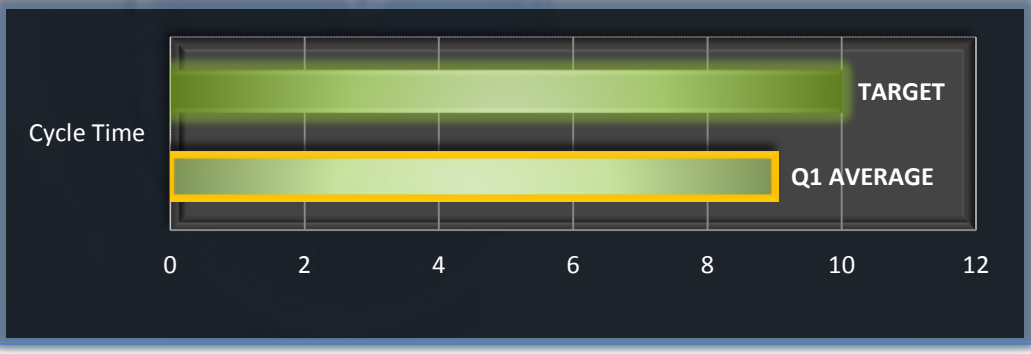
	July	August	September
Target	540	540	540
Actual	1043	749	863

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q1 Average: 9 Days

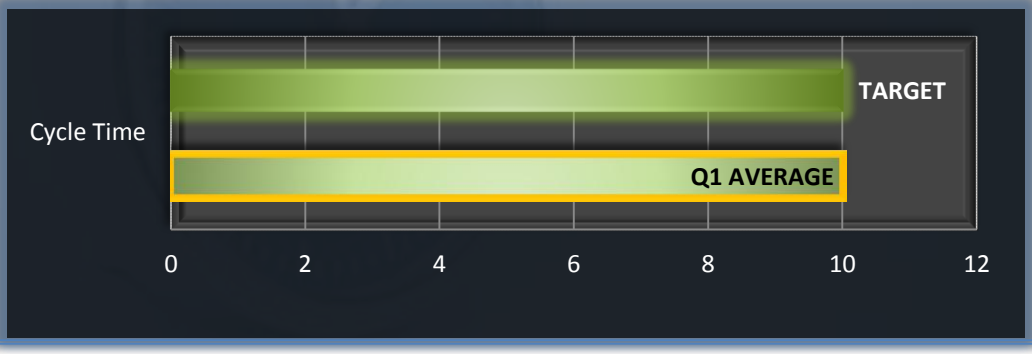


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q1 Average: 10 Days



Department of Consumer Affairs

State of California
Acupuncture Board

Performance Measures

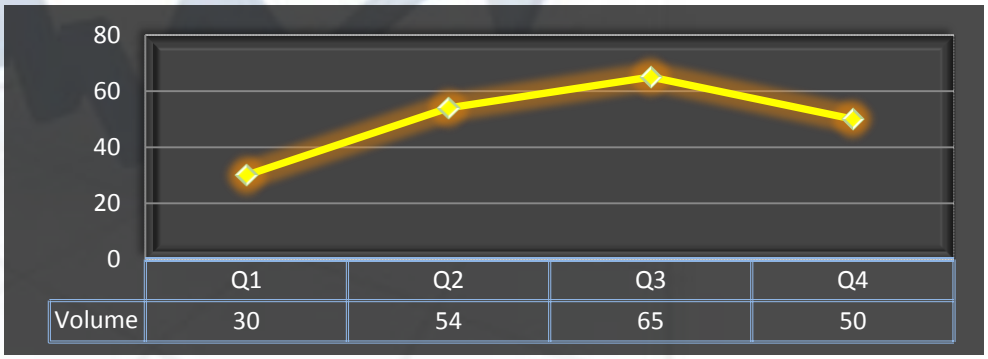
Annual Report *(2012 – 2013 Fiscal Year)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures are posted publicly on a quarterly basis.

Volume

Number of complaints and convictions received.

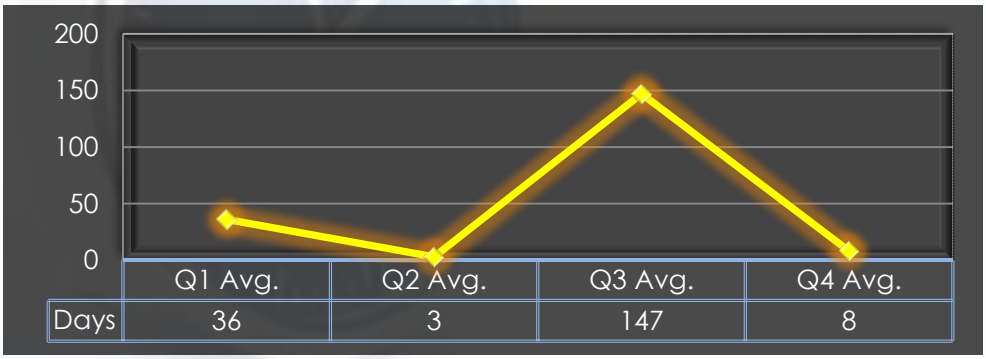
The Board had an annual total of 201 this fiscal year.



Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

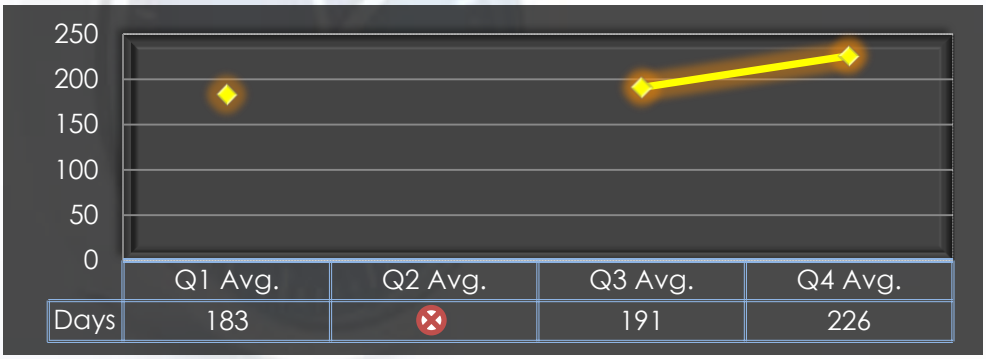
The Board has set a target of 10 days for this measure.



Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

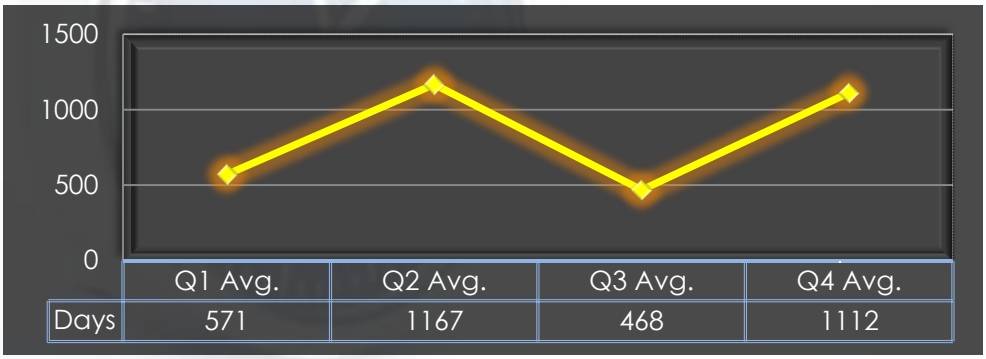
The Board has set a target of 200 days for this measure.



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

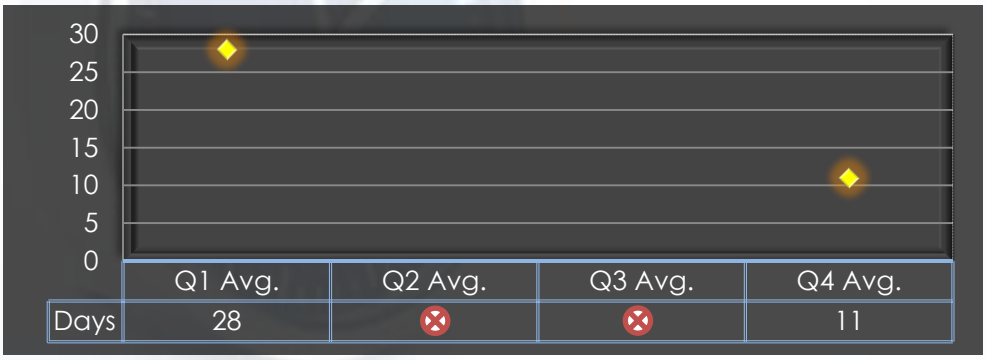
The Board has set a target of 540 days for this measure.



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

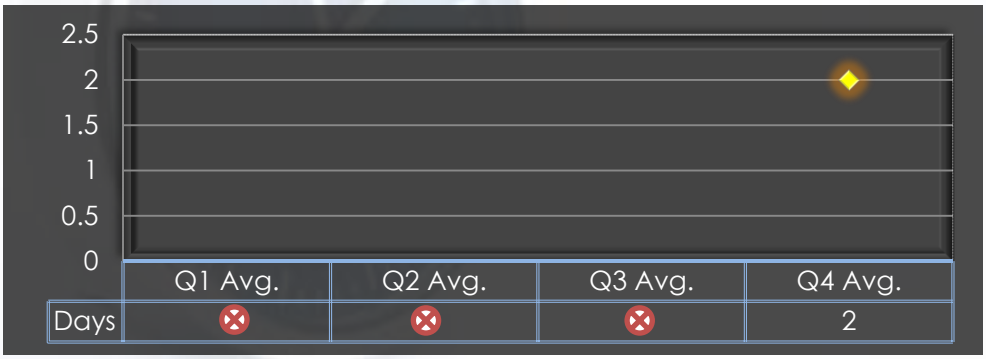
The Board has set a target of 10 days for this measure.



Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

The Board has set a target of 10 days for this measure.



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q4 Report *(April - June 2013)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

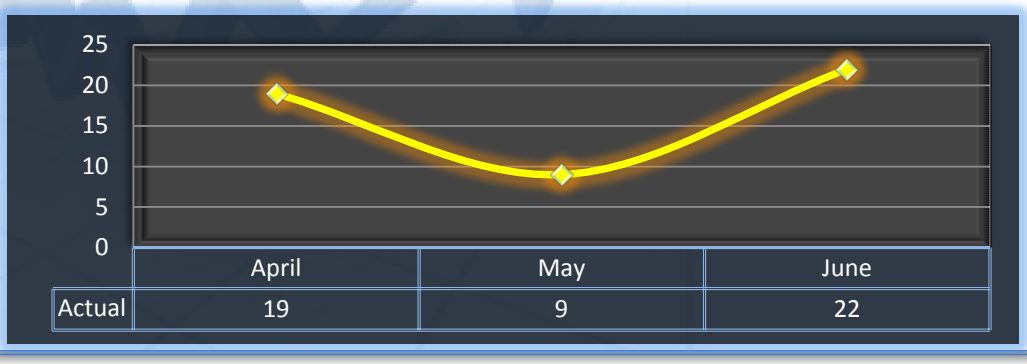
Volume

Number of complaints and convictions received.

Q4 Total: 50

Complaints: 26 Convictions: 24

Q4 Monthly Average: 17



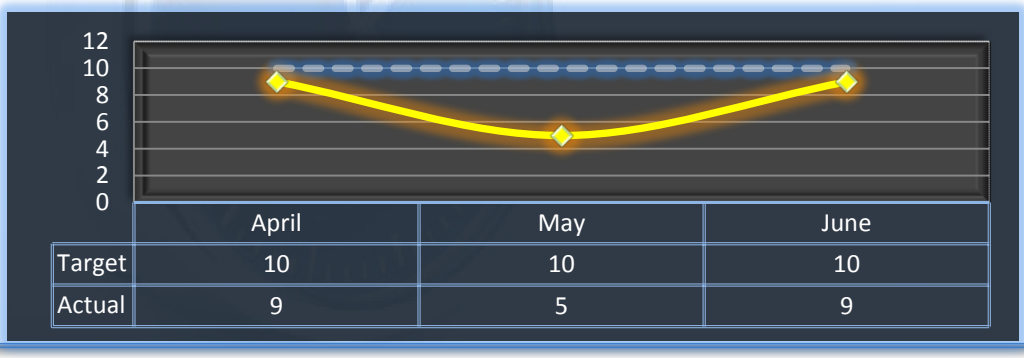
	April	May	June
Actual	19	9	22

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q4 Average: 8 Days



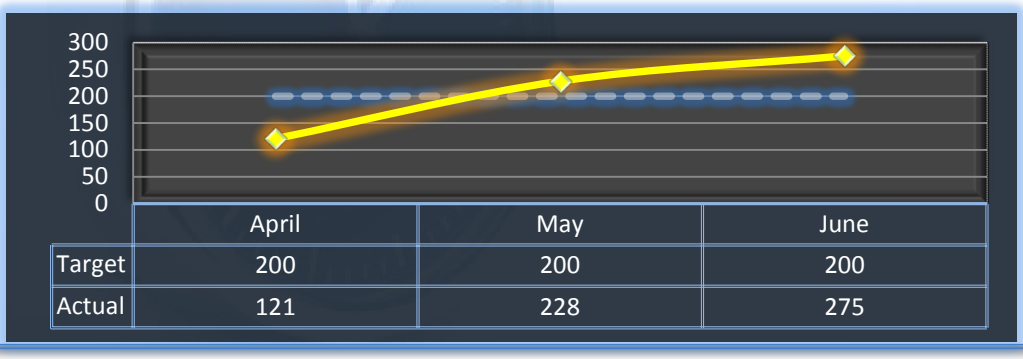
	April	May	June
Target	10	10	10
Actual	9	5	9

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q4 Average: 226 Days



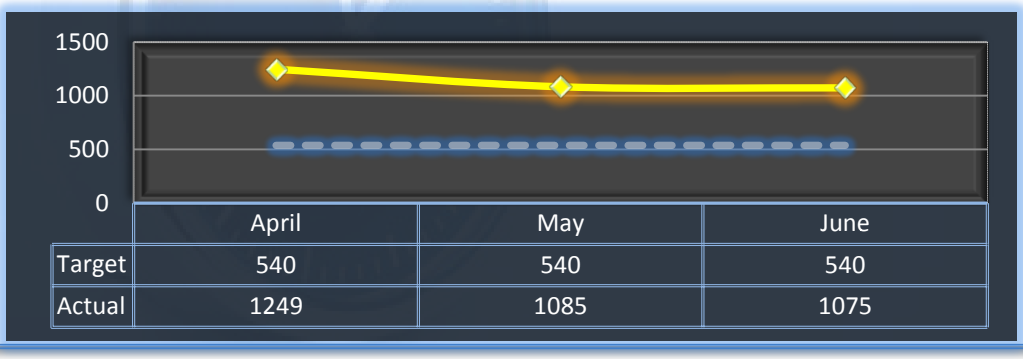
	April	May	June
Target	200	200	200
Actual	121	228	275

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q4 Average: 1,112 Days



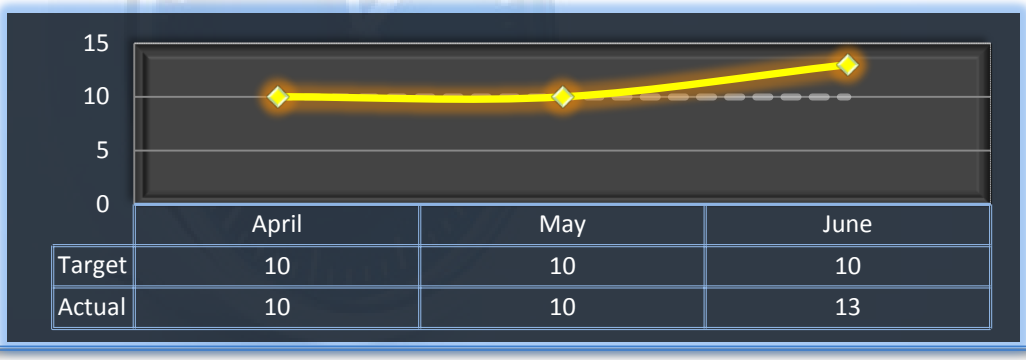
	April	May	June
Target	540	540	540
Actual	1249	1085	1075

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q3 Average: 11 Days



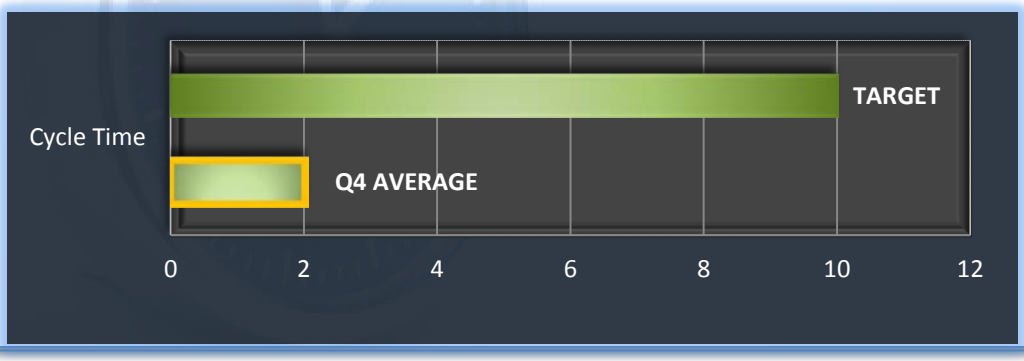
	April	May	June
Target	10	10	10
Actual	10	10	13

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q3 Average: 2 Days



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q3 Report *(January - March 2013)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

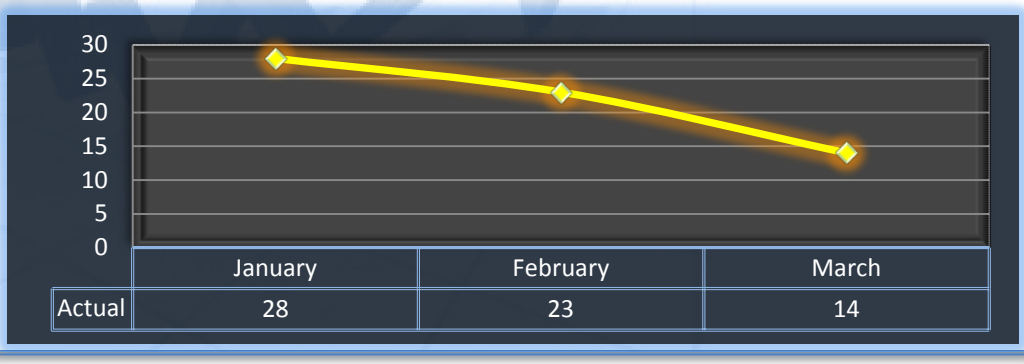
Volume

Number of complaints and convictions received.

Q3 Total: 65

Complaints: 19 Convictions: 44

Q3 Monthly Average: 22



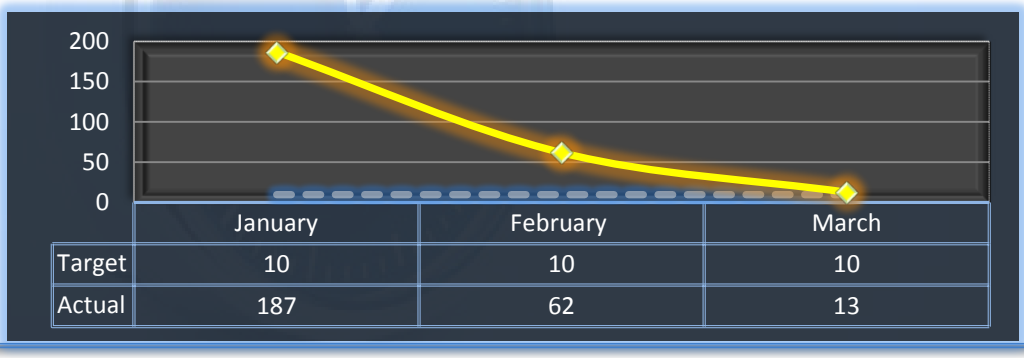
	January	February	March
Actual	28	23	14

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q3 Average: 147 Days



	January	February	March
Target	10	10	10
Actual	187	62	13

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q3 Average: 191 Days

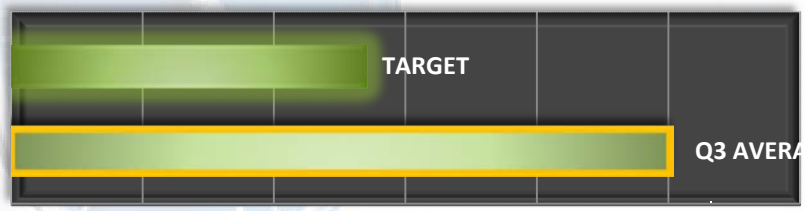
	January	February	March
Target	200	200	200
Actual	137	264	144

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q3 Average: 468 Days



Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q2 Report *(October - December 2012)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

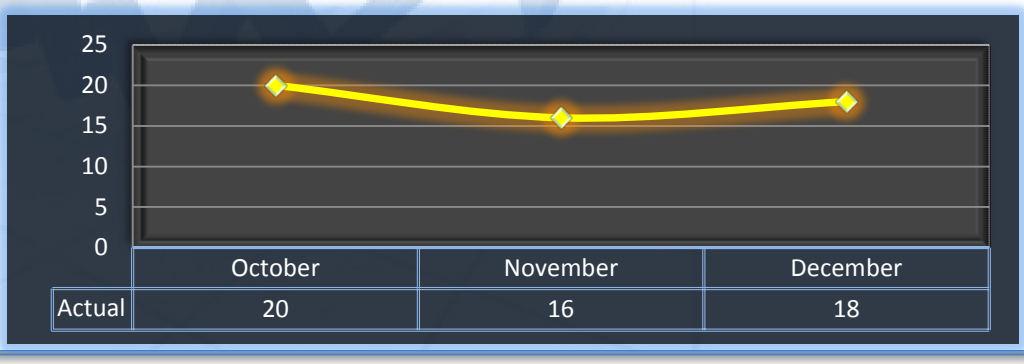
Volume

Number of complaints and convictions received.

Q2 Total: 54

Complaints: 8 Convictions: 44

Q2 Monthly Average: 18

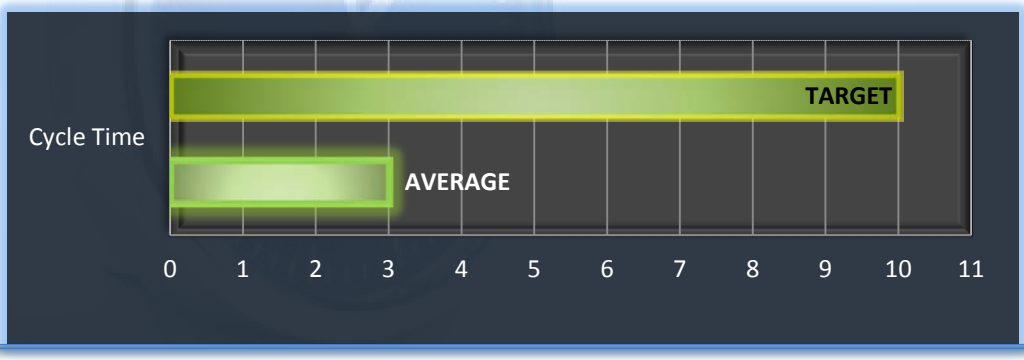


Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q2 Average: 3 Days



Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q2 Average: N/A

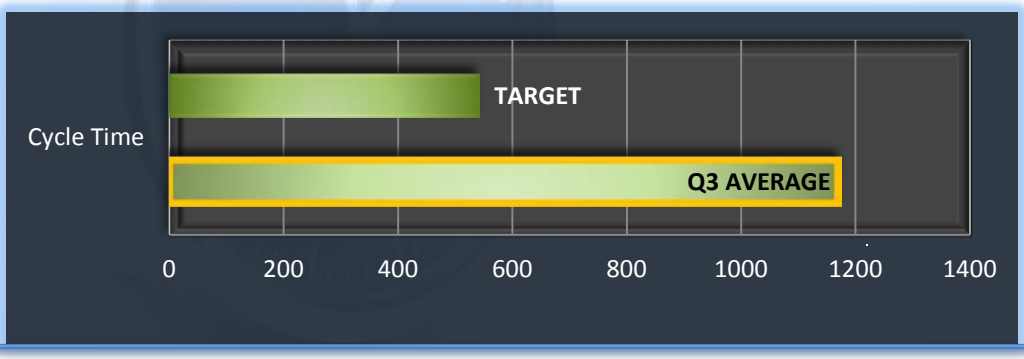
The Board did not report any investigations this quarter.

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: 1,167 Days



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q2 Average: N/A

The Board did not contact any new probationers this quarter.

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q2 Average: N/A

The Board did not handle any violations this quarter.

Department of Consumer Affairs

State of California Acupuncture Board

Performance Measures

Q1 Report *(July - September 2012)*

To ensure stakeholders can review the Board's progress in meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

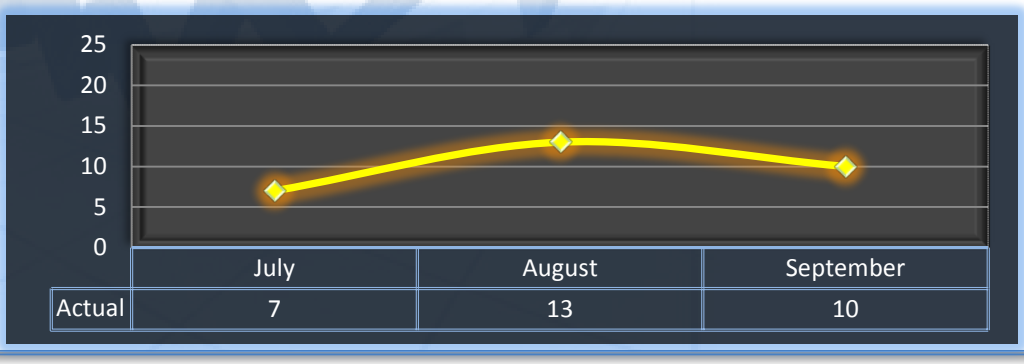
Volume

Number of complaints and convictions received.

Q1 Total: 30

Complaints: 18 Convictions: 12

Q1 Monthly Average: 10

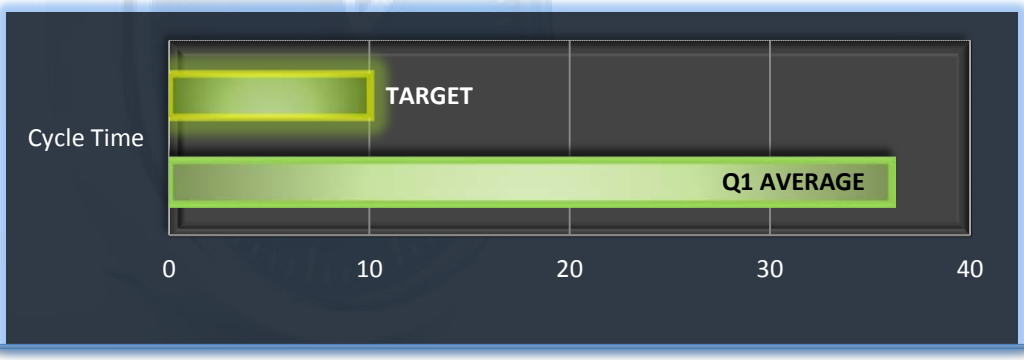


Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q1 Average: 36 Days

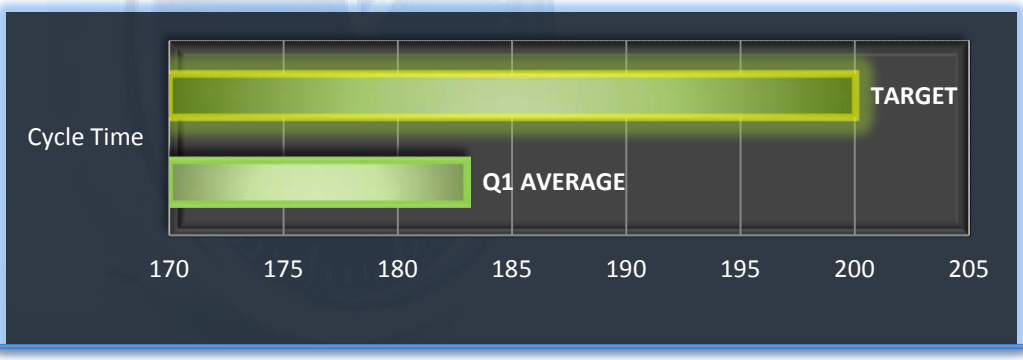


Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 200 Days

Q1 Average: 183 Days

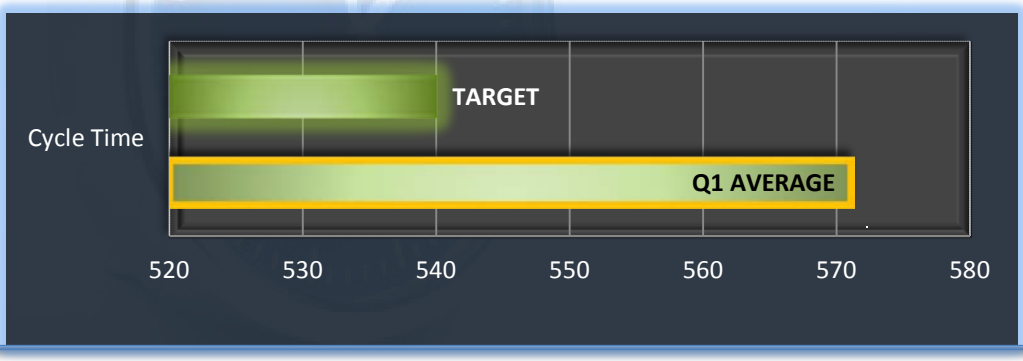


Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q1 Average: 571 Days

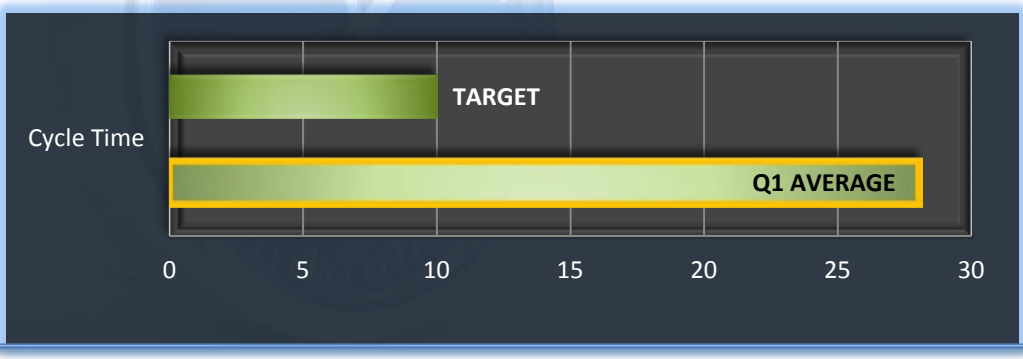


Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q1 Average: 28 Days



Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q1 Average: N/A

The Board did not handle any probation violations this quarter.

Appendix D

The following results were generated through an online survey posted by the Department of Consumer Affairs on behalf of your program. Due to a low response rate for many Boards and Bureaus, PM6 will not be reported publicly until a larger sample size has been generated. These results are for your information only at this time.

July 1, 2010 - June 30, 2011	
Total responses:	1
Performance measure score	100%

Acupuncture Board

Was our representative courteous?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Do you feel that the representative who handled your complaint understood your problem?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Were you made aware that your complaint was closed?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Did our representative deal with your problem in a fair and reasonable manner?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

If you were less than satisfied with the final outcome of your case, what was your primary reason for filing a complaint with us? (Please check the one that most represents your situation.)	Number	% of Total
	0	---
	0	---
	0	---
	0	---
	0	---
Total	0	

How did you contact our Board/Bureau?	Number	% of Total
Website	0	0%
Regular mail	0	0%
E-mail	0	0%
Phone	1	100%
In-person	0	0%
Total	1	

How satisfied were you with the format and navigation of our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

Acupuncture Board

How satisfied were you with information pertaining to your complaint available on our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to respond to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with our response to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to speak to a representative of our Board/Bureau?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

How satisfied were you with our representative's ability to address your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

How satisfied were you with the time it took for us to resolve your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

How satisfied were you with the explanation you were provided regarding the outcome of your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

Acupuncture Board

Overall, how satisfied were you with the way in which we handled your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

Would you contact us again for a similar situation?	Number	% of Total
Definitely	1	100%
Probably	0	0%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	1	

Would you recommend us to a friend or family member experiencing a similar situation?	Number	% of Total
Definitely	1	100%
Probably	0	0%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	1	

Complaint Number	Comment

The following results were generated through an online survey posted by the Department of Consumer Affairs on behalf of your program. Due to a low response rate for many Boards and Bureaus, PM6 will not be reported publicly until a larger sample size has been generated. These results are for your information only at this time.

July 1, 2011 - June 30, 2012	
Total responses:	3
Performance measure score	93%

Acupuncture Board

Was our representative courteous?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Do you feel that the representative who handled your complaint understood your problem?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Were you made aware that your complaint was closed?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Did our representative deal with your problem in a fair and reasonable manner?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

If you were less than satisfied with the final outcome of your case, what was your primary reason for filing a complaint with us? (Please check the one that most represents your situation.)	Number	% of Total
	0	---
	0	---
	0	---
	0	---
	0	---
Total	0	

How did you contact our Board/Bureau?	Number	% of Total
Website	0	0%
Regular mail	3	100%
E-mail	0	0%
Phone	0	0%
In-person	0	0%
Total	3	

How satisfied were you with the format and navigation of our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

Acupuncture Board

How satisfied were you with information pertaining to your complaint available on our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to respond to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with our response to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to speak to a representative of our Board/Bureau?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with our representative's ability to address your complaint?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took for us to resolve your complaint?	Number	% of Total
Very satisfied	2	67%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	1	33%
Very dissatisfied	0	0%
Total	3	

How satisfied were you with the explanation you were provided regarding the outcome of your complaint?	Number	% of Total
Very satisfied	2	67%
Somewhat satisfied	1	33%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	3	

Acupuncture Board

Overall, how satisfied were you with the way in which we handled your complaint?	Number	% of Total
Very satisfied	3	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	3	

Would you contact us again for a similar situation?	Number	% of Total
Definitely	2	67%
Probably	1	33%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	3	

Would you recommend us to a friend or family member experiencing a similar situation?	Number	% of Total
Definitely	3	100%
Probably	0	0%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	3	

Complaint Number	Comment
1A-2011-26	The agent was terrific.

The following results were generated through an online survey posted by the Department of Consumer Affairs on behalf of your program. Due to a low response rate for many Boards and Bureaus, PM6 will not be reported publicly until a larger sample size has been generated. These results are for your information only at this time.

July 1, 2012 - June 30, 2013	
Total responses:	1
Performance measure score	100%

Acupuncture Board

Was our representative courteous?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Do you feel that the representative who handled your complaint understood your problem?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Were you made aware that your complaint was closed?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

Did our representative deal with your problem in a fair and reasonable manner?	Number	% of Total
Yes, strongly agree	0	---
Somewhat agree	0	---
Neutral	0	---
Somewhat disagree	0	---
No, strongly disagree	0	---
Total	0	

If you were less than satisfied with the final outcome of your case, what was your primary reason for filing a complaint with us? (Please check the one that most represents your situation.)U	Number	% of Total
	0	---
	0	---
	0	---
	0	---
	0	---
Total	0	

How did you contact our Board/Bureau?	Number	% of Total
Website	0	0%
Regular mail	0	0%
E-mail	0	0%
Phone	0	0%
In-person	0	0%
Total	0	

How satisfied were you with the format and navigation of our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

Acupuncture Board

How satisfied were you with information pertaining to your complaint available on our Web site?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to respond to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with our response to your initial correspondence?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took to speak to a representative of our Board/Bureau?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with our representative's ability to address your complaint?	Number	% of Total
Very satisfied	0	---
Somewhat satisfied	0	---
Neither satisfied nor dissatisfied	0	---
Somewhat dissatisfied	0	---
Very dissatisfied	0	---
Total	0	

How satisfied were you with the time it took for us to resolve your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

How satisfied were you with the explanation you were provided regarding the outcome of your complaint?	Number	% of Total
Very satisfied	0	0%
Somewhat satisfied	1	100%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	

Overall, how satisfied were you with the way in which we handled your complaint?	Number	% of Total
Very satisfied	1	100%
Somewhat satisfied	0	0%
Neither satisfied nor dissatisfied	0	0%
Somewhat dissatisfied	0	0%
Very dissatisfied	0	0%
Total	1	
Would you contact us again for a similar situation?	Number	% of Total
Definitely	0	0%
Probably	1	100%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	1	
Would you recommend us to a friend or family member experiencing a similar situation?	Number	% of Total
Definitely	1	100%
Probably	0	0%
Maybe	0	0%
Probably not	0	0%
Absolutely not	0	0%
Total	1	
Complaint Number	Comment	
1A-2011-13	Thank you Board for your efforts and all you have done for us contacting the subject.	

Attachments

Attachment A

State of California

California Acupuncture Board
Board Member
Administrative Manual

Adopted October 25, 2013

Edmund G. Brown Jr., Governor
State of California

Members of the Board

Michael Shi, L.Ac, Licensed Member – Chair
Kitman Chan, Public Member – Vice Chair
Hildegarde Aguinaldo, J.D. – Public Member
Francisco Hsieh – Public Member
Jeannie Kang, L.Ac, Licensed Member
Jamie Zamora – Public Member

Executive Officer

Terri Thorfinnson, J.D.

This procedure manual is a general reference including a review of some important laws, regulations, and basic Board policies in order to guide the actions of the Board members and ensure Board effectiveness and efficiency.

This Administrative Procedure Manual, regarding Board Policy, can be amended by a majority of affirmative votes of any current or future Board.

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CHAPTER 1. Introduction

Mission Statement

To protect, benefit, and inform the people of California by exercising the licensing, regulatory, and enforcement mandates of the Acupuncture Licensure Act and Acupuncture Regulations.

Brief History

The Board of Medical Examiners (now called the Medical Board of California) 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 MediCal payments for acupuncture treatment.

In 1980 the law was amended to: abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority; expanded the acupuncturists' scope of practice to include electroacupuncture, cupping, and moxibustion; clarified that Asian massage, exercise and herbs for nutrition were within the acupuncturist's authorized scope of practice; and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the Medical Board'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).

Function of the Board

The Acupuncture Board's (Board) legal mandate is to regulate the practice of acupuncture and Asian medicine in the State of California. The Board established and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. 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 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 promotes safe practice through the improvement of educational training standards, continuing education, enforcement of the B&P Code, and public outreach.

State of California Acronyms

ALJ	Administrative Law Judge
AG	Office of the Attorney General
APA	Administrative Procedure Act
B & P	Business and Professions Code
CCCP	California Code of Civil Procedure
CCR	California Code of Regulations
DAG	Deputy Attorney General
DOF	Department of Finance
DOI	Division of Investigation
DPA	Department of Personnel Administration
OAH	Office of Administrative Hearings
OAL	Office of Administrative Law
SAM	State Administrative Manual
SCIF	State Compensation Insurance Fund
SCO	State Controllers Office
SCSA	State and Consumer Services Agency
SPB	State Personnel Board

General Rules of Conduct

All Board Members shall act in accordance with their oath of office, and shall conduct themselves in a courteous, professional and ethical manner at all times. The Board serves at the pleasure of the governor, and shall conduct their business in an open manner, so that the public that they serve shall be both informed and involved, consistent with the provisions of the Bagley-Keene Open Meeting Act and all other governmental and civil codes applicable to similar boards within the State of California.

- Board members shall comply with all provisions of the Bagley-Keene Open Meeting Act.

- Board members shall not speak or act for the Board without proper authorization.

- Board members shall not privately or publicly lobby for or publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Board.

- Board members shall not discuss personnel or enforcement matters outside of their official capacity in properly noticed and agendized meetings or with members of the public or the profession.

- Board members shall never accept gifts from applicants, licensees, or members of the profession while serving on the Board.

- Board members shall maintain the confidentiality of confidential documents and information related to board business.

- Board members shall commit the time and prepare for Board responsibilities including the reviewing of board meeting notes, administrative cases to be reviewed and discussed, and the review of any other materials provided to the board members by staff, which is related to official board business.

- Board members shall recognize the equal role and responsibilities of all Board members.

- Board members shall act fairly, be nonpartisan, impartial, and unbiased in their roles of protecting the public and enforcing the Acupuncture Licensure Act.

- Board members shall treat all consumers, applicants and licensees in a fair, professional, courteous and impartial manner.

- Board members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.

- Board members shall not use their positions on the Board for personal, familial, or financial gain. Any employment subsequent to employment as a board member shall be consistent with Executive Order 66-2.

CHAPTER 2. Board Members & Meeting Procedures

Membership
(B & P Code Section 4929)

The Board consists of seven members. Three members are licensed acupuncturists and four are public members. The Governor appoints the three licensed members and two public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. All members appointed by the Governor are subject to Senate confirmation. The members serve a four-year term for a maximum of two terms.

Board Meetings
(B & P Code Section 101.7)
(Government Code Section 11120 et seq. – Bagley-Keene Open Meeting Act)

The full board shall meet at least three times each calendar year. The Board shall meet at least once each calendar year in northern California and at least once each calendar year in southern California in order to facilitate participation by the public and its licensees.

The board, as a statement of policy, shall comply with the provisions of the Bagley-Keene Open Meeting Act, and conduct their business in accordance with Robert's Rules of Order, as long as that does not conflict with any superseding laws or regulations.

Due notice of each meeting and the time and place thereof must be given to each member in the manner provided by the Bagley-Keene Open Meeting Act.

The Board may call a special meeting at any time in the manner provided by the Bagley-Keene Open Meeting Act, Government Code Section 11125.4.

Quorum
(Business and Professions Code Section 4933)

Four members of the board, including at least one acupuncturist, shall constitute a quorum to conduct business. An affirmative vote of a majority of those present at a meeting of the board is required to carry any motion.

Board Member Attendance at Board Meetings
(Board Policy)

Being a member of the Board is a serious commitment to the governor and the people of the State of California. Board members shall attend a minimum of 75% of all scheduled board meetings. If a member is unable to attend, he or she must contact the Board Chair or the Executive Officer, and provide a written explanation of their absence.

Public Attendance at Board Meetings
(Government Code Section 11120 et seq.)

Meetings are subject to all provisions of the Bagley-Keene Open Meeting Act. This Act governs meetings of the state regulatory Boards and meetings of committees of those Boards where committee consists of more than two members. It specifies meeting notice, agenda requirements, and prohibits discussing or taking action on matters not included on the agenda. If the agenda contains matters which are appropriate for closed session, the agenda shall cite the particular statutory section and subdivision authorizing the closed session.

Agenda Items
(Board Policy)

Board members may submit agenda items for a future Board meeting during the "Future Agenda Items" section of a Board meeting or directly to the Board Chair 15 days prior to a Board meeting. To the extent possible, the Board Chair will calendar each Board member's request on a future Board meeting.

In the event of a conflict, the Board Chair shall make the final decision. The Board Chair will work with the Executive Officer to finalize the agenda.

If a Board member requests an item be placed on the agenda, and that request can not be complied with at the immediate upcoming meeting, then the requested agenda item shall be placed on the next regularly scheduled meeting and shall never be postponed more than two meetings.

Notice of Meetings
(Government Code Section 11120 et seq,)

Meeting notices, including agendas, for Board meetings will be sent to persons on the Board's mailing list at least 10 calendar days in advance, as specified in the Bagley-Keene Open Meeting Act. The notice shall include a staff person's name, work address, and work telephone number who can provide further information prior to the meeting.

Notice of Meetings Posted on the Internet
(Government Code Section 11125 et seq,)

Meeting notices shall be posted on the Board's web site at least 10 days in advance of the meeting, and include the name, address, and telephone number of staff who can provide further information prior to the meeting

Mail Ballots
(Government Code Section 11500 et seq,)

The Board must approve any proposed decision or stipulation before the formal discipline becomes final and the penalty can take effect.

Proposed stipulations and decisions are mailed to each Board member for his or her vote. For stipulations, a background memorandum from the assigned deputy attorney general accompanies the mail ballot. A five calendar day deadline generally is given for the mail ballots for stipulations and proposed decisions to be completed and returned to the Board's office.

Holding Disciplinary Cases for Board Meetings
(Board Policy)

When voting on mail ballots for proposed disciplinary decisions or stipulations, a Board member may wish to discuss a particular aspect of the decision or stipulation before voting. If this is the case, the ballot must be marked "hold for discussion," and the reason for the hold must be provided on the mail ballot. This allows staff the opportunity to prepare information being requested.

If two votes are cast to hold a case for discussion, the case is set aside and not processed (even if four votes have been cast on a decision). Instead the case is scheduled for a discussion during a closed session at the next Board meeting.

If the matter is held for discussion, staff counsel will preside over the closed session to assure compliance with the Administrative Procedure Act and Open Meeting Act.

Record of Meetings
(Board Policy)

The minutes are a summary, not a transcript, of each Board meeting. They shall be prepared by Board staff and submitted for review by Board members before the next Board meeting.

Board minutes must be approved or disapproved at the next scheduled meeting of the Board. When approved, the minutes shall serve as the official record of the meeting. The recordings of each board meeting shall be maintained and not destroyed.

Tape Recording
(Government Code Section 11124.1(b))

The meeting may be audio and video tape recorded by the public or any other entity in accordance with the Bagley-Keene Open Meeting Act, the members of the public may tape record, videotape or otherwise record a meeting unless they are disruptive to the meeting and the Chair has specifically warned them of their being disruptive, then the Chair may order that their activities be ceased.

The board may place the audio recorded public board meetings on its web site at www.acupuncture.ca.gov.

Meeting Rules
(Board Policy)

The Board will use Robert's Rules of Order, to the extent that it does not conflict with state law (e.g., Bagley-Keene Open Meeting Act or other state laws or regulations), as a guide when conducting the meetings. Questions of order are clarified by the Board's legal counsel.

Public Comment
(Board Policy)

Public comment is always encouraged and allowed, however, if time constraints mandate, the comments may be limited to five minutes per person. Due to the need for the Board to maintain fairness and neutrality when performing its adjudicative function, the Board shall not receive any information from a member of the public regarding matters that are currently under or subject to investigation, or involve a pending or criminal administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with any information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person must be instructed to refrain from making such comments.

2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:

    a. Where the allegation involves errors of procedure or protocol, the Board may designate its Executive Officer to review whether the proper procedure or protocol was followed and to report back to the Board.

    b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.

3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting. The Board accepts the conditions established in the Bagley-Keene Open Meeting Act and appreciates that at times the public may disapprove, reprimand, or otherwise present an emotional presentation to the Board, and it is the Board's duty and obligation to allow that public comment, as provided by law.

CHAPTER 3. Travel & Salary Policies & Procedures

Travel Approval
(Board Policy)

Board members shall receive Executive Officer approval for all travel and salary or per diem reimbursement, except for regularly scheduled Board, committee, and conference meetings to which a Board member is assigned.

Travel Arrangements
(Board Policy)

Board members should attempt to make their own travel arrangements and are encouraged to coordinate with the Board liaison on lodging accommodations.

Out-of-State Travel
(SAM Section 700 et seq.)

Out-of-state travel for all persons representing the state of California is controlled and must be approved by the Governor's Office.

Travel Claims
(SAM Section 700 et seq.)

Rules governing reimbursement of travel expenses for Board members are the same as for management-level state staff. All expenses shall be claimed on the appropriate travel expense claim forms. The Board Liaison maintains these forms and completes them as needed.

The Executive Officer's travel and per diem reimbursement claims shall be submitted to the Board Chair for approval.

It is advisable for Board members to submit their travel expense forms immediately after returning from a trip and not later than thirty days following the trip.

Salary Per Diem
(B & P Code Section 103 and 4931)

Each member of the Board shall receive a per diem in the amount provided in Section 103 of the Business and Professions (B&P) Code. Board members fill non-salaried positions, but are paid $100 per day for each meeting day and are reimbursed travel expenses.

Compensation in the form of salary per diem and reimbursement of travel and other related expenses for Board members is regulated by the B&P Code Section 103. In relevant part, B&P Code Section 103 provides for the payment of salary per diem for Board members "for each day actually spent in the discharge of official duties," and provides that the Board member "shall be reimbursed for traveling and other expenses necessarily incurred in the performance of official duties."

Salary Per Diem
(Board Policy)

Accordingly, the following general guidelines shall be adhered to in the payment of salary per diem or reimbursement for travel:

1. No salary per diem or reimbursement for travel-related expenses shall be paid to Board members except for attendance at official Board or committee meetings, unless a substantial official service is performed by the Board member.

   Attendance at gatherings, events, hearings, conferences or meetings other than official Board or committee meetings in which a substantial official service is performed the Executive Officer shall be notified and approval shall be obtained from the Board Chair prior to Board member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean such time as is expended from the commencement of a Board or committee meeting until that meeting is adjourned.

   If a member is absent for a portion of a meeting, hours are then reimbursed for time actually spent. Travel time is not included in this component.

3. For Board-specified work, Board members will be compensated for time actually spent in performing work authorized by the Board Chair. This may also include, but is not limited to, authorized attendance at other events, meetings, hearings, or conferences. Work also includes preparation time for Board or committee meetings and reading and deliberating mail ballots for disciplinary actions.

4. Reimbursable work does not include miscellaneous reading and information gathering unrelated to board business and not related to any meeting, preparation time for a presentation and participation at meetings not related to official participation of the members duties with the Board.

5. Board members may participate on their own (i.e., as a citizen or professional) at an event or meeting but not as an official Board representative unless approved in writing by the Chair. Requests must be submitted in writing to the Chair for approval and a copy provided to the Executive Officer. However, Board members should recognize that even when representing themselves as "individuals," their positions might be misconstrued as that of the Board.

CHAPTER 4. Selection of Officers & Committees

Officers of the Board

The Board shall elect at the first meeting of each year a Chair and Vice Chair.

Election of Officers

Elections of the officers shall occur annually at the first meeting of each year.

Officer Vacancies

If an office becomes vacant during the year, the Chair may appoint a member to fill the vacancy for the remainder of the term until the next annual election.

If the office of the Chair becomes vacant, the Vice Chair shall assume the office of the Chair. Elected officers shall then serve the remainder of the term.

Board Member Addresses

Board member addresses and telephone numbers are confidential and shall not be released to the public without expressed authority of the individual Board member. A roster of Board members is maintained for public distribution on the Board's web site using the Board's address and telephone number.

Board Member Written Correspondence and Mailings

All correspondence, press releases, articles, memoranda or any other communication written by any Board member in his or her official capacity must be provided to the Executive Officer. The Executive Officer will retain a copy in a chronological file.

Communications: Other Organizations/Individuals/Media

All communications relating to any Board action or policy to any individual or organization, or a representative of the media shall be made only by the Board Chair, his or her designee, or the Executive Officer. Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact

Committee Appointments

The Chair shall establish committees as he or she deems necessary.

The composition of the committees and the appointment of the members shall be determined by the Board Chair in consultation with the Vice Chair and the Executive Officer.

Committee Meetings

Each committee will be comprised of at least two Board members. The committees are an important venue for ensuring that staff and Board members share information and perspectives in crafting and implementing strategic objectives.

The Board's committees allow Board members, stakeholders and staff to discuss and conduct problem solving on issues related to the Board's strategic goals. They also allow the Board to consider options for implementing components for the strategic plan.

The committees are charged with coordinating Board efforts to reach Board goals and achieving positive results on its performance measures.

The Board Chair designates one member of each committee as the committee's chairperson.

The chairperson coordinates the committee's work, ensures progress toward the Board's priorities, and presents reports as necessary at each meeting.

During any public committee meeting, comments from the public are encouraged, and the meetings themselves are frequently public forums on specific issues before a committee. These meetings shall also be run in accordance with the Bagley-Keene Open Meeting Act.

Attendance at Committee Meetings

If a Board member wishes to attend a meeting of a committee of which he or she is not a member, the Board member must obtain permission from the Board Chair to attend and must notify the committee chair and staff.

Board members who are not members of the committee that is meeting cannot vote during the committee meeting.

If there is a quorum of the Board at a committee meeting, Board members who are not members of the committee must sit in the audience and cannot participate in committee deliberations.

The Board's legal counsel works with the Executive Officer to assure any meeting that fits the requirements for a public meeting is appropriately noticed.

CHAPTER 5. Board Administration & Staff

Executive Officer
(B & P Code Section 4934)

The Board may appoint an Executive Officer. The Executive Officer is responsible for the financial operations and integrity of the Board, and is the official custodian of records. The Executive Officer is an at will employee, who serves at the pleasure of the Board, and may be terminated, with or without cause, in accordance with the provisions of the Bagley-Keene Open Meeting Act.

Board Administration

Strategies for the day-to-day management of programs and staff shall be the responsibility of the Executive Officer as an instrument of the Board.

Executive Officer Evaluation

On an annual basis, the Executive Officer is evaluated by the Board Chair during a closed session. Board members provide information to the Chair on the Executive Officer's performance in advance of this meeting.

Board Staff
(B & P Code Section 4934)

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements.

Because of this complexity, the Board delegates this authority and responsibility for management of the civil service staff to the Executive Officer as an instrument of the Board.

Board members may express any staff concerns to the Executive Officer but shall refrain from involvement in any civil service matters. Board members shall not become involved in the personnel issues of any state employee.

Board Budget

The Executive Officer or the Executive Officer's designee will attend and testify at the legislative budget hearings and shall communicate all budget issues to the Administration and Legislature.

Communications with Other Organizations & Individuals

All communications relating to any Board action or policy to any individual or organization shall be made only by the Chair of the Board, his or her designee, or the Executive Officer.

Any Board member who is contacted by any of the above should inform the Board Chair or Executive Officer of the contact immediately.

All correspondence shall be issued on the Board's standard letterhead and will be disseminated by the Executive Officer's office.

Business Cards

Business cards will be provided to each Board member with the Board's name, address, telephone and fax number, and website address.

CHAPTER 6. Other Policies & Procedures

Board Member Disciplinary Actions

If a board member violates any provision of the Administrative Procedure Manual, the Chair will provide in writing, notice to the member of the violation. If the member disagrees with the notice, the board member must provide a reply in writing. After giving the board member an opportunity to respond to the notice, the Chair, at his/her discretion may meet in person or discuss by telephone with the board member to discuss the violation. The Chair may ask a third person to be present during the meeting. If the matter is not resolved at the end of the meeting or it is resolved but the board member continues to violate the procedures in the manual, the Chair may agendize at the next board meeting an item asking for censure of the board member.

If the violation concerns the Chair's conduct, the Vice-Chair will handle the matter.

Terms and Removal of Board Members

(B & P Code Sections 4929 and 4930)

The Governor appoints three acupuncturist members and two public members of the Board. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member. Each appointment shall be for the term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only. No person shall serve more than two consecutive terms on the Board

Each Governor appointee shall serve until his successor has been appointed and qualified or until 60 days has elapsed since the expiration of his term whichever first occurs. Each Senate Rules Committee and the Speaker of the Assembly appointee shall serve until his successor has been appointed and qualified or until one year has elapsed since the expiration of his term whichever first occurs.

The Governor has the power to remove any member from the Board appointed by him for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct.

Resignation of Board Members

(Government Code Section 1750(b))

In the event that it becomes necessary for a Board member to resign, a letter shall be sent to the appropriate appointing authority (Governor's Office, Senate Rules Committee, or the Speaker of the Assembly) with the effective date of the resignation. Written notification is required by state law. A copy of this letter shall also be sent to the Board Chair and the Executive Officer.

Conflict of Interest
(Government Code Section 87100)

No Board member may make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

Any Board member who has a financial interest shall disqualify him or herself from making or attempting to use his or her official position to influence the decision.

Any Board member who feels he or she is entering into a situation where there is a potential for a conflict of interest should immediately consult the Executive Officer or the Board's legal counsel.

Contact with Licensees and Applicants

Board members shall not intervene on behalf of a licensee or applicant for licensure for any reason. They should forward all contacts or inquiries to the Executive Officer.

Contact with Respondents

Board members should not directly participate in complaint handling and resolution or investigations. To do so would subject the Board member to disqualification in any future disciplinary action against the licensee. If a Board member is contacted by a respondent or his/her attorney, the Board member should refer the individual to the Executive Officer.

Service of Legal Documents

If a Board member is personally served as a party in any legal proceeding related to his or her capacity as Board member, he or she must contact the Executive Officer immediately.

Serving as an Expert Witness
(Executive Order 66.2)

Pursuant to Executive Order 66-2, no employment, activity, or enterprise shall be engaged in by any gubernatorial appointee which might result in, or create the appearance of resulting in any of the following:

1. Using the prestige or influence of a State office for the appointee's private gain or advantage.

2. Using state time, facilities, equipment, or supplies for the appointee's private gain or advantage, or the private gain or advantage of another.

3. Using confidential information acquired by virtue of State involvement for the appointees private gain or advantage, or the private gain or advantage of another.

4. Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act which the appointee would be required or expected to render in the regular course of hours of his or her State employment or as a part of the appointee's duties as a State officer.

Gifts from Licensees and Applicants

A gift of any kind to Board members from licensees, applicants for licensure, continuing education providers or approved schools is not permitted. Gifts must be returned immediately

Ex Parte Communications

(Government Code Section 11430.10 et seq.)

The Government Code contains provisions prohibiting ex parte communications. An "ex parte" communication is a communication to the decision-maker made by one party to an enforcement action without participation by the other party. While there are specified exceptions to the general prohibition, the key provision is found in subdivision (a) of section 11430.10, which states:

> "While the proceeding is pending, there shall be no communication, direct or indirect, regarding any issue in the proceeding to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and an opportunity for all parties to participate in the communication."

Board members are prohibited from an ex parte communication with Board enforcement staff while a proceeding is pending.

Occasionally, an applicant who is being formally denied licensure, or a licensee against whom disciplinary action is being taken, will attempt to directly contact Board members. If the communication is written, the person should read only far enough to determine the nature of the communication. Once he or she realizes it is from a person against whom an action is pending, they should reseal the documents and send them to the Executive Officer.

If a Board member receives a telephone call from an applicant under any circumstances or licensee against whom an action is pending, he or she should immediately tell the person they cannot speak to them about the matter and inform the Executive Officer and the Board's legal counsel.

If the person insists on discussing the case, he or she should be told that the Board member will be required to recuse him or herself from any participation in the matter. Therefore, continued discussion is of no benefit to the applicant or licensee.

If a Board member believes that he or she has received an unlawful ex parte communication, he or she should contact the Executive Officer and the Board's legal counsel.

Honoraria Prohibition
(Government Code Section 89503 and FPPC Regulations, Title 2, Division 6)

As a general rule, members of the Board should decline honoraria for speaking at, or otherwise participating in, professional association conferences and meetings. A member of a state Board is precluded from accepting an honorarium from any source, if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Board members are required to report income from, among other entities, professional associations and continuing education providers. Therefore, a Board member should decline all offers for honoraria for speaking or appearing before such entities.

There are limited exceptions to the honoraria prohibition. The acceptance of an honorarium is not prohibited under the following circumstances:

(1) when a honorarium is returned to the donor (unused) within 30 days;
(2) when an honorarium is delivered to the State Controller within thirty days for donation to the General Fund (for which a tax deduction is not claimed); and
(3) when an honorarium is not delivered to the Board member, but is donated directly to a bona fide charitable, educational, civic, religious, or similar tax exempt, non-profit organization.

In light of this prohibition, members should report all offers of honoraria to the Board Chair so that he or she, in consultation with the Executive Officer and staff counsel, may determine whether the potential for conflict of interest exists.

Board Member Orientation

The Board member orientation session shall be given to new Board members within one year of assuming office.

Ethics Training

California law requires all appointees to take an ethics orientation within the first six months of their appointment and to repeat this ethics orientation every two years throughout their term.

Sexual Harassment Training
(Government Code Section 12950.1)

Board members are required to undergo sexual harassment training and education once every two years.

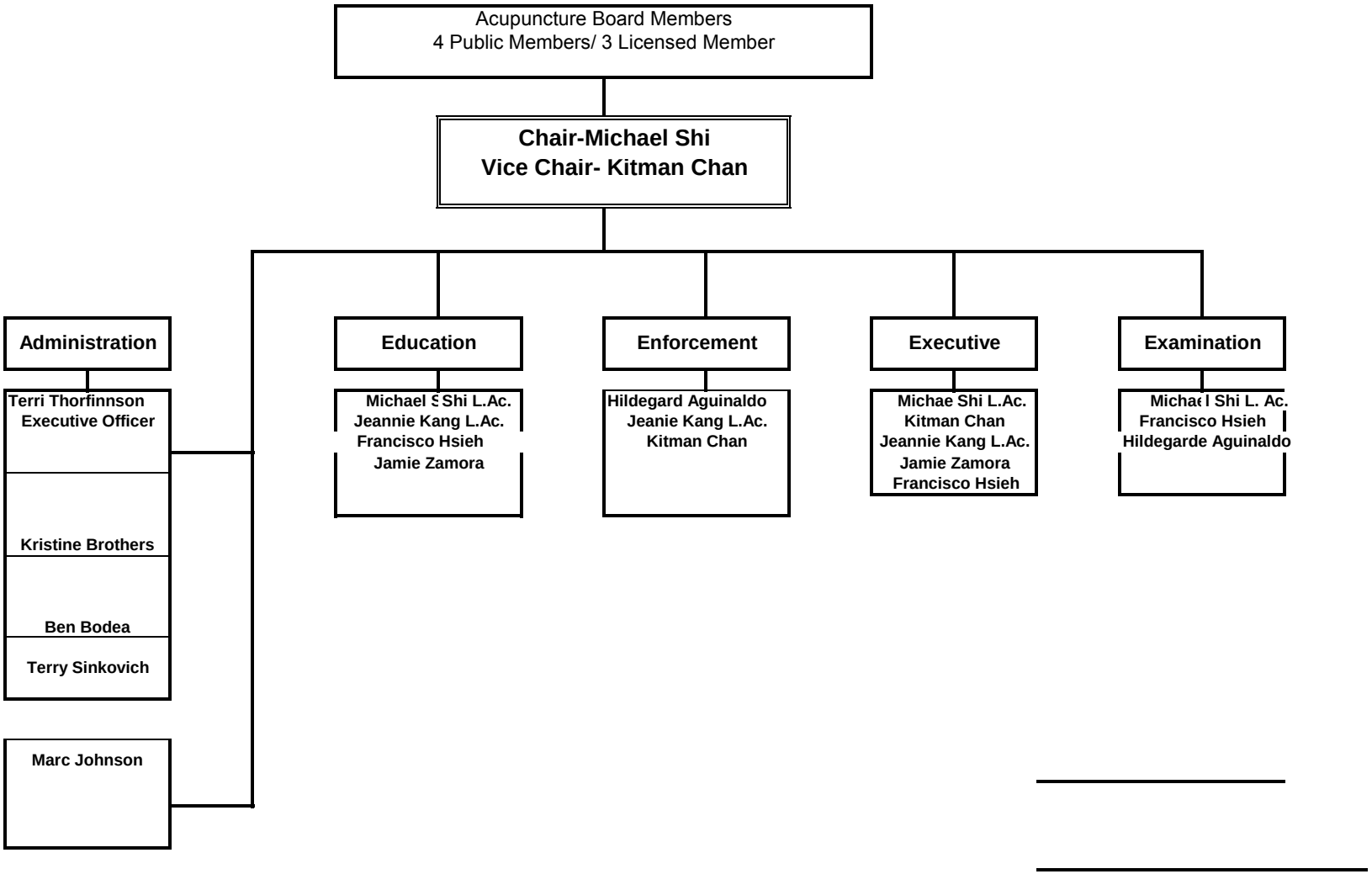
Attachment B

FY 2013-14

Department of Consumer Affairs

Acupuncture Board

Committees



Attachment C

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

ACUPUNCTURE BOARD
1747 N. Market Blvd, Suite 180, Sacramento, CA 95834
P (916) 515-5200 F (916) 928-2204 www.acupuncture.ca.gov

August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report

Conducted by

Terri Thorfinnson, J.D., Executive Officer
Acupuncture Board

Executive Summary

At the November 15, 2012 meeting of the California Acupuncture Board (hereafter referred to as Board) there was discussion about the August 2012 California Acupuncture Licensing Examination (CALE). Concerns were expressed by attendees regarding the quality of the August 2012 CALE and the methodology that was used to determine the cut score/passing score that resulted in a low pass rate for candidates. The Board ordered the Executive Officer to conduct an investigation into these concerns.

The investigation into the August 2012 CALE began with several key questions:

1) Was the exam validated and what does that mean?
2) Did the exam follow the exam plan set by the occupational analysis?
3) Is the item bank adequate and how was it impacted by the "compromised" questions?
4) Was there anything different about the exam development compared with past CALEs?
5) Was the exam reliable in predicting and ensuring minimum acceptable competence?
6) Was the cut score set correctly or should it be changed and why?

Definitions

In reviewing the concerns, it is evident that there is confusion about the examination terminology and concepts that must be clarified. Therefore, the following are definitions of examination terminology and key concepts. This information is derived in large part from the Licensure Examination Validation Policy (OPES 12-01) from the Office of Professional Examination Services (OPES) at the Department of Consumer Affairs (DCA). These definitions are based on or quoted from published national psychometric standards:

Content Domain is the "set of behaviors, knowledge, skills, abilities, attitudes or other characteristics to be measured by a test, represented in a detailed specification, and often organized into categories by which items are classified."[i]

For the CALE, those content domains are:

1. Patient Assessment,
2. Developing a Diagnostic Impression,
3. Providing Acupuncture Treatment,
4. Prescribing Herbal Medicinals, and
5. Regulations for Public Health and Safety.

This information is available on the Board's Web site and contained in the CALE August 2012 preparation guide provided to candidates.[ii]

Occupational analysis is the method for identifying the tasks performed in a profession and the knowledge, skills, and abilities required to perform those tasks. For occupational licensing, the term occupational analysis is preferred over job analysis or practice analysis because the scope of the analysis is across a profession, not an individual job.

Reliability is the "degree to which test scores for a group of test takers are consistent over repeated applications of a measurement procedure and hence are inferred to be dependable, and repeatable for an individual test taker, the degree to which scores are free of errors of measurement for a given group."[iii]

A **reliability coefficient** is a "unit-free indicator that reflects the degree to which scores are free of measurement error. The indicator resembles (or is) a product-moment correlation coefficient. In classical test theory, the term represents the ratio of true score variance to observed score variance for a particular examinee population. The conditions under which the coefficient is estimated may entail variations in test forms, measurement occasions, raters, scorers, or clinicians, and may involve multiple examinee products or performances. These and other variations in conditions give rise to qualifying adjectives, such as alternate-form reliability, internal consistency reliability, test-retest reliability, etc." [iv]

Validation is the "the process by which evidence of validity is gathered, analyzed, and summarized."[v]

Validity is the "degree to which accumulated evidence and theory support specific interpretations of test scores entailed by proposed uses of a test."[vi] Validity is not a property inherent in a test. It is the degree to which the decisions in all phases of exam development are accurate. For licensure examinations, validity is interpreted as correctly differentiating between persons who are qualified to safely practice a profession from those who are not.

Content-related evidence of validity is the evidence that shows the extent to which the content domains of a test are based upon tasks performed in practice and the knowledge, skills and abilities required to perform those tasks. This information is acquired through the occupational analysis.

Examination outline (examination plan) is the detailed description for an examination that specifies the number or proportion of items required to assess each contact domain.

Minimum acceptable competence is the level of knowledge, skill, and ability required of licensees that, when performed at this level, would not cause harm to the public health, safety, and welfare. Minimum acceptable competence is an absolute standard and is determined by a group of licensees serving as Subject Matter Experts (SMEs). These SMEs review the occupational analysis task and knowledge statements and determine the level of performance on them that is required for minimum acceptable competence in the profession. This description serves as the criterion upon which the passing score for a licensure examination is based.

Criterion-referenced passing score is the score on a licensure examination that establishes minimum acceptable competence. Since the difficulty level of the test questions on an examination vary from test form to test form, the passing score that identifies minimum acceptable competence varies according to the difficulty of the specific examination. The passing score is not dependent upon the performance of the candidates who sit for the examination. Arbitrary fixed passing scores are not considered legally defensible[vii].

Examination development specialists are individuals who are trained, experienced, and skilled in licensure-related occupational analysis; licensure-related examination planning, development, validation, administration, scoring, and analysis; and the professional and technical standards, laws, and regulations related to these tasks. OPES employs the examination development specialists with whom the Board contracts through an Intra-Agency Contract agreement to develop its licensure exams.

Passing score (cut score): The primary professional standards followed by OPES, *Standards for Educational and Psychological Testing,* defines a "cut score" (or passing score) as a "specific point on a scale, such that scores at or above that point are interpreted or acted upon differently from scores below that point."[viii] For licensure examination purposes, the criterion-referenced passing score is the point that determines minimum acceptable competency. For the August 2012 CALE, the passing score was set at 133 out of a possible 175 points (i.e., 76%).

The **pass rate** is the proportion of candidates who achieve the cut score or higher on the exam. The pass rate for the August 2012 CALE was 38.5%.

Subject Matter Experts (SMEs) are practitioners currently possessing an active license in good standing, who are active in their practice, and are representative of the diversity of the professional population in terms of years licensed, practice specialty, ethnicity, gender, and geographic area of practice.

Legal Authority

Business and Professions Code section 4938 (c) mandates that the acupuncture licensure exam be developed by OPES.

Business and Professions Code section 139 (a), (b), (c), (d) sets out the exam requirements and standards with which OPES must comply including occupational analyses, psychometric evaluation and exam validation.

Findings

A thorough review of the facts and concerns was conducted and the following findings were concluded:

1. **The August 2012 CALE was validated by OPES.**
2. **The August 2012 CALE is a reliable measure of minimum acceptable competence.**
3. **The passing score (cut score) was accurately set for the August 2012 CALE.**

Finding #1: The August 2012 CALE was validated by OPES.

The Acupuncture Board is required by law to contract with OPES to develop the California Acupuncture Licensing Examinations (CALEs.)[ix]

OPES' mission is to protect the interests of consumers by supporting the Department of Consumer Affairs and its regulatory entities in their commitment to establish and maintain licensure examination programs that are fair, valid, and legally defensible.

OPES' guiding principles are to:

- Develop and implement quality licensure examination programs;
- Promote the sound, ethical, and fair use of licensure examinations;
- Base all licensure examinations on current and valid occupational analyses;
- Verify that any national licensure examination used in California is job-related and valid for State licensees; and
- Promote innovative technological applications to improve examination-related services.

OPES provides professional examination services to the boards, bureaus, and committees within DCA on a fee-for-service basis through Intra-Agency Contract agreements, or IACs. An IAC is developed prospectively by mutual agreement between OPES and the board, bureau, or committee. The IAC defines the activities, roles, and responsibilities of each party to the agreement, and a summary outline of the processes and benchmarks.

Currently, OPES is performing examination-related work for 43 projects, including, but not limited to, the CA Acupuncture Board, CA Architects Board, Board of Behavioral

Sciences, Cemetery and Funeral Bureau, Court Reporters Board, Dental Board of CA, Dental Hygiene Committee of CA, Board for Engineers, Land Surveyors, and Geologists, Board of Guide Dogs for the Blind, Landscape Architects Technical Committee, Optometry Board, Pharmacy Board, Physician Assistant Committee, Board of Psychology, Bureau for Security and Investigative Services, Speech-Language Pathology, Audiology, and Hearing Aid Board, CA Veterinary Medical Board, and Board of Vocational Nursing and Psychiatric Technicians.

The purpose of a licensure examination is to protect consumers by verifying that new licensees possess the minimum acceptable knowledge and experience necessary to perform tasks on the job safely and competently. Examination questions are designed to test the application of knowledge and tasks related to the practice of acupuncture rather than simply the knowledge of acupuncture. This is an important distinction in understanding the nature and structure of the CALE.

The OPES examination validation policy states that "All aspects of the test development and test use, including occupational analysis, examination development, and validation, should adhere to accepted technical and professional standards to ensure that all items on the examination are psychometrically sound, job-related, and legally defensible."[x]

OPES adheres to the above *Standards* and *Principles* in developing, analyzing and validating the CALE. In addition, OPES follows the Equal Employment Opportunity Commission (EEOC) Uniform Guidelines on Employee Selection Procedures (1978); Business and Professions Code section 139 (a), (b), (c), and (d); Business and Professions Code section 101.6; Government Code section 12944 (a) of the Fair Employment and Housing Act; and the Civil Rights Act of 1964, as amended to ensure that the examination is legally defensible.

There are two distinct phases to the CALE examination development process. In the first phase, an occupational analysis and content outline is required to be developed. OPES follows the national exam industry standard and recommends that an occupational analysis be conducted every five years to be considered current (unless there is a significant change in the profession that warrants a more frequent occupational analysis be done). The occupational analysis for acupuncture was conducted in 2008 and a summary is posted on the Board's Web site.[xi] It is anticipated that the next acupuncture occupational analysis will be conducted in 2013.

The minimum requirements for psychometrically sound occupational analyses are as follows:

- Adhere to the *Standards for Educational and Psychological Testing* and the *Principles for Validation and Use of Personnel Selection Procedures* or other psychometrically sound examination method as reference in a recognized professional source.
- Gather data from a sample of current licensees in the State of California that represents the geographic, professional, and other relevant categories of the profession.

- Develop an examination outline from the occupational analysis. [xii]

The last stage of the first phase of exam development is the creation of an examination outline or plan. The occupational analysis provides the guide for required knowledge that must be understood and the tasks that must be performed by licensed Acupuncturists in order to demonstrate minimum acceptable competency. The exam plan is developed based on the results of the data gathered from the sample of licensees in the occupational analysis. The exam outline or plan is the content guide for developing exam questions.

The most recent report documenting the content-related evidence of the validity of the CALE is the "Validation Report: Acupuncturist" published in 2008. This report details 152 separate Acupuncturist job task statements organized into five major content areas and 260 knowledge statements that are required for performance of the tasks. The linking of these knowledges to the job tasks and job task content areas, along with the weightings of these components in the licensure examination are documented in the "Examination Outline" published in this report. A summary version of this report is available on the Acupuncture Board website at http://www.acupuncture.ca.gov/students/oareport2008.pdf.

The exam plan determines the content of each exam. Each of the 175 scored and 25 pretest (unscored) test questions on the August 2012 CALE is linked, by multiple groups of Licensed California Acupuncturists serving as SMEs in OPES-facilitated workshops, to one or more of the job task statements and its related knowledge statement(s). The number of test questions measuring each job task/knowledge combination is specified in the examination outline. The OPES validation report provides strong evidence for the content-related validation of the CALE.

The second phase in exam development is for SMEs to develop exam questions. This process has several stages that include writing questions for and selecting questions from the test item bank, reviewing existing questions to determine if they need to be modified or used in the exam; and constructing the exam with new, modified or existing questions.

The participation of SMEs is essential to the development of licensure exams, and ensures that the exams accurately assess whether candidates possess the minimally acceptable knowledge, skills, and abilities necessary to perform tasks on the job safely and competently.

The selection of SMEs by boards, bureaus, and committees of DCA critically affects the quality and defensibility of their licensure examinations, and is based on the following minimum criteria:

- Reflect the profession in specialty, practice setting, geographic location, ethnicity, and gender.
- Represent the current pool of practitioners.
- Possess current skills and a valid license in good standing.

- Articulate specialized technical knowledge related to a profession.

In addition, at least half of the six to ten SMEs in each workshop should be licensed about five to seven years to ensure an entry-level perspective is represented.

The minimum requirements for psychometrically sound examination development and validation are as follows:

- Adhere to the *Standards for Educational and Psychological Testing* and the *Principles for Validation and Use of Personnel Selection Procedures.*
- Document the process following recommendations in the *Standards* and *Principles.*
- Conduct with a trained examination development specialist in consultation with SMEs.
- Use an examination outline and psychometrically sound item-writing guidelines.
- Follow established security procedures.

OPES completes a detailed analysis of the entire test and each question as part of its examination development and validation process. Adhering to testing industry standards and principles ensures the credibility of the CALE as a licensing exam that evaluates minimum acceptable competency in acupuncture and protects the public health and safety. A validated exam also produces statistical data to demonstrate that the quality of the CALE itself is valid, reliable, and legally defensible.

As part of the validation process, the number of questions in an examination should be sufficient to ensure content coverage and provide reliable measurement, including the results from an occupational analysis, item analysis, and examination analysis. The standard for having a sufficient number of test questions in the item bank is: 1) At least one new form of the examination could be generated if a security breach occurred; and 2) Questions are not exposed too frequently to repeating examinees.[xiii]

Concern was expressed about the number of questions in the CALE item bank and whether it contains a sufficient number of questions. There is a misperception that a significant number of "compromised" questions were removed from the item bank. In fact, these questions were not removed, so there was no decrease in the number of questions in the item bank.

The misconception about item bank maintenance related to exam questions that were deemed to be "compromised" by appearing in an unauthorized study guide sold on the street needs further clarification. After a close review of the study guide, OPES determined there were specific questions identified as compromised, so they were flagged for revision and not to be used without revision in future exams, including the August 2012 CALE. These compromised questions were not technically removed from the item bank. They are being revised as needed for future use. The nature of exam development includes creating both new questions and revised questions that evaluate the correct application of knowledge and tasks and modifying existing questions. Thus,

the existing CALE item bank was not diminished by the flagging and modifying of the compromised questions.

According to OPES, they conduct workshops year round to create new questions to ensure each content category has a wide variety of questions available for future exams. The item bank has sufficient questions in each content category to allow for new or modified questions to be used for each exam. The CALE item bank has a sufficient number of questions regardless of the compromised questions. Thus, the compromised questions did not have any impact in the development of the August 2012 exam. However, modifying the phrasing of the compromised questions could have impacted the examinees' performance as reflected in the pass rate, particularly for those individuals who chose to memorize test questions rather than learn the knowledge required to perform the required job tasks.

Conclusion: The August 2012 CALE was developed according to nationally recognized testing industry standards. The exam plan was used in developing and validating the exam. The same identical and well-documented process was adhered to as has been done with past CALEs—there was no deviation in the exam development process from the process used in past CALEs.

OPES is in compliance with the testing industry *Standards* and *Principles* and has been fully transparent with publishing its standards, exam policies, and occupational analysis. The August CALE is valid, accurate, and legally defensible. The data show that the August 2012 CALE performed extremely well.

Finding #2: The August 2012 CALE is a reliable measure of minimum acceptable competence.

OPES performs detailed psychometric analysis of each test question checking for whether the test accurately measures that those who understand the concept the question is supposed to test in fact answer the question correctly. OPES analyzes each question for whether the answers vary by language reflecting some advantage or disadvantage in the question wording in each language. OPES also analyzes the questions to ensure that the answer to one question does not provide a clue to the answer to another question in the exam. In analyzing the August 2012 CALE, OPES found the questions that were scored accurately measured the application of Acupuncture knowledge. They also found that language was not a factor in whether someone answered questions correctly or incorrectly, thus each language version of the exam was deemed equivalent to each other in its ability to test for required knowledge.

The national standards followed by OPES states the following: "The inferences made from the resulting scores on a licensing examination are validated on a continuous basis. Gathering evidence in support of an examination and the resulting scores is an on-going process. Each examination is created from an examination outline that is based upon the results of a current occupational analysis that identifies the job related

critical tasks, and related knowledge, skills, and abilities necessary for safe and competent practice."[xiv]

OPES validates each exam through detailed question-by-question analysis: Does the exam adhere to the exam plan? Do questions overlap or provide clues to answers to other questions in the exam? Is there any variation in the how exam takers perform on each question? Is there any variation in how exam takers perform on each question by language?

The Council on Licensure, Enforcement, and Regulation states that ". . . reliability is an index of the stability of test scores. Reliability indices range between 0 and 1.00, with higher numbers being associated with a greater level of score stability. Reliability indices above 0.90 are considered very acceptable for most purposes, while indices less than 0.70 usually indicate an unacceptable level of score stability."[xv]

Cronbach's alpha reliability coefficient is a measure of the internal consistency reliability of an examination. The Cronbach's Alpha reliability coefficient for the 175 scored test questions on the August 2012 CALE is 0.914. This value is above the standard of 0.90 noted above.

The standard error of measurement statistic is an estimate of the degree of accuracy of any particular score on a test. This estimate is calculated using an estimate of the test's overall reliability value. The smaller the value of the standard error of measurement, the more accurate is any particular score on the exam. The standard error of measurement for the August 2012 CALE is 5.556 raw score points. This is a typically small standard error of measurement for OPES examinations.

The point biserial correlation coefficient (Rpb) is a mathematically simplified calculation of the Pearson Product Moment correlation coefficient between the proportion of candidates who get an individual test question correct and their respective total scores on that test.[xvi] The correlation, which can range from -1.00 through zero to +1.00, indicates how closely the performance on an individual test question is related to overall performance on the test. The importance of the Rpb for the item analysis of an examination goes beyond reaching the level of statistical significance, especially for examinations with larger numbers of applicants. When there are 400 candidates, the critical value for statistical significance is approximately 0.10. At or beyond this value the Rpb can be considered statistically significant.

However, for examination item analysis, any Rpb of approximately zero indicates that the specific test question under investigation is not contributing to an accurate identification of minimum acceptable competence. In addition, any negative Rpb indicates that the test question under investigation is "working backward" to the degree indicated by the negative value. For example, an Rpb of -0.01 indicates that the test question is practically of no value in determining whether candidates are at the level of minimum acceptable competence. Furthermore, any Rpb value of -0.20, if it occurred, would indicate that candidates who get the test question *incorrect* actually tend to get

higher scores on the examination as a whole. Such a test question, if it had been present, would need to be corrected or dropped from the examination.

For the August 2012 CALE, there were no negative Rpb values. All scored items had Rpb values in the desired range for statistical significance and correlation analysis.

Conclusion: The psychometric analysis performed by OPES on the August 2012 CALE determined that the CALE was reliable in its predictability for evaluating minimum acceptable competency. This reliability, in turn, contributed to the exam's validity and credibility as an exam based on sound testing industry standard psychometric analysis and evaluation. The August 2012 CALE was developed in the same manner as previous examinations, using the same processes.

Finding #3: The passing score (cut score) was accurately set for the August 2012 CALE.

439 candidates took the August 2012 CALE. There were 175 possible points for the exam. The cut score was 133. 169 (38.5%) candidates achieved a passing score of 133 out of 175 points. As a comparison, the cut score for the February 2012 CALE was 128 and the pass rate was 68%.

The concern that led to this investigation focused on the cut score and the low pass rates. There has been significant confusion about the cut scores and pass rate and both terms have been incorrectly used interchangeably. By definition, the cut score is determined by extensive psychometric analysis of individual exam questions in workshops facilitated by an OPES' Examination Development Specialist with SMEs recommended by the Board. The pass rate is simply the percentage of candidates that achieved a passing score.

OPES employs a criterion-referenced passing score methodology called the "modified Angoff technique" for determining licensure examination passing scores. The criterion applied is minimum acceptable competence to practice the profession. A criterion-referenced passing score maximizes the likelihood that candidates who pass the licensure examination have sufficient knowledge and experience to practice safely and competently.

Criterion-referenced standard setting begins with the establishment of a minimally acceptable level of competence for safe practice that candidates must possess in order to pass the examination. The group of licensed Acupuncturists serving as SMEs developed common definitions of different levels of candidate performance by identifying critical work behaviors that contrast the highly competent, the minimally competent, and the incompetent candidate.

Because licensing examinations are known to vary in difficulty from one examination form to another, a fixed passing score or percentage such as 70% does not represent

the minimally acceptable competence for all administrations of an examination. Therefore, arbitrary passing scores are not considered accurate or legally defensible.[xvii]

By applying a criterion-referenced methodology, a passing score is lowered for an examination containing a large number of difficult items (questions) and raised for an examination containing a small number of difficult items. Candidates who take a more difficult test would be placed at a disadvantage unless a criterion-referenced passing score is established. Thus, the passing score provides safeguards to both the candidate and the consumer affected by the particular profession.

This criterion-referenced passing score development methodology is independent of the performance of other candidates who take the examination at the same time. The passing score is not based on performance with respect to the group. Rather, the passing score is based upon minimum acceptable competence as it relates to the difficulty of the particular set of items within the examination form.

The passing score standards for licensure examinations must: 1) Follow a process that adheres to accepted technical and professional standards; 2) Adheres to a criterion-referenced passing score methodology that uses minimum competence at the entry level to the profession.[xviii] OPES adheres to these test industry standards in setting passing scores for the CALE.

Eight California-licensed acupuncturists served as SMEs in the passing score workshop for the August 2012 CALE conducted in the OPES offices on August 15 and 16, 2012 under the direction of a test development specialist. The process included a number of newly licensed practitioners to ensure participation from entry-level licensees. Each of the SMEs had participated in previous CALE exam development workshops at OPES. These SMEs had an average of 9.5 years of licensed experience and ranged from a minimum of 6.3 to a maximum of 12.3 years of experience.

The SMEs were trained and calibrated in minimum acceptable competence for acupuncturists and trained in the modified Angoff technique for setting passing scores. Following the training, the SMEs independently estimated the passing score for each of the 200 (scored and unscored) questions on the examination. When passing rate estimates provided by individuals SMEs had differences greater than 20%, raters discussed the differences and resolved them if possible. None of the scoreable items had differences in estimated passing scores greater than 20%. This is one of the many layers of analysis and checks and balances OPES employs to control individual bias and ensure accuracy.

The workshop facilitator also monitored actual test question difficulty of each test question based on the item analysis for the August 2012 CALE. Over all SME raters and all scoreable test questions, the difference between the average actual item difficulty and the average estimated passing score was 4.65 points. This is a very small, statistically and practically insignificant difference.

An important assessment of the quality of the decisions made by the licensed Acupuncturists serving as SMEs in the passing score workshop is the inter-rater reliability or inter-rater consistency. One measure of this consistency is the **Intraclass Correlation Coefficient**. This correlation coefficient describes the degree of consistency among a group of independent raters. Values range from -1.00 through zero to +1.00. Positive values indicate a consistent relationship among the raters, with higher positive values indicating a stronger relationship.

The Intraclass correlation coefficient among the eight SMEs serving in the passing score workshop was 0.838. This value is highly statistically significant ($p<.000$). More importantly, this value indicates that the set of SME raters who determined the passing score for the August 2012 CALE were highly consistent with one another.

These data show that the SMEs serving as passing score workshop participants were consistent with one another and closely paralleled the actual average item difficulty of the scored questions on the CALE.

One other measure, the classical test theory-based **Conditional Standard Error Measurement** (CSEM) indicates a high degree of precision (accuracy) of the passing score used for the August 2012 CALE. The CSEM is parallel in meaning to the Standard Error of Measurement discussed above, except it more accurately measures the degree of consistency of decisions made at the cut score for the examination. The conditional standard error of measurement for the August 2012 CALE is 5.407 raw score points and is more precise than the value of the standard error of measurement across the full range of scores on the CALE (SEM = 5.556).

The above excerpts of the various psychometric and statistical analysis employed by OPES to ensure the exam tests minimum acceptable competency and that its results are reliable have been included in this report to demonstrate the scientific, evidence-based analysis that is conducted for each and every Acupuncture Licensing Exam developed by OPES. The August CALE and other exams developed by OPES are developed with national industry testing standards. The extensive analyses indicate all of the CALE are in fact accurate and can be backed up with statistical data demonstrating its accuracy and reliability.

There is a misperception that the passing score should be a fixed score; but, in fact, the passing score is set based solely on whether the cut score reflects minimally acceptable competence to practice acupuncture, not a fixed score. The goal of the exam is to test minimum acceptable competency to protect the public health and safety of consumers. An arbitrary fixed passing score or percentage, such as 70 percent, does not represent minimally acceptable competence.[xix] Arbitrary passing scores are not legally defensible.[xx]

The advantage of using criterion-referenced methodology is that the passing score is independent of the performance of other candidates who take the examination at the same time. The passing score is not based on performance with respect to the

candidates. Rather, the passing score is based upon the difficulty of the items within the examination.

Claims that the August 2012 CALE examination results are problematic due to the fluctuating passing scores from exam to exam or the fact that the passing score is not fixed are inaccurate and do not represent the industry testing scoring standards where the Angoff method is utilized. The CALE must adhere to testing standards and principles and not be changed to accommodate requests for score alteration. Additionally, if the August 2012 CALE passing score were changed, such change must be based on sound testing standards and principles. Since OPES adhered to the required testing industry standards and principles, any change in the cut score without evidence would render the examination invalid, inaccurate, and legally indefensible.

Another incorrect conclusion made through public comment was that a low pass rate was a reflection of the poor quality of the exam itself. The validity and reliability of the exam in evaluating minimum competency is based on detailed exam evaluation standards. Whether an exam is valid includes an evaluation of whether it adheres to the exam plan that is guided by the occupational analysis. Validation also includes psychometric analysis of each question and whether the answers to each question predicts reliably that those who answer a question correctly actually understand and can apply the content knowledge the question is testing. Conclusions regarding the quality of an exam are based on this validation process and standards, not on the pass rates of candidates.

The pass rate is a function of the candidates taking the exam and not the exam itself. Since the exam is a measure of how many candidates possess minimum acceptable competence, the pass rate is a measure of how many who took the exam possesses minimum acceptable competence. The exam is developed from the occupational analysis of what clinical knowledge and tasks candidates must know in order to practice with minimum acceptable competence in acupuncture, not simply academic knowledge of acupuncture. A low pass rate reflects the percentage of candidates who do not have minimum acceptable competence. It is important to understand that a licensure exam is developed to test for minimum acceptable competence based on what acupuncture practitioners need to know to practice so they do not harm the public's health and safety. This clinical knowledge of the practice is determined by the occupational analysis.

There were also concerns expressed about candidates not being provided enough guidance for exam preparation. As a convenience, and to assist candidates prepare for the CALE, the Board provides candidates with an examination preparation guide in English, Chinese and Korean. All August 2012 CALE candidates were mailed this preparation guide.

This comprehensive, Board-authorized exam preparation guide contains information about the examination, including the purpose, development, and passing score; examination and site security; examination administration details, including scheduling,

directions to the site(s), ADA accommodations, and testing in Chinese or Korean; and the check-in and testing process. Appendices include a detailed CALE content outline, sample questions by content area, and lists of acupuncture pulses, points, herbs and herbal formulas.

A review of the preparation guide provides all candidates with an awareness of what content areas they need to know to successfully pass the CALE. The licensure exam is not the same as a school exam that tests academic knowledge related to recognition and recall. A licensure exam tests on how to apply the knowledge[xxi]. The candidates who failed the August 2012 CALE did not demonstrate a high enough proficiency in understanding and applying minimum acceptable competence in the required content areas.

Conclusion: There are no anomalies in the exam scoring process for the August 2012 CALE. The exam plan was utilized in scoring and validating the exam. The same identical and well-documented process was adhered to, as has been done with past CALEs—there was no deviation in the exam scoring process from the process used in past CALEs.

OPES is in compliance with the testing industry *Standards* and *Principles* and has been fully transparent with publishing its standards, exam policies, and occupational analysis on its internal Web site. The August CALE cut score is accurate and legally defensible. Extensive analysis indicates that the quality of the August 2012 CALE is excellent, as evidenced by the data cited within this report.

Terri Thorfinnson, Executive Officer 2/13/13

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[i] American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, *Standards for educational and psychological testing,* Washington, D.C.,1999, p. 174.

[ii] See http://www.acupuncture.ca.gov/students/exam_content.shtml

[iii] American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, *Standards for educational and psychological testing,* Washington, D.C.,1999, p.180.

[iv] Ibid. p.181.

[v] Society for Industrial Organizational Psychology, Inc., *Principles for the Validation and Use of Personnel Selection Procedures*, Bowling Green, OH, 2003, p. 72.

[vi] American Educational Research Association, p.184.

[vii] The AERA, APA, NCME, *Standard for Educational and Psychological Testing* (1999) in discussing fixed passing scores on licensure examinations state the following (on page 157): "Legislative bodies sometimes attempt to

legislate a cut score, such as 70%. Arbitrary numerical specifications of cut scores are unhelpful for two reasons. First, without detailed information about the test, job requirements, and their relationship, sound standard setting is impossible. Second, without detailed information about the format of the test and the difficulty of items, such numerical specifications have little meaning."

[viii] American Educational Research Association, p. 175.

[ix] California Code of Regulations, Business and Professions Code section 4938 (c).

[x] OPES Licensure Examination Validation Policy, 2012, p.4.

[xi] See http://www.acupuncture.ca.gov/students/exam_content.shtml

[xii] OPES Licensure Examination Validation Policy, 2012, p.5

[xiii] Ibid., p.5

[xiv] Ibid. p. 4.

[xv] See also Nunnally and Bernstein's Psychometric Theory (3rd Edition, 1994), p. 265 for additional support for these recommended values.

[xvi] To avoid spuriously increasing the correlation, the analyzed item's score is not added to the calculation of the total score for that particular point biserial analysis. Hence, that item's correlation with the total score is not inappropriately influenced by adding that items values to the total score.

[xvii] The AERA, APA, NCME, *Standard for Educational and Psychological Testing* (1999) in discussing fixed passing scores on licensure examinations state the following (on page 157): "Legislative bodies sometimes attempt to legislate a cut score, such as 70%. Arbitrary numerical specifications of cut scores are unhelpful for two reasons. First, without detailed information about the test, job requirements, and their relationship, sound standard setting is impossible. Second, without detailed information about the format of the test and the difficulty of items, such numerical specifications have little meaning."

[xviii] OPES Licensure Examination Validation Policy, 2012, p. 6.

[xix] Ibid., p. 6

[xx] Ibid., p. 6

Appendix

Department of Consumer Affairs
Acupuncture Board

Examination Content

The content of the California Acupuncture Licensing Examination is based on the results of a comprehensive occupational analysis, which is revised every four or five years, most recently in 2008. Licensed acupuncturists in California were surveyed in order to identify the tasks, knowledge, skills and abilities that are important components of the acupuncture professions.

The following percentages indicate the portion of the test devoted to each major topic. For further definition of the content areas, please refer to Tables 18 and 19 in the 2008 Occupational Analysis / Validation Report found on this web site.

Content Area: **Patient Assessment**
33%

The practitioner obtains patient's history and performs a physical examination to determine presenting complaint and interrelationship among symptoms. The practitioner determines the effects of Western medications the patient is taking. The practitioner uses modern diagnostic testing procedures to augment traditional assessment methods.

(A) Obtaining Patient History (15%)
(B) Performing a Physical Examination (14%)
(C) Evaluation for Western Pharmacology (3%)
(D) Implementing Diagnostic Testing (1%)

Content Area: **Developing a Diagnostic Impression**
17%

The practitioner evaluates clinical manifestations to determine the relative strength and progression of disease. The practitioner evaluates patterns of disharmony according to theories of Oriental medicine to arrive at a final diagnosis. The practitioner demonstrates knowledge of how pathology in Western medicine relates to disease in traditional Oriental medicine.

(A) Form a Diagnostic Impression (7%)
(B) Differentiation of Syndromes (4%)
(C) Patient Education and Referral (4%)
(D) Develop Treatment Plan (2%)

Content Area: **Providing Acupuncture Treatment**
32%

The practitioner implements knowledge of the therapeutic effects of points and combinations of points in modifying pain, normalizing functioning, and treating disharmonies. The practitioner uses anatomical landmarks and proportional measurements in locating points on or near body surfaces. The practitioner identifies clinical indications for using alternate treatment modalities.

(A) Point Selection Principles (8%)
(B) Point Categories (8%)
(C) Point Location and Needling Techniques (5%)
(D) Provide Auxiliary Treatment (8%)
(E) Implement Microsystems (1%)
(F) Observation and Modification (2%)

Content Area: **Prescribing Herbal Medicinals**
11%

The practitioner prescribes herbs and formulas based on diagnostic criteria. The practitioner modifies formulas and dosage of herbs according to patient's condition. The practitioner identifies situations and conditions where herbs and formulas would produce undesired effects.

(A) Identification of Herbs (5%)
(B) Prescribing and Administering Herbs (6%)

Content Area: **Regulations for Public Health and Safety**
7%

The practitioner understands and complies with laws and regulations governing hygiene and the control of pathogenic contaminants. The practitioner applies legal guidelines for office practice and maintenance of patient records. The practitioner adheres to legal requirements for reporting known or suspected abuse.

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Department of Consumer Affairs
Acupuncture Board

"CALE cutscores (passing scores) for the following exam dates: June 12, 2000 through August 7, 2012"

Date	Passing Score
6/12/2000	*N/A
12/13/2000	*N/A
6/20/2001	*N/A
1/23/2002	116
7/17/2002	127
1/22/2003	116
8/13/2003	117
1/20/2004	119
7/30/2004	129
1/13/2005	127
8/17/2005	126
3/7/2006	124
8/29/2006	125
1/17/2007	128
8/7/2007	129
2/13/2008	128
8/12/2008	122
1/21/2009	126
8/5/2009	129
2/16/2010	129
8/10/2010	124
Feb-2011	119
Aug-2011	132
Feb-2012	128
Aug-2012	133

Acupuncture Board's records retention schedule as required by the Department of General Services and the State Administrative Manual. Statistical information is retained for no more than 10 years.

Independent Reviewer: Bruce Little, Ph.D. April 3, 2013

Bruce Little, Ph.D. Date

Subject: Independent Review of the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report

Introduction and Brief History of the Project

In January 2013, I was contacted by the Department of Consumer Affairs to provide an independent review of the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report, conducted by Terri Thorfinnson, Executive Officer of the Acupuncture Board.

Following discussions between individuals at the Department of Consumer Affairs and the Commission on Teacher Credentialing (my current employer), a Standard Agreement commencing on January 24, 2013 (or upon approval) through March 23, 2013 between the two agencies was made to assign me to provide an independent review of the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report.

To better understand the context under which Ms. Thorfinnson conducted her investigation, I met with Denise Brown, the Director of the Department of Consumer Affairs, and with Robert Holmgren, Ph.D., the Supervising Test Development Consultant for the OPES, who was assigned to assist me in securing information/data relevant to questions concerning the August 2012 CALE and to Ms. Thorfinnson's investigation findings.

According to the Executive Summary in Ms. Thorfinnson's August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report, concerns were expressed by attendees of the November 15, 2012 meeting of the California Acupuncture Board (Board). These concerns were related to the quality of the August 2012 CALE and the method that was used in setting the passing score (cut score). As a result of these concerns, the Board ordered Ms. Thorfinnson to conduct an investigation.

"....The investigation (i.e., Ms. Thorfinnson's investigation) into the August 2012 CALE began with several key questions:

1) Was the exam validated and what does that mean?
2) Did the exam follow the exam plan set by the occupational analysis?
3) Is the item bank adequate and how was it impacted by the "compromised" questions?
4) Was there anything different about the exam development compared with past CALEs?
5) Was the exam reliable in predicting and ensuring minimum acceptable competence?
6) Was the cut score set correctly or should it be changed and why?"

The Independent Review

The Role of an Independent Reviewer

The role of an independent reviewer is to consider relevant information/evidence and make independent judgments about some products, processes, or events, based on relevant professional and legal references and guidelines, and on relevant professional training/experience, and expertise.

In this particular case, this independent reviewer was asked to evaluate the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report, conducted by Ms. Thorfinnson and determine if this investigator's review, based on the existing information/evidence relevant to the six key questions (listed above), would be substantially similar to or different from the three findings listed in Ms. Thorfinnson's report. The unexpanded versions of the three findings listed in Ms. Thorfinnson's report are displayed below for the readers' convenience:

1. The August 2012 CALE was validated by OPES.
2. The August 2012 CALE is a reliable measure of minimum acceptable competence.
3. The passing score (cut score) was accurately set for the August 2012 CALE.

Preparation for the Independent Review

Inasmuch as this reviewer's judgments needed to be focused on information/evidence related to the original six key questions generated during the November 15, 2012 Board meeting and the three findings listed in Ms. Thorfinnson's report (dated February 19, 2013), I asked Dr. Holmgren for access to various CALE-related data and documents. I also arranged to interview one of the OPES Personnel Selection Consultants who had attended the passing score workshop for the August 2012 CALE.

Review of Data and Documents

Prior to reviewing any confidential examination-related documents, I signed an Examination Security Affidavit; this was witnessed by Director Denise Brown and Dr. Robert Holmgren. Due to the sensitive/confidential nature of many of the documents I reviewed, I chose to review these documents at the OPES office. These documents remained in secure storage when I was not reviewing them.

During the months of February and March, 2013, I reviewed a variety of CALE-related documents (e.g., memoranda, spreadsheets, data analysis printouts) at the OPES office. In addition to reviewing the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report conducted by Ms. Thorfinnson, I also reviewed the December 2008 Acupuncturist Occupational Analysis, since occupational analyses provide the foundational validation evidence and examination outlines (also called blueprints or exam plans) from which occupational licensing exams should be developed.

In addition to reviewing CALE-related data and documents pertaining to the August 2012 CALE passing score workshop, I reviewed numerous CALE-related documents dating back to January 2005. These documents included the following:

- OPES/Acupuncture Board Workshop Summaries of item bank reclassification activities performed by SMEs and facilitated by OPES examination staff - this work is typically performed to check alignment of test items that exist in an item bank against the most current examination outlines (developed as part of the Occupational Analysis) and to reclassify all usable items according to the most recent corresponding tasks, knowledge statements, subareas, and content areas of an occupation.
- OPES/Acupuncture Board Workshop Summaries that described examination item-writing and item-review activities performed by Acupuncture Subject Matter Experts (SMEs) and facilitated by OPES examination staff - typically at least one Personnel Selection Consultant.
- OPES/Acupuncture Board Workshop Summaries of examination construction activities performed by SMEs and facilitated by OPES examination staff
- Relevant examination item analyses performed by OPES staff using Iteman Item Analysis Program - a software package developed specifically for analyzing test items (These analyses are conducted after test items [or test forms] have been administered to examinees.)
- OPES/Acupuncture Board Workshop Summaries of examination passing score (cut-score) setting activities performed by SMEs and facilitated by OPES examination staff
- Memoranda sent from OPES examinations staff to the California Acupuncture Board pertaining to the CALE

Independent Reviewer Findings

I will address, in the original order, the three findings found in the August 2012 California Acupuncture Licensing Examination (CALE) Investigation Findings Report, conducted by Ms. Thorfinnson. Ms. Thorfinnson's findings are numbered 1-3 below and following each of her stated findings are my listed comments, reviews of the relevant evidence, and my findings. (My finding numbers will match those of Ms. Thorfinnson.)

> Ms. Thorfinnson's finding 1: The August 2012 CALE was validated by OPES.

Comments

While differences exist in the interpretation and use of the term "validated" as it pertains to job-related examinations, I will adhere to a commonly accepted measurement perspective that examinations are not "valid" per se, but if constructed well and according to professional guidelines, a high quality examination will, to a large degree, align to an examination outline (or blueprint) developed as part of an occupational analysis. In addition, a well-developed examination will provide sound evidence from which decisions concerning some level of candidate preparation might be made.

Review of the evidence (in preparation for finding 1)

At the request of the California Acupuncture Board (CAB), staff at the Department of Consumer Affairs' Office of Examination Resources (now called OPES) conducted a validation study of the Acupuncturist occupation in California. The study was completed in December 2008.

As part of the occupational analysis, OPES staff interviewed a number of California-licensed Acupuncturists (hereafter Acupuncturists) and met with focus groups comprised of Acupuncturists to identify the tasks that Acupuncturists perform on the job, and the knowledge required to perform those tasks.

Following these interviews and focus group meetings, OPES staff developed a questionnaire that was sent statewide to more than 3,900 Acupuncturists in good standing with CAB. The response rate for questionnaires used in the analysis was 553/3,918 or 14.11%. (Some questionnaires were excluded from the analysis because the recipients were no longer practicing or had returned blank questionnaires, as is common in these kinds of studies.)

The Acupuncturist questionnaire was made up of three sections. The first section asked Acupuncturists to provide demographic information about themselves, their work setting, and their practice. The second section asked Acupuncturists to rate specific job tasks (on provided rating scales) in terms of how frequently they performed the tasks and how important the task was to performance of their job. The third section asked Acupuncturists to rate specific knowledge statements on how important that knowledge was to performance of their job.

After the questionnaires were received by OPES and the data from the questionnaires were entered, OPES calculated critical values for each task and knowledge statement based on the ratings that questionnaire respondents provided, then met with another focus group of Acupuncturists who determined that all the task and knowledge statements would be retained for the examination outline (test blueprint). An additional focus group of Acupuncturists then established the links between the job tasks and the related knowledge statements for the examination outline. The examination outline was structured into five content areas weighted proportionally (based on ratings) relative to the other content areas. The examination outline specifies the job tasks and knowledge that a California Acupuncturist is expected to master at the time of licensure.

While high quality OAs and the resulting examination outlines do not guarantee that a high quality examination will be created, they provide critical content-related information to assist in the development of examinations that are job related.

Independent Reviewer's Finding 1

Inasmuch as a well-conducted and well-documented occupational analysis (OA) can provide a solid and legally defensible foundation for a high-quality examination program, it was important to review the 2008 Acupuncturist OA conducted by OPES staff.

Many, if not most, occupations evolve over time, and having noticed the 2008 date of the Acupuncturist OA, I initially wondered if this could be a concern. After performing a review of the CALE-related documents (e.g., workshop summaries), and interviewing OPES staff who had attended CALE-related workshops, I found no indication that any of the SMEs who had participated in CALE-related workshops might have considered any of the tasks or knowledge statements listed in the 2008 study to be out of date. (A number of these Acupuncturist SMEs had also participated in quite a few CALE-related item-review workshops over the past few years and, as such, had ample opportunities to voice any concerns.)

The participation of multiple Acupuncturist SME panels and the sample of California Acupuncturist survey respondents that OPES staff included when conducting the 2008 Acupuncturist OA appear to be sufficient to support the development of the examination outline for the Acupuncturist examination. The evidence provided in the 2008 Acupuncturist OA indicates that OPES staff members followed accepted professional guidelines in conducting the OA and in developing the examination outline used to construct the CALE.

The CALEs that have been assembled by Acupuncturist SMEs (under the guidance of OPES staff facilitators) since the 2008 Acupuncturist OA seem to align well with the examination outline that was developed during the 2008 OA. This is commonly one type of evidence considered when determining whether a test is valid for the stated purpose of the examination – in this case, to determine if examinees are prepared to work safely and effectively in California as entry-level Acupuncturists.

Ms. Thorfinnson's finding 2: The August 2012 CALE is a reliable measure of minimum acceptable competence.

Comments

While validity is appropriately considered the most critical component of any examination program, reliability provides an important supporting role. Examination programs that exhibit problems with reliability need to be evaluated to determine the reason.

Reliability is an indicator of how dependable a test is in measuring that which is intended to be measured. A test would be considered reliable if the same test takers were to receive similar scores on the test after having taken it a number of times. (Of course this assumes that no learning or remembering of the test items is occurring on the part of the examinees.)

It is important to note that just because a test is reliable, we should not necessarily assume that it is valid. I will use a brief analogy of the steering wheel in a car. If the wheels of the car are properly balanced and aligned, and the steering components are centered properly, we can drive a car on a level road, release our grip on the steering wheel and the car will continue in a more-or-less straight line. If we repeat this behavior a number of times with the same result, we can comfortably say that the steering is accurate (valid), in that the car does what we intended it to do, and we can say that the steering is reliable because it goes straight in a repeatable fashion. If we were to release the steering wheel and the car continuously veered to the right, we would assume that the steering was reliable (e.g., repeatable, even predictable), but it wasn't accurate (valid) because it wasn't behaving as intended (continuing in a straight line).

Before we determine if a test is reliable, we first need to have SMEs establish that the test items are aligned to the examination outline and that the items are written to a level appropriate for safe and effective entry-level practice. In addition, test items need to be evaluated using appropriate statistical measures. Test items can be considered reliable yet exhibit

variations in performance by administration. Examinee groups can change over time and examinee performance can also be affected in a number of ways. In terms of differences in group performance, first-time test takers tend to score better, on average, than repeat test takers. The primary reason is that repeat test takers are by definition a different group than those who passed the exam on the first attempt. The entire group of repeat test takers has already *not* passed the exam and was likely not as well prepared to take the exam as those who passed on the first attempt.

Review of the evidence (in preparation for finding 2)

In preparation to evaluate to Ms. Thorfinnson's second finding, I reviewed the item- and test-level analyses of the CALE performed by OPES staff using Iteman Item Analysis Program - a software package developed specifically for analyzing test items (These analyses are conducted after test items (or test forms) have been administered to test candidates.) These analyses can provide considerable insight into the quality of the test items and test forms.

Independent Reviewer's Finding 2

A review of the item- and test-level statistics indicated that the CALE test items and test forms possess acceptable levels of performance. Test-level statistics indicate that the CALE test forms have had acceptable levels of performance as indicated by the commonly calculated statistics.

Ms. Thorfinnson's finding 3: The passing score (cut score) was accurately set for the August 2012 CALE.

Comments

Developing examinations and determining passing scores for subject areas in which the test developers are not specifically trained (e.g., Acupuncturist) has led test developers to rely heavily on the use of SMEs. While test developers who work with individuals in a particular occupational may gain considerable insight into an occupation, it is critical to use SMEs and current practitioners to ensure that test items are job related and aligned to the examination outline. Likewise it is critical to use SMEs to ensure that passing scores are set based on the expertise of SMEs and their understanding of what constitutes minimum acceptable competence for an entry-level licensee.

Note: It is difficult for test developers (or anyone else) to know precisely if a passing score is set accurately. Criterion-referenced passing scores depend very heavily on the SMEs' understanding of what constitutes minimum acceptable competence and their ability to apply that conceptualization of minimum acceptable competence to their ratings of the items on the test form.

Many if not all tests will pass some small number of examinees who should not have passed (false positives) and will not pass some number of examinees who should have passed (false negatives). This occurs for a number of reasons, such as:

- Testing conditions that are not conducive to good test taking (e.g., loud noises, excessive cold or heat, or other uncomfortable environmental conditions)
- Examinee anxiety level or illness
- Test items that are too easy or too difficult, or that contain wording that is unclear
- Examinee cheating

It is also difficult to compare passing rates by examination administration due to reasons, such as:

- True differences in examinee groups
- Revisions in test content (We often see this when a program revises its rules or regulations and not all examinees have had an opportunity to learn about the changes prior to testing.)
- Sample size differences (with small sample sizes being especially sensitive to score fluctuations)

Review of the evidence (in preparation for finding 3)

In preparation to evaluate to Ms. Thorfinnson's third finding, I reviewed the following documents/spreadsheets:

- OPES/Acupuncture Board Workshop Summaries of examination construction activities performed by SMEs and facilitated by OPES examination staff
- Relevant item analyses conducted by OPES staff
- OPES/Acupuncture Board Workshop Summaries of examination passing score (cut-score) setting activities performed by SMEs and facilitated by OPES examination staff
- A spreadsheet that contained the ratings that the Acupuncturist SMEs provided for the items contained in the test form that had been administered to the candidates during the August 2012 CALE

I also interviewed an OPES consultant who attended the passing-score workshop for the August 2012 CALE to discover if the consultant noticed anything unusual about how the workshop was conducted or in the ratings that the SMEs provided for the test items in the August 2012 CALE. According to the OPES consultant, the workshop was very routine.

A number of the Acupuncturist SMEs who had participated in the August 2012 CALE passing score workshop had participated in previous CALE-related workshops (e.g., item [question] writing, item review, and passing score). This practice of using SMEs on multiple occasions is not uncommon in the testing industry and is often done to add a sense of continuity to the process.

Independent Reviewer's Finding 3

According to the documents reviewed, there were eight California-licensed acupuncturist SMEs who participated in the August 2012 CALE passing-score workshop. This is an acceptable number of SMEs for this type of workshop.

OPES staff followed accepted professional procedures in conducting the passing score workshop for the August 2012 CALE. Conversations with an OPES consultant who attended the workshop indicated that the Acupuncturist SMEs who participated in the understood what constituted entry-level practice in Acupuncture and assigned reasonable ratings to the test items based on that conceptualization.

General conclusion

After reviewing all the available evidence, I find that OPES staff and the Acupuncturist SMEs involved in assisting OPES staff in examination development and in the setting of the passing score for the August 2012 CALE adhered to acceptable professional guidelines and procedures.

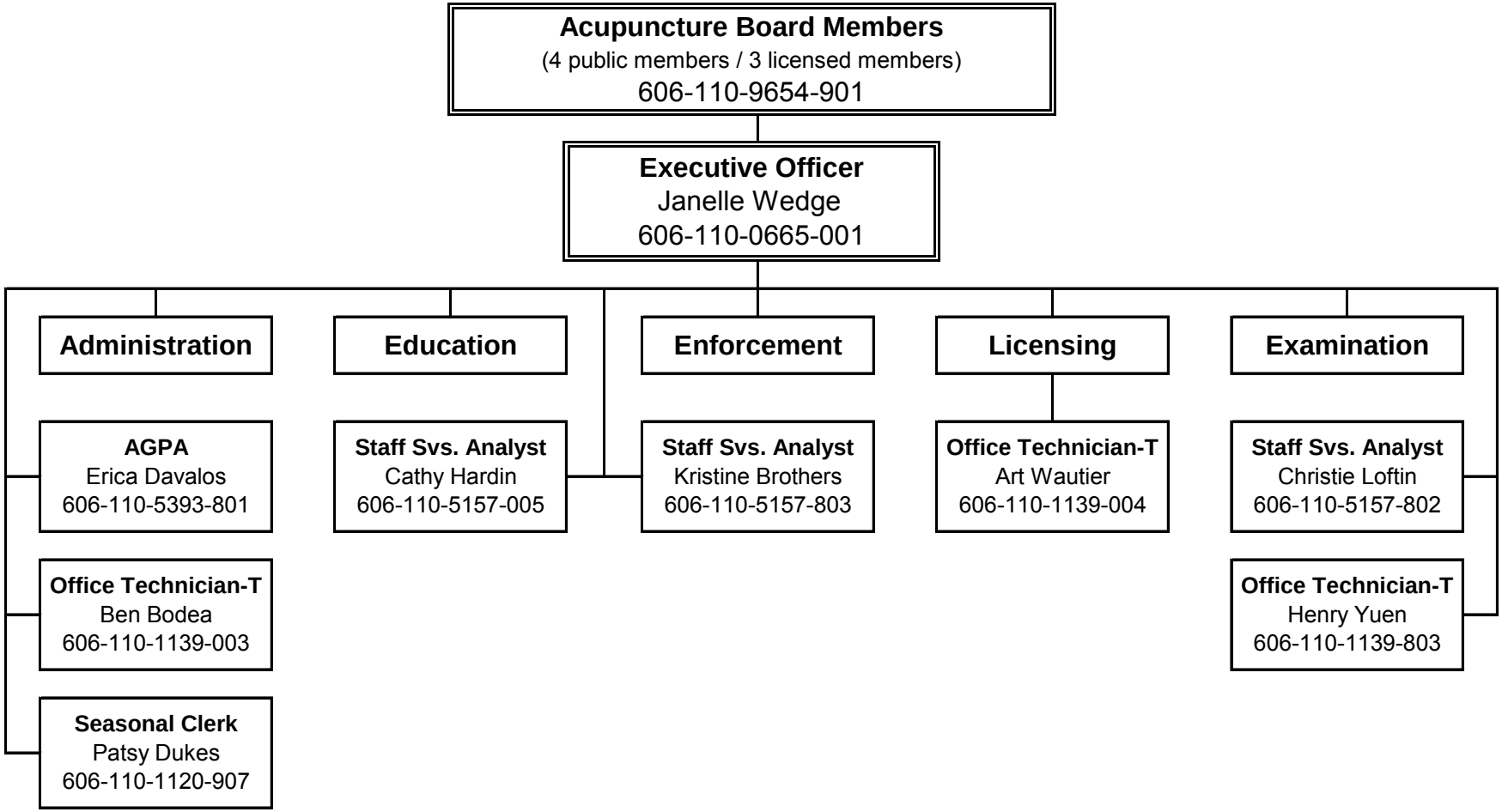
Attachment D

Department of Consumer Affairs

ACUPUNCTURE BOARD

June 2010

FY 2009/10
8 PYs



Janelle Wedge, Executive Officer

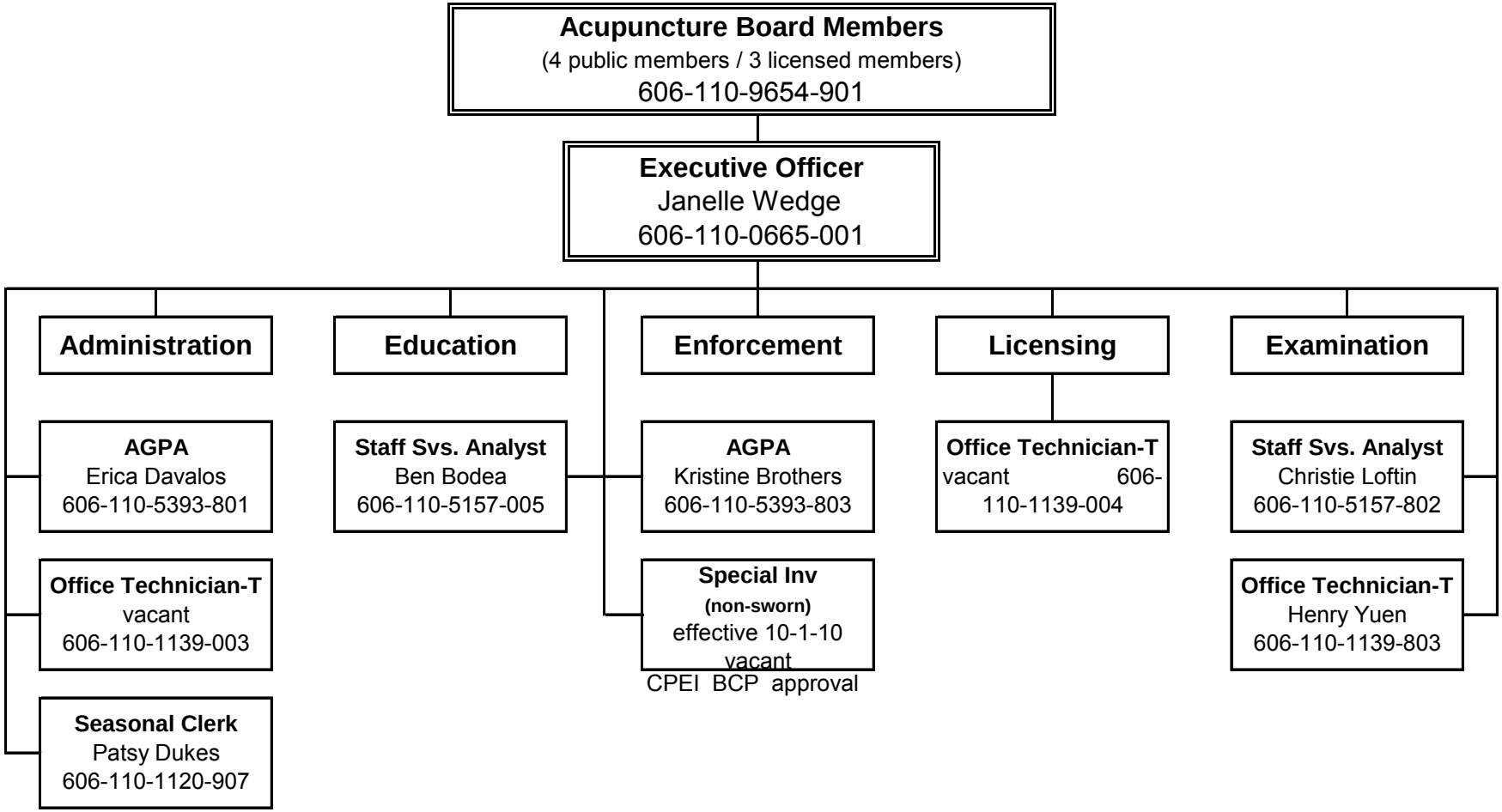
Personnel Analyst

Department of Consumer Affairs

ACUPUNCTURE BOARD

June 2011

FY 2010/11
9 PYs



Janelle Wedge, Executive Officer

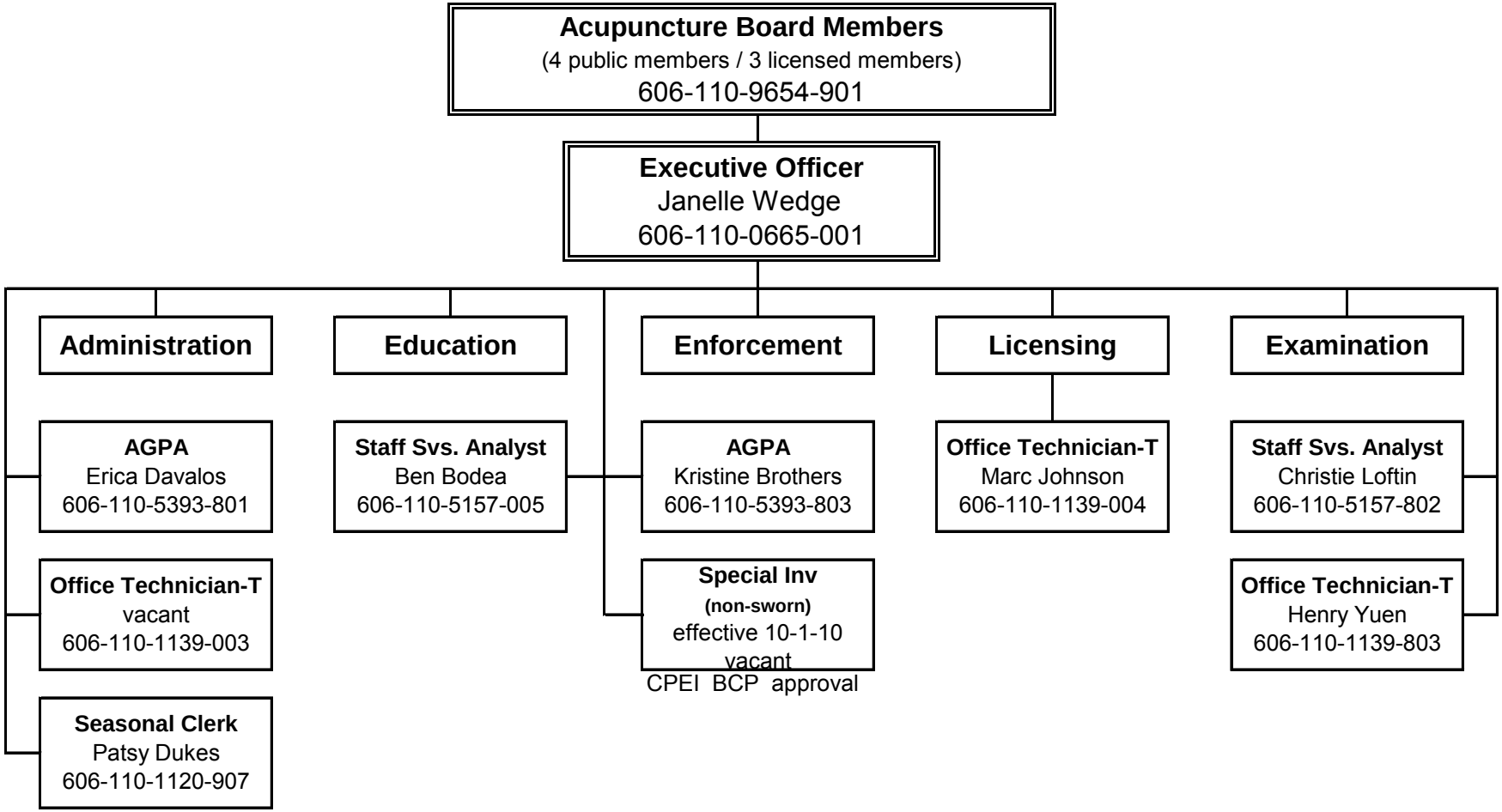
Personnel Analyst

Department of Consumer Affairs

ACUPUNCTURE BOARD

June 2012

FY 2011/12
8 PYs

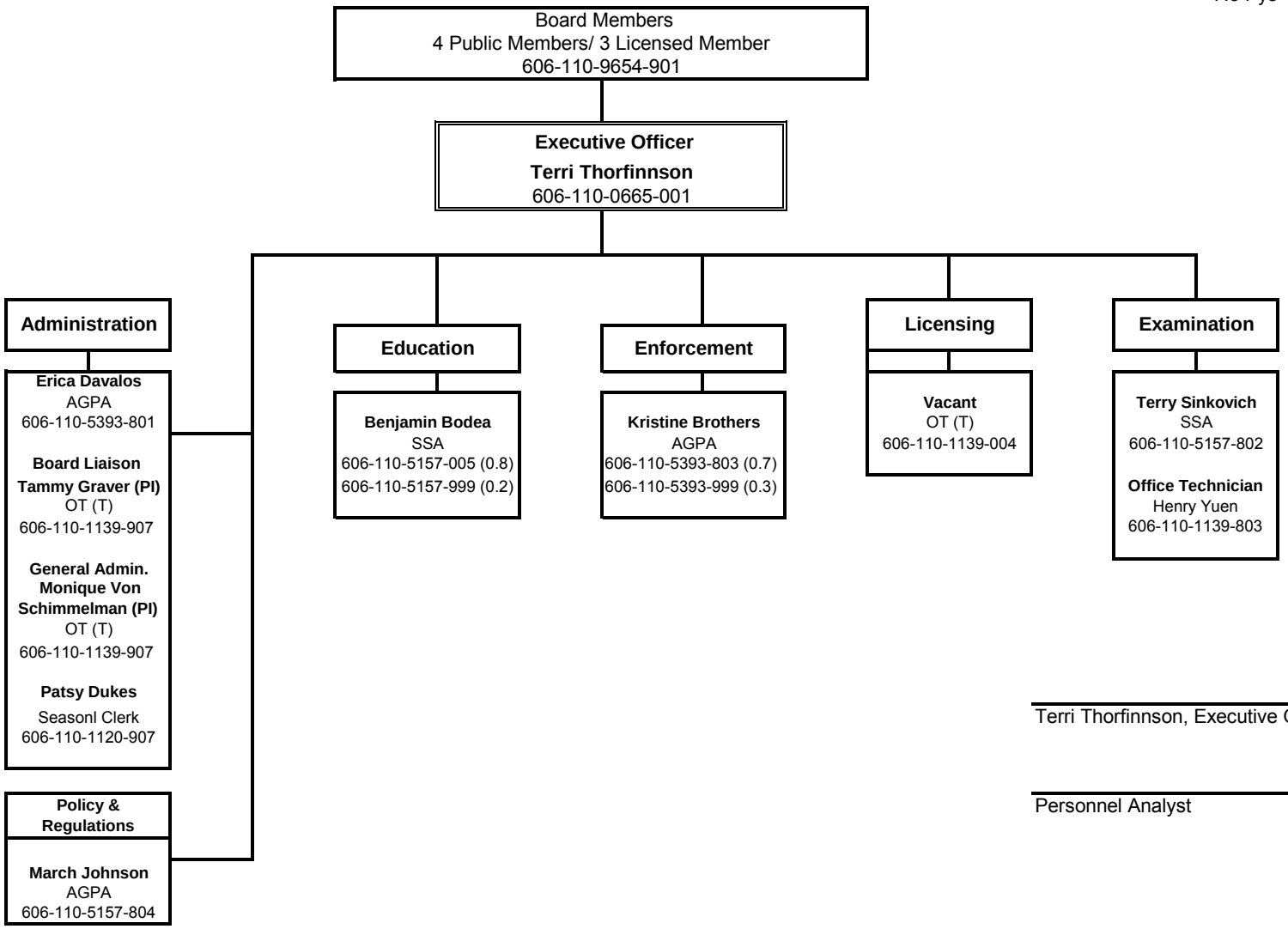


Janelle Wedge, Executive Officer

Personnel Analyst

Department of Consumer Affairs
Acupuncture Board
June 2013

FY 2012/13
7.5 Pys



Terri Thorfinnson, Executive Officer

Personnel Analyst