**CALIFORNIA ACUPUNCTURE BOARD**
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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor

January 3, 2005

Senator Liz Figueroa
Chair, Joint Committee on Boards,
Commissions, and Consumer Protection
1020 N Street, Room 521
Sacramento, CA 95814

RE: Board's Response to the Joint Committee's Background Paper for the Acupuncture Board's January 4, 2005 Hearing

Dear Senator Figueroa:

This is in response to the Joint Committee's (Committee) sunset Background Paper prepared for the Acupuncture Board's January 4, 2005 hearing.

The tenor of the Committee's paper is of concern to the Board. The Board disagrees with the allegation that it may not be serving the public and licensees well. The paper misrepresents Board actions and positions and ignores the considerable input provided to the Committee in 2002 and again in the Board's September 1, 2004 Sunset Review Report, October 8, 2004 responses to the Little Hoover Commission's (LHC) Report and the16 additional questions from the Committee.

The Board concurs that several issues noted in the Committee's report have been considered before. In 2002, the Board presented its review and recommendations on many of the issues (i.e., diagnosis, scope of practice, primary health care, educational standards, national exam, and school approval process) to the Committee in written reports, responses and oral testimony. Rather than considering the Board's responses and recommendations, the Committee chose to refer these issues to the LHC to review and to conduct a comprehensive analysis (SB 1951, Chapter 714, Statutes of 2002, added B&P Code Section 4934.1).

The Board has continued in good faith to address and respond to each of the issues raised by the Committee. The Board is committed to continue to work with the Committee to resolve these issues and would encourage the Committee to meet with the Board and its legal counsel to discuss and clarify the areas where the Committee does not have an accurate understanding of the Board's position and the work it has done on these topics.

Acupuncture and Oriental medicine is a 30-year young profession in this country and in California. California is also one of the first states to license and regulate acupuncturists. At this time, there are no national standards or a scope of practice established as of yet. Until there are, California has been and will continue to be at the vanguard of setting standards for consumer protection, the profession and the country.

The following are the Board's responses to the Committee's issues identified for the Acupuncture Board's January 4, 2005 sunset hearing.

**COMMITTEE'S ISSUE #1: Whether the Board should be transformed into a bureau or be fully reconstituted.**

**Board's Response:**

The Acupuncture Board should continue in its current structure to provide consumer protection through the licensure and regulation of the profession. Concluding extensive reviews and audits, the Committee and Department of Consumer Affairs supported the continuance of the Board through sunrise legislation in 1998 and again in 2002. The LHC, in their September 2004 report, made suggestions on issues about the practice and regulation of acupuncture, but did not recommend any structural changes to the Board or its status as a Board. The Governor's California Performance Review also recommended retaining the Board in its current structure, but moving it and all medical health professions under the Department of Health Services. The Board also addressed this issue on pages 7-8 of its September 1, 2004, Sunset Review Report.

The Board has continued to provide consumer protection by strengthening the enforcement program, increasing the educational requirements, clarifying examination requirements and streamlining licensing requirements. This has been accomplished while working with a group of diverse stakeholders who don't agree, have different visions and interpretations for the scope of practice, educational standards and the concept of medicine, involve different ethnicities, cultural views and values, including stakeholders in this state, and nationally, who have varying goals for the profession. The Board is often caught in the middle and continues to try to make educated decisions based on the law.

Longstanding laws have been in place governing DCA boards or bureaus that designate the number and composition of the board as well as designating the appointing source. It has been the policy of the legislature to require a public majority on licensing boards for all professions excepting the health care boards, wherein the statutes designate a professional majority. Any changes to these laws and policies will require legislative action and approved by the Governor.

**COMMITTEE'S ISSUE #2: Scope of practice, related educational requirements, and proposed Board legislative amendment.**

**Committee's Question: What are the key differences between the scope of practice of an acupuncturist and the scope of practice of a physician? Does current law permit acupuncturists to act as primary care providers, even to the extent of diagnosing, prescribing, and referring based upon Western models of medicine? How should the Board educate potential licensees, depending upon the answers to these previous questions? How can the Board reconcile vast increases in educational requirements for new licenses while arguing that 30 hours of continuing education every 2 years for current licenses is adequate?**

The Board will address the three categories identified in Issue #1 in the order listed in the Committee's report, which are: (1) Scope of Practice Issues, (2) Educational Requirements, and (3) Diagnosis

**Board's Response:**

1) **Scope of Practice Issue**

The Board addressed this issue in the Board's 2004 Sunset Review Report (pages 18 and 19), and in the Board's two responses to the Committee, dated October 8, 2004, addressing additional questions posed from the Committee (question 9, pages 3-5) and the LHC's findings and recommendations (recommendation 1, pages 1-4).

B&P Code sections 4927 and 4937, in conjunction with Legal Opinion 93-11, prepared by the Board's legal counsel in 1993 and all succeeding legal opinions, defines acupuncture and the wide range of modalities to treat most common diseases and dysfunctions of the body. The Board believes the current scope of practice for a practitioner of acupuncture and Oriental medicine is adequate and depends greatly on the legal interpretations, opinions and guidance of the Board's legal counsel to implement and clarify the laws and regulations of the profession.

The Board agrees that the status of an acupuncturist as a primary care provider allows the acupuncturist to engage in the scope of practice as defined in B&P Code Sections 4927 and 4937. B&P Code Section 4927(d) defines acupuncture to mean "the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion." B&P Code Section 4937 authorizes an acupuncturist to utilize Oriental medicine treatment modalities and procedures used to promote, maintain, and restore health; including the use of Oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements. Acupuncturists were included as primary treating physicians in the Workers Compensation system in 1989 and approved as a Qualified Medical Evaluator (QME)(Labor Code Section 3209.3(a)). An acupuncturist obtained the ability to diagnose, independent of a physician, since eliminating the requirement for a physician referral by statute in 1979. Thus an acupuncturist is allowed to diagnose, prescribe and administer treatment in the practice of acupuncture and Oriental medicine, as defined in B&P Code Sections 4927 and 4937.

The Board's Legal Counsel, and therefore the Board, relies on intent language and the interpretation of the intent language, which require licensees to be subject to regulation and control as a primary health care professional. However, such a designation is only within the scope of practice of 'acupuncture and Oriental medicine.' The Board construed this to mean, if an acupuncturist determines the patients' health problem or symptoms are beyond their scope and ability to treat (example: cancer, tumors, etc) the acupuncturist must inform the patient and recommend the patient schedule an appointment with the appropriate health care provider. Referral does not mean managing the patients' overall health care. The Board does not interpret this language as

establishing authority "across multiple disciplines, including Western medicine," as the Committee stated in their Background Paper (page 8). Though the text of law omits direct reference to diagnosis,

Board's legal counsel interprets legislative intent to mean:

> "The codification of legislative intent found in section 4926 references the need to regulate and control acupuncturists as a "primary health care profession." A primary health care professional will possess the ability to diagnose, prescribe and administer treatments. Although an acupuncturist is authorized to practice all three phases of the healing arts (i.e., diagnose, prescribe, and administer treatment), the acupuncturist is limited by the statute as to the types of treatments for which he or she can prescribe and administer. Thus, while acupuncturists are considered to be primary health care professionals, there are statutory limitations upon their ability to prescribe and the nature of treatments which they are allowed to administer." *(Legal Opinion 93-11,* page 4)

**Legislative intent is specifically included in legislation to indicate what the legislature intended the law to accomplish.**

*Legal Opinion 93-11* found that the Legislature in repealing B&P Code Section 2155 (i.e., eliminating the need for a physician referral as a precondition for treatment by an acupuncturist) (Statutes of 1979, Chapter 488, effective January 1, 1980) authorized acupuncturists to diagnose a patient's condition prior to providing any treatment. Thus, per the above, an acupuncturist is authorized to diagnose. However, though acknowledged in legislative intent, the text of the law omitted diagnosis, which is a critical function. Since 1980 acupuncturists have been authorized to diagnose within their current scope and in their daily practice. 'Primary health care' means a licensed health care provider who provides initial health care services to a patient and who, **within the scope of their license**, is responsible for diagnosis and treatment, health supervision, preventative health services, and referral to other health care providers when an acupuncturist determines the patients' health problems are beyond their scope and ability to treat. As a primary health care professional an acupuncturist may provide comprehensive, routine and preventative acupuncture and Oriental medicine treatments.

This was recognized in 2002 by the Committee and the Department of Consumer Affairs in the written comments reported in their final recommendations regarding Issue No. 1, relating to continuance of regulating the profession, wherein they stated, "Acupuncturists diagnose, administer treatment, and prescribe various treatments and herbs to promote patient health."

This is further recognized by the LHC in their September 2004 report recently released, wherein on Page ii of the Executive Summary, they state "clear statutory language is needed to affirm that consumers have direct access to acupuncturists who can diagnose patients using traditional Oriental techniques….".

The Committee cannot overlook the uniqueness of this medicine and its consuming public. Unlike other health care professions, this medicine was founded and integrated into the United States within the last 30 years. The benefits and impact of this medicine

were not fully understood when it was originally introduced to this country. California's ethnic and cultural diversity and support of a more holistic approach to health care has advanced the knowledge and acceptance of the medicine to the consuming public. Many Asian citizens will only look to an acupuncturist as their primary and often only, medical care. The ability to diagnose such patients is an integral component in the patients overall care. The elimination or constraint of an acupuncturist's ability to diagnose would result in the restriction of health care to these cultures.

Former Governor Jerry Brown appeared before the LHC's September 25, 2003, public hearing to testify on behalf of the Board and the profession. He explained that with the "competing views of the world and the economic, cultural and ideological perspectives", the legislature intended to "allow the consumer to have the liberty of choice in the medicine they choose and the opportunity to select the healer of their choice". He went on to state that with this choice comes threat and opportunity and that the LHC needs to sort through the politics of these issues, but the legislative intent language specifically defined the intent to "allow the practice of Oriental medicine…culminating to a modern world…and yes, using diagnosis...and yes, requiring a quality education…and yes, with a knowledge of Western medicine…and yes, to integration…" Governor Brown stated we need guidelines, but while respecting tradition and that the goal of the 1980 legislation was to ensure that consumers could choose to seek practitioners of traditional Oriental medicine without a doctor's referral.

**2) <u>Educational Requirements</u>**

The Board addresses this issue on Pages 20 and 21 of the Board's 2004 Sunset Review Report. The Board feels the scope of practice and educational curriculum requirements are focused on Traditional Oriental Medicine (TOM) and are clearly defined in the laws and regulations that regulate an acupuncture and Oriental medicine practitioner. The educational curriculum provides the licensee with the foundation to practice competently within their defined scope of practice. Since the commencement of licensure in California in 1975 health care and related technology have changed tremendously. It is the responsibility of the Board to maintain an adequate level of educational requirements that match the entry-level knowledge, skills and abilities required of a licensed practitioner in California today. B&P Code Section 4939(b) requires a minimum 3,000-hour curriculum requirement, effective January 1, 2005. This is a 652-hour increase over the previous educational requirement of 2,348 hours (established in 1985), with approximately an 88% increase of those hours in the areas of TOM, Herbology, and Clinical Practice, and a 12% increase in Western Biomedical sciences.

Unlike what the Committee's Background Paper states the Board is not pursuing any increase in hours above 3,000, nor has it any plan or proposal to achieve such. Although the Board has stated its support of an eventual entry-level standard of 4,000 hours, before it would ever proceed with any further increases in educational requirements, it would need to evaluate the educational outcomes and practice proficiencies of licensees trained at the 3,000-hour level, as well as the need or justification for any increase. If in time the Board determines the justification is there to proceed with increasing the hours above 3,000, any increase would not be for the express purpose of increasing Western medicine training, as stated by the Committee in their Background Paper. The issue of training requirements for acupuncturists is a long established and settled issue dating back 25 years. Throughout this time, California Code of Regulations Section 1399.436 has

included Western biomedical science courses to familiarize practitioners with the practices of other health care practitioners, as do all health care professions. These courses have consisted of a survey of the basic sciences, internal medicine, pharmacology, neurology, surgery, obstetrics/gynecology, urology, radiology, nutrition, public health, clinical practice of medicine, osteopathy, dentistry, psychology, nursing, chiropractic, podiatry and homeopathy. An acupuncturist practices in a western medical environment. They see patients who may have been seen previously by Western practitioners and an understanding of western medical will assist an acupuncturist in understanding a patient's medical history and in making a diagnosis. Similarly, familiarity with Western medical terms assists the acupuncturist in referring patients to western practitioners and responding to their inquiries. An acupuncturist is required to characterize treatments and diagnosis when seeking insurance reimbursements for treatment provided

The LHC recommended the Board devote adequate curriculum to patient safety, including coordination (i.e., up-to-date infection control practices, improving coordination with Western medicine) (LHC Regulation of Acupuncture, Executive Summary, page vii). The Board agrees and its main objective is to set a standard that protects the consumer and assures a level of education that is consistent with other first-contact health care professionals. All medical practitioners need a core medical curriculum leading to basic medical understanding and an awareness of the strengths and limitations of other modalities to know when to refer and how best to communicate with other practitioners. It is in the patient's best interest that all medical practitioners possess common core knowledge of medical terminology, promote adequate professional communication, competent patient case management, continuity of care and comprehension of reporting responsibilities. All health care professionals must keep up with constant changes and improvements in modern science and medicine. Acupuncturists, as well as all providers listed in the California Labor Code Section 3209.3 as 'physicians', are required to complete accurate, uniform, and replicable evaluations. The procedures require an evaluation of anatomical loss, functional loss, and the presence of physical complaints to be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community. The Board feels a licensee should have a core education and knowledge of the biomedical sciences as currently taught in acupuncture schools. Knowing how to establish a working diagnosis, when to refer, and how to communicate and interact with Western trained practitioners ensures the health, safety and welfare of the consumer.

**3) <u>Diagnosis</u>**

The Board believes there is a clear distinction between Eastern and Western medicine. Eastern medicine is increasingly being accepted as a complement to not a substitute for Western medicine. The treatment modalities and philosophies of Eastern and Western medicine are distinctly different and should not be merged. The Board agrees with the Committee's statement that "the ability to diagnose is inherent in any healing art professions" (Committee's Background Paper, page 15). Accordingly, their respective statutes to particular treatment modalities and scope of practices restrict all health care practitioners.

**<u>COMMITTEE'S ISSUE #3</u>: Is the Board failing in its duty to protect the public?**

**<u>Committee's Question</u>: How does the Board respond to specific issues of public safety set out in the LHC report, such as ensuring that acupuncturists use sterile needles?**

**<u>Board's Response</u>:**

<u>Clean Needles</u>

The Board has been responsive to the consumer by ensuring strict education requirements on clean needle technique (CNT) and testing the exam applicant on CNT protocol. The Board also enforces state and federal laws relating to standards of care, sterilization, and condition of office (i.e., OSHA, CNT, Hazardous Waste, Health and Safety Codes, etc.). The Board's 2004 revised consumer brochure, released June 2004, also contains language addressing single use needles (page 8) and herb-drug interactions (page 10).

The Board agrees with the LHC's recommendation of writing language to define a single use disposable needle requirement into regulation. As the integration of Eastern and Western medicine continues to expand the Eastern practitioner should be required to offer information regarding Western medicine interaction –and- the Western practitioner should offer information on complementary medicines, including but not exclusively, acupuncture. The DHS/FDA has jurisdiction for approving medical devices. However, the Board acknowledges the LHC's recommendation to regulate single-use disposable needles and will amend current regulations to reflect FDA rules. The Board concurs acupuncture needles should always follow FDA regulations. Single-use disposable needles are already the norm and have not been an issue. The 1996 Occupational Analysis reflected that 99.6% (99.3% English, 100% Chinese and 100% Korean) of licensees 'only' used disposable needles in their practice and few consumer complaints have been filed with the Board involving multiple use needles. June 1996 FDA rules have required manufacturers to label their acupuncture needles for 'single use only', and historically, students are taught this in their theoretical and practical training.

<u>Herbs</u>

The Board has devoted considerable time in many meetings since 1997 discussing a wide range of concerns about herb safety. The Committee's Background Paper's conclusion that "the Board has given scant attention to this question" is inaccurate.

The Board recognizes and agrees with the LHC regarding the concerns and importance of herb-drug interactions, herb purity and potency, accurate labeling, and reporting of adverse effects. 'Regulating herbs' was a primary issue in the Board's 1997, 1998 and 1999/2000 Strategic Plans. The Board discussed this issue for the first time at a public meeting on September 28, 1997, and again on February 23, 1998, May 28, 1998, February 23, 1999 and concluded June 27, 2000. In 1997 the Board felt that in order to protect consumers against the potential danger of medicinal-grade herbs it was essential to review the need to regulate the distribution, sale and/or use of herbs in California. During that time, the Board assisted the California State Food and Drug Branch of the Department of Health Services (DHS), the state agency having authority over herbs and herbal products, to identify Asian patent medicines for the 1997-1998 *Compendium of Asian Patent Medicines.* This publication was compiled to educate the public, herbal industry and medical community on the potential danger of some of the patent medicines. Dr. Richard Ko, DHS Division of Food and Drug,

testified numerous times before the Board, but specifically on September 28, 1997, February 23, 1998, and May 28, 1998 regarding herbal regulation. In reference to a proposal to allow only Board licensed acupuncturists or herbalist to prescribe or administer herbs, the Board was advised, at its February 23, 1999 meeting, by its legal counsel that the Board only had legal authority to regulate herbs that are administered or prescribed by a licensee. He also advised that the coalitions of dietary herb companies and pharmaceutical companies could be too strong for the Board to take on in this highly sensitive, financially lucrative and political battle and should be left up the state agency (DHS) with the authority to do so.

The Board feels very confident that in California, acupuncturists are the only licensed health care professionals **trained and tested for competency in prescribing herbal medicine**. California approved acupuncture schools offer a minimum of 450 classroom hours of instruction in traditional Oriental herbology in addition to clinical training. Chinese herbal medicine has been practiced safely and effectively for centuries and has great potential for beneficial results when prescribed by a trained professional who recognizes the benefits and risks.

The Board, in its consumer brochure, advises that it is very important that a patient inform both their physician and acupuncturist of all the products they are currently taking (drugs, herbs, other supplements) so that the practitioners can monitor effectiveness, ensure safety from adverse reactions and watch for possible interactions.

**COMMITTEE'S ISSUE #4: The use of unlicensed acupuncture assistants.**

**Committee's Question: Should the Board perform unannounced, on-site visits of offices in order to determine if acupuncturists are not accurately reporting the use of unlicensed assistants? Will the Board's proposed regulations do enough to protect consumers from treatment by unlicensed acupuncture assistants?**

**Board's Response:**
The Committee seems to be equating "unlicensed activity" with any use of "acupuncture assistants." The two are not the same issue. In fact, since July 2000, five cases were opened against specific licensees involving alleges 'acupuncture assistants.' All five cases were closed with compliance or no actual violation was found.

The Board does take enforcement action against individuals who have been found to engage in the unlicensed practice of acupuncture. The action taken ranges from issuing a citation, issuing a cease and desists notice, authority to file an injunction, to filing a criminal complaint with the district or city attorney. Because this type of unlicensed activity relates to health care and is more serious, investigations are typically referred to the local authorities to prosecute to ensure prompt legal action versus administrative action. Over the last four years, a total of 126 complaints were filed on unlicensed activity. However 75 of those cases were found to be licensed, 6 cases were found to be duplicates and opened in error, 40 cases were not unlicensed activity, but the findings of the investigation involved unprofessional conduct, and out of the 126 complaints, as addressed above, only 5 cases were against specific licensees involving alleged 'acupuncture assistants.' The Board investigated 105 of these complaints in-house and forwarded 21 for formal investigation.

Regarding the use of assistants, the Board reported its findings and recommendations on Pages 25 through 28 of its September 2004 Sunset Review Report. The Board extensively reviewed the laws and regulations pertaining to the use of unlicensed individuals of other states and of seven other California medical professions. Areas reviewed included the definition of assistants, educational requirements, jurisdiction, supervisory requirements, examination requirements, licensing/certification requirements, and scope of practice. After the review the Board decided to proceed on the Chiropractic model and has edited coursework, guidelines and a training manual to adapt the model to the acupuncture profession.

The Board is soliciting the Committee's acceptance and 'support' of the findings and recommendations on the use of assistants. With that support the Board will proceed to finalize assistants performance procedures, coursework requirements, supervisory responsibilities, training manual and complete regulations establishing an acupuncture assistant by the end of 2005. The Board was not able to take any definitive action until its recommendations were presented to the Committee and the Committee input received.

Under current law the use of assistants who are performing direct patient care are not legal. The Board has been proactive to notify all licensees of this fact. In the May 2003 Points of Interest newsletter licensees were advised that the use of such individuals for direct patient care is considered unlicensed practice. The two surveys the Board distributed to licensees in May 2002 and May 2003 also communicated this point. Since July 2000, five cases were opened against specific licensees involving alleged 'acupuncture assistants.' All five cases were closed with compliance or no actual violation was found.

The Board does not have specific statutory authority to conduct unannounced visits, however it can perform such visits if permission is given by the licensee to enter. In order to inspect a location and sanction the owner, who refuses entry, the Board would need specific statutory authority or a search warrant. Designated Board staff periodically conduct visits to approved acupuncture schools or externship clinics, but not to individual licensee clinics. If needed, the Board would and has requested an investigator from the Department of Consumer Affairs Division of Investigation to conduct clinic site visits.

**COMMITTEE'S ISSUE #5: Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists, are also practicing acupuncture.**

**Committee Question: Is the Board aware of allopathic doctors, podiatrists, or dentists who are practicing acupuncture? More specifically, can the Board explain how a dentist would go about performing acupuncture on a patient – rather than inserting a needle or syringe with Novocain to a patient? Please expand upon and clarify what the Board interprets as practicing acupuncture. If the Board believes there are doctors performing acupuncture without taking any coursework or training, has the Board taken disciplinary action against these people?**

**Board's Response:**
In response to the Committee's inquiry about how a dentist would go about performing acupuncture on a patient, it is the Board's understanding that in lieu of a dentist using Novocain, they would perform acupuncture on standard acupuncture points to relieve pain.

The standard points for this type of technique are located on the head, arms, including the hands, and legs. The stimulation of acupuncture points can cause the release of endorphins, which are natural mechanisms to relieve pain. Many patients for health reasons or personal preference request the use of acupuncture facial anesthesia than Novocain injections or as a complement to anesthesia.

The Board is aware of physicians that perform acupuncture, but are do not know to what extent.

> B&P Code section 4935(b) defines, "Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500) who practices acupuncture involving the application of a needle to the human body…." -and-
> Section 4947 states: "Nothing in this chapter shall be construed to prevent the practice of acupuncture by a person licensed as a dentist or a podiatrist, within the scope of their respective licenses, if the licensee has received a course of instruction in acupuncture. This course material shall be approved by the licensing board having jurisdiction over the licensee…" Accordingly, exempt practitioners refers to an allopathic doctor, podiatrist or dentist who is authorized to perform acupuncture by within their own scope of practices (e.g., the use of acupuncture to modify the perception of pain or to normalize physiological functions which are normally treated within their respective scope of practice).

The Board feels that the 200-300 hour course in Oriental medicine often taken by many allopathic doctors, podiatrists or dentists is totally inadequate. It is the Board's opinion that the some allopathic doctors, podiatrists or dentists who perform acupuncture and Oriental medicine in their practices, do so without having taken sufficient coursework or training. For example, the Board has reviewed some of the training programs for physicians available at various institutions. In the case of one university, the course description states, "the training is organized into three units that involve lectures, home study and video viewing, and a one day supervised clinical training session. One course description indicates home study of videotapes and clinical point practice that is to be conducted on the physician and on family and friends. This same university has a graduation list of over one thousand physicians and osteopaths, of which approximately 306 reside and practice in California. The course chairman describes the course as,

> "Medical Acupuncture for Physicians is a basic course. It is typically the first serious exposure the student has to acupuncture, its scope, depth, and organization, however, provide participants with the comprehensive training they need to practice good acupuncture. For participants with ambition to learn more in acupuncture, the course provides the firm foundation on which to develop skills in specialty applications or microsystems. It is simply and modestly states, the best course on the continent."

The Board feels that proper, adequate and 'complete program training' in acupuncture and Oriental medicine diagnosis is essential to ensure safe and effective acupuncture treatment.

The LHC in their September 2004 report (Executive Summary, page v) supports this position and stated, "Practitioners interested in mastering both Eastern and Western methods should

continue to seek licensure under both systems".

Given the extremely sensitive political battle that would ensue, the Board's legal counsel has recommended the Board not pursue this issue. Changes would be required in each of respective practice acts of the practitioners identified in B&P Code section 4935(b). Additionally, over the years, no separate and independent legislation has been proposed to accomplish this goal.

Lacking the authority to do so, the Board has never been able to take disciplinary action against a practitioner licensed as a physician, surgeon, dentist, podiatrist who performs acupuncture and Oriental medicine in the course of their practices, by virtue of their licensure and respective scopes of practices. The Board's authority to take disciplinary action covers only licensed acupuncturists.

**COMMITTEE'S ISSUES #6: The Board does not and has not had a faculty member appointee for two years, notwithstanding the legal requirement that there be one.**

**Committee's Question: What has the Board done to encourage the appointment of a faculty member who is on a Board approved acupuncture college? Has the Board been in contact with the Governor's office regarding the appointment?**

**Board's Response:**
The Board has no authority over the functions of the Governor's Office, however the Board regularly provides the Governor's office with the status of Board members terms, impending vacancies and quorum needs. In addition, in an effort to keep the appointments and functions of the Board at a maximum, the Board has historically worked directly with all administrations evaluating and running security and license checks on possible new appointees, when requested. Recently the Board has been working directly with Governor Schwarzenegger's administration and the executive office of the Department of Consumer Affairs on possible candidates for Board appointments. The Department and Governor's office have always welcomed this input and interaction from the Board, which is essential to ensure professional appointees in good standing. Once appointed the Board works with the Governor's office, Senate Rules and the newly appointed member to ensure all required documents are filed in a timely manner.

Three new appointments were made to the Board towards the end of Governor Davis' term, however, since the Acupuncture Board appointees are required to be confirmed by the Senate these appointments were held during the transition of the new administration and were withdrawn by Governor Schwarzenegger upon taking office. One of these three positions was designated as filling the professional/faculty member position

This situation is not unique to the Acupuncture Board. It is the Board's understanding that the Governor's Office is working to get board vacant positions filled, including the professional/faculty member position. This was the first time the Board has ever experienced not having a quorum, and the Board has been a proactive participant to work with the appropriate authorities to move appointment recommendations through in as timely a manner as possible in this political environment.

**<u>COMMITTEE'S ISSUE #7</u>: The law provides that a majority of the appointed members of the Board shall constitute a quorum. Vacancies continue to be a problem for the Board.**

**<u>Committee's Question</u>: How many members of the Board should constitute a quorum? Why are vacancies an enduring problem?**

**<u>Board's Response</u>:**
Vacancies have never been an 'enduring problem' for the Board before. Historically the Board never lacked a quorum until SB 1951 (Chapter 714, Statutes of 2002) amended the language in B&P Code section 4933(c) to define that "five members of the board shall constitute a quorum to conduct business." Prior to SB 1951's amendments to 4933, this section defined that "a majority of the appointed members of the Board shall constitute a quorum to conduct business." Currently, with the Board down to four members this is the first time the Board has ever experienced not having a quorum. The Board would prefer to function under the previous version of 4933. Since August 1, 2004, the Executive Committee is the only functioning committee of the Board until a quorum is reestablished.

**<u>COMMITTEE'S ISSUE #8</u>: Enforcement of the Board's continuing medical education (CE) program, and its ability to audit licensees to ensure compliance with the continuing education requirements.**

**<u>Committee's Question</u>: It is unclear to the Committee if the Board's improved auditing process is practical or effective. Could the Board please clarify its auditing process for CE of licensees in further detail?**

**<u>Board's Response</u>:**
B&P Code Section 4945 requires an acupuncturist complete 30 hours of continuing education every two years as a condition of license renewal. CCR Section 1399.489 provides the authority to the Board to perform random audits of acupuncturists who have reported compliance with the continuing education requirement.

Prior to 2001 licensees provided self-certification of compliance with the continuing education requirements. In an attempt to verify self certification and strengthen compliance, commencing in 2001 the Board implemented a new system for recording and retaining CE provider attendance records within a monthly filing system that would be used to cross-check and verify licensees attendance to continuing education courses. Providers submit attendance records showing the name, signature and license number of the acupuncturist who attended the approved course within ten days of completion. Monthly 10-20 licensees reporting compliance with the continuing education requirement are randomly selected and sent an audit letter. The audit letter also contains language that would allow the Board to issue a citation and levy a fine should the licensee fail to comply with the continuing education requirements of Section 1399.489. Compliance levels have ranged between 93% to 97% annually. CCR Section 1399.463 authorizes the Board to issue a citation and fine for noncompliance. B&P Code Section 4945(e) allows the Board to renew a license if the licensee's continuing education is deficient and the licensee must make up the deficient continuing education hours by the next renewal cycle.

**<u>COMMITTEE'S ISSUE #9</u>: Whether ACAOM's approval process for schools used in 39 other states is superior and less costly than the Board's.**

**<u>Committee's Question</u>: If the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM) is used by 39 other states and appears to be a better approval process according to the LHC, why doesn't the Board support the use of ACAOM?**

**<u>Board's Response</u>:**
The Board is opposed to naming any specific accrediting agency in law. If required, the legislative language should remain generic to allow the Board discretion to recognize any accrediting agency approved by the U.S. Department of Education. The Board addresses this issue on Pages 34 through 36 of the Board's 2004 Sunset Review Report.

In 2001, the Board began to focus on reviewing and evaluating the school approval process. Public meetings were held to review the Board's application, site visit manual, and policies and regulations relating to school approval; BPPVE's approval process; and the Accreditation Commission of Acupuncture and Oriental Medicine's (ACAOM) accreditation process. In addition, BPPVE and ACAOM made presentations about their processes and how California could utilize or partner with them.

The Board's review unveiled some concerns pertaining to ACAOM. ACAOM's didactic and clinical training program hour requirements have historically been below that of California's, so the schools that receive ACAOM accreditation do not necessarily meet California's standards. In addition, the Board is monitoring several accusations that surfaced in June 2004 against ACAOM of professional and ethical misconduct, which was raised by three ACAOM commissioners who were then removed from the Commission. Also in June ACAOM underwent organizational restructuring with the deletion of the long-standing director and office in Southern California, thus now retaining only one office in Maryland. Historically the Board regularly interacted with the director of the Southern California office, discussed and strategized school issues and participated in joint school site visits when appropriate.

According to the LHC's September 2004 Report, "ACAOM fees for accreditation are significantly higher than those charged by the Board for approval. ACAOM's application fees are double those of the Board. Further, in addition to assessing a fee per student on top of the basic fee for each step of the process, ACAOM has several steps, including eligibility, candidacy, accreditation, sustaining, and re-accreditation, each of which has fees associated with it. Over a ten-year period that involves many of the ACAOM steps but just the one approval step that the Board offers, a program might spend ten times or more on ACAOM accreditation than on Board approval." The average cost to an ACAOM accredited school is in a range of $30,000 to $50,000 for the complete accreditation process. The only fees associated with the Board's school approval process is $1,500 for the application and the school pays travel costs for the two site visitors.

Accreditation is not a replacement for governmental regulation. Public institutions receive their approval to operate through the state Constitution and legislative action. Accreditation is a voluntary, private-sector evaluation. Accrediting bodies cannot force institutions to comply with state and federal laws, and do not view their role as regulatory. There are three types of accrediting bodies, regional associations (e.g., the Western Association of

Schools and Colleges [WASC]); national accrediting bodies (e.g., the Association of Independent Colleges and Schools, the National Association of trade and Technical Schools); and specialized accrediting bodies (e.g., ACAOM, NOMAA, American Bar Association, National Education Association). The Board is opposed to naming any specific accrediting agency in law. If required, the legislative language should remain generic to allow the Board discretion to recognize any school accredited by an accrediting agency approved by the U.S. Department of Education.

National scope, practice or educational standards "do not" exist in this profession, which is largely due to the variance in the scope of practice from state to state. The spectrum is wide and diverse. For instance, 11 states do not license acupuncture and Oriental medicine practitioners, others still require a referral from an allopathic doctor, and some states have a limited scope of practice, while the profession in California has a broader scope. Therefore, at the June 2002 and again at the September 23, 2003 Board meeting the members took a position to retain the Board's school approval process as a requirement for a graduate student to qualify for the CALE. Recognizing other approval or accrediting authorities may limit or compromise the Board's ability to improve educational and approval standards.

**COMMITTEE'S ISSUE #10: The Committee recommended that the Board should continue evaluating the National Examination, given the time, effort, and cost involved in providing the Board's California-only examination.**

**Committee's Question: Does the Board agree with the LHC's recommendation that the California Acupuncture Licensing Examination (CALE) should remain the state's licensing examination?**

**Board's Response:**
The Board supports the findings and recommendations of the LHC regarding the California Acupuncture Licensing Examination (CALE). The CALE is developed by the Department of Consumer Affairs Office of Examination Resources according to the Standards for Educational and Psychological Testing (Standards) published by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. The Standards are the criteria used by the psychometric and legal professions to judge whether examinations are legally defensible and psychometrically sound. The Office of Examination Resources has proven to be a very reliable and professional partner in the development of the licensing examination. Consistent with the Board's policy to ensure a psychometrically sound and valid licensing examination, the Board has and will continue to review and evaluate testing alternatives.