

# **Acupuncture Board Executive Summary – Background and Description Of the Board and Profession**

## **History of the Board**

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 Oriental 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 Oriental 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 etseq. 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.

### **Board Composition**

SB 1980 (Chapter 991, Statutes 1998) reduced the Board from 11 members to 9 members, consisting of three members who are licensed acupuncturists with at least five years of acupuncture experience and not licensed as physicians, one member who is a licensed acupuncturist who is also a faculty member of any board approved acupuncture college, one member who is a licensed physician with two years of acupuncture experience, and four public members. The member serves a four-year term for a maximum of two terms and is subject to confirmation by the Senate. The Governor appoints the three licensed members, licensed/faculty member, physician member, and two public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. As of August 1, 2004 two of the Governor's appointee's terms ended and the Assembly Speaker's appointee is currently serving in her 60-day grace period with a term ending September 1, 2004. Currently the Board only has four appointed members (3 public and 1 licensed) and shortly will be down to only three members (2 public and 1 licensed). Board vacancies consist of five Governor appointees (1 public, 2 licensed, 1 licensed/faculty and 1 licensed MD) and one Assembly Speaker appointee for a public position.

### **Committees of the Board**

The Acupuncture Board has four committees that make recommendations to the full Board as follows:

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

### **Board regulation of the practice and practitioners**

The Acupuncture Licensure Act (B&P Code, Section 4925-4979) and its related administrative regulations (Title 16, CCR, Sections 1399.400 et seq.) defines and regulates both the practice of acupuncture and the profession. The Board licenses and regulates acupuncture and Oriental medicine practitioners, establishes educational standards and approves training programs. A

Masters Degree is required for graduation from any one of the thirty-one Board approved acupuncture schools. Also, several of the acupuncture schools in California have been approved

for the 4,000-hour Doctorate program, which was nationally adopted in May 2000. As part of its licensing function, biannually, the Board develops and administers the California Acupuncture Licensing Examination (CALE) in English, Chinese and Korean.

The practice of acupuncture, as defined in B&P Code Section 4927, involves the stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion. B&P Code Section 4937 authorizes a licensed acupuncturist to engage in the practice of acupuncture and to perform or prescribe the use of Oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal and mineral products, and dietary supplements to promote, maintain, and restore health. Licensed acupuncturists in California are primary health care professionals holding the highest responsibilities of providing for the health and safety of their patients. Any incident or behavior compromising that safety is critical. An acupuncturist may diagnose and treat illnesses and injuries, in addition to prescribing herbs and herbal formulas, perform Oriental massage, electroacupuncture and moxibustion. The Board regulates over 9,500 licensed acupuncturists.

In California, only those persons who have met the educational and examination requirements and have been issued and possess a current and valid acupuncturist license are allowed to practice acupuncture. Individuals licensed by the Acupuncture Board use the title of ‘Licensed Acupuncturist’ (L.Ac).

Exemptions: Physicians licensed by the Medical Board of California are authorized to practice acupuncture within their scope of licensed medical practice. Podiatrists licensed by the California Board of Podiatric Medicine and dentists licensed by the Dental Board of California may also practice acupuncture as part of their respective licensed practices - if they have completed a course of instruction in acupuncture approved by their respective licensing boards (B & P Code Section 4947).

The ethnic diversity of the profession often brings about language barriers and accepted practices that vary between the different ethnicities. Eastern and Western medicine, while distinctly separate entities, continue to integrate, and it has been a challenge to the Board to educate the profession about acceptable standards of ethics for practice in the West, as well as advancing the esteem and acceptance of the profession while maintaining the historical integrity of the various Eastern disciplines. The accelerating “mainstreaming” of alternative medicines, particularly acupuncture and Oriental medicine has added to the Board’s workload responsibilities and challenges. Acupuncture is used extensively in pain management, drug and alcohol detoxification, treatment of HIV patients and cancer patients to mitigate the impact of chemotherapy. The majority of enforcement cases are cases relating to unprofessional conduct, ethical issues, practice management issues and sexual misconduct. The Board has been challenged as to how to get the message to the public of what to expect from the acupuncturists, in addition to informing licensees regarding what constitutes proper practice protocol. The Board wrote, designed, produced and released the first consumer brochure on acupuncture and Oriental medicine in 2001 and just concluded revising it for distribution in 2004.

Since the Board’s 2002 review, the Board has made a number of changes to improve overall

effectiveness and efficiency and respond to concerns and recommendations raised by the Sunset Review Committee. Throughout 2003–2004 the Board worked intimately and extensively with the Little Hoover Commission on the comprehensive analysis of the scope of practice for acupuncturists, along with educational standards, and the school approval and examination processes. The Board also concluded its two-year comprehensive study and review of the use of unlicensed acupuncture assistants and the need to license and regulates those assistants. In addition an extensive review and evaluation was conducted of continuing education requirements, course quality and relevance, distance education, and auditing practice. The Board successfully completed regulations to implement the 3,000-hour educational standards that take effect January 1, 2005 (Business and Professions Code Section 4939, the results of AB 1943, Chapter 781, Statutes of 2002). The educational requirements consist of 2,050 hours of didactic training and 950 hours of clinical training. The regulatory process for this package was a two-year arduous process, but reflective of a collaborative spirit of all stakeholder perspectives to ensure a quality educational standard for the health, safety and welfare of the citizens of California. The enforcement program has been strengthened and the new licensing examination plan, as defined in the 2001 Occupational Analysis, has been fully implemented and monitored for performance. In the last fiscal year, the Board continued its work to protect the California Consumer and increase their access to acupuncture and Oriental medical care. The Board expanded the consumer services on its Web site, by modifying the capability of filing complaints on-line in addition to the ability to electronically correspond directly with the Board. The Board also completed revisions to the consumer brochure. Revisions were reflective of perspectives from the public, Sunset Review Committee and Little Hoover Committee.

The mission of the Acupuncture Board is to benefit and protect the public through appropriate regulation of licensure, education standards, and enforcement of the Acupuncture Licensure Act.

The following highlights represent the Board’s accomplishments over the last four-year period from 2001 through 2004:

## **2001**

- Concluded occupational analysis.
- Two new member appointments made to the Board.
- Completed and distributed consumer brochure.
- The Board’s website was redesigned, information expanded, and connected to the Governor’s new portal.
- Reviewed, site visited, and approved five new acupuncture schools.
- The Department of Consumer Affairs Internal Audit Office conducted a successful performance audit of the Board’s programs.
- Commenced writing and developing of licensee newsletter.
- Established the Competencies and Outcomes Task Force to identify practice competence and assign educational hours to those competencies.
- Commenced the second sunset review process/hearings.

## **2002**

- Proceeded through the Board's second sunset review process and hearings. SB 1951 was introduced by Senator Figueroa to sunrise the Board.
- Between May 2001 and April 2002 held four Competencies Task Force meetings. CTF submitted final recommendations to the Board on April 24, 2002.
- Board developed and adopted (6/25/02) the 2002-2003 Strategic Plan
- Board adopted Competencies Task Force recommendations June 25, 2002.
- Board supported and lobbied for AB 1943, raising curriculum hour requirements to 3,000 commencing January 1, 2005.
- Completed and distributed a licensee newsletter.
- Reviewed, site visited, and approved two new acupuncture schools.
- Reviewed and approved three China Externship Programs.
- Developed and adopted China externship application and forms.
- Successfully administered two acupuncture-licensing examinations.
- Participated in three consumer fairs.
- Commenced the revision of the consumer disclosure policy to enhance consumer access to complaint information.

## **2003**

- Effective January 2003, SB 1951 was implemented, sunrising the Board and changing the structure of the Board to require 3 acupuncturists who are not licensed as physicians and surgeons and one acupuncturist who is a faculty member of an acupuncture college approved by the Board.
- Effective January 2003, legislation took effect, strengthening the Board's enforcement ability for unprofessional conduct, fraud and negligence by acupuncturists.
- Sunrise legislation (SB 1951, Chapter 714, Statutes of 2002) added Section 4934.1 and 4934.2 to the B&P Code requiring the Little Hoover Commission to conduct reviews of specific issues with respect to the practice of acupuncture, educational standards, school approval process and examination process. In addition, it also requires the Board to conduct certain studies and reviews relating to acupuncture assistants and continuing education.
- Commenced the regulatory process to implement the requirement of B&P Code Section 4939(b), which established the standards for the approval of an acupuncture training program at a minimum of 3,000 hours (2003 Proposed Curriculum Regulations – CA Regulatory Notice Register #Z-03-0570-10).
- Successfully wrote, developed and distributed a licensee newsletter.
- Through the budget change proposal (BCP) process, secured funding to augment the enforcement costs for the Attorney General budget line item for FY 2004/2005.
- Adopted revisions to the consumer complaint disclosure policy to enhance consumer access to complaint information, to be promulgated into regulations.
- Reviewed, site visited, and approved two new acupuncture schools.
- Participated in consumer fairs.

- Successfully completed the Governor's budget hearings and drills, and vacancy and staff reduction plans with a minimal impact to the Board, its staff and its budget.
- Completed the budget hearing process for a \$1.5 Million loan to the GF.
- Implemented licensee-auditing process to verify compliance with continuing education requirements.
- Completed and compiled two licensee surveys relating to continuing education and use of assistants.
- Successfully completed the expansion and relocation of the Board office.
- Expanded consumer services on Board's Web site, by modifying the capability of filing complaints on-line in addition to the ability to electronically correspond directly with the Board.
- Successfully completed two acupuncture-licensing examinations and licensed over 700 new licensees.
- Revoked the licenses of nine acupuncturists.

## **2004**

- Successfully completed regulations to implement the 3,000-hour educational standards that take effect January 1, 2005. The educational requirements consist of 2,050 hours of didactic training and 950 hours of clinical training. The regulatory process for this package was a two-year arduous process, but reflective of a collaborative spirit of all stakeholder perspectives to ensure a quality educational standard for the health, safety and welfare of the citizens of California.
- Throughout 2003-2004 worked intimately and extensively with the Little Hoover Commission on the comprehensive analysis of the scope of practice for acupuncturists, along with educational standards, and the school approval and examination processes.
- Concluded a two-year comprehensive study and review of the use of unlicensed acupuncture assistants and the need to license and regulate these assistants.
- Concluded a two-year extensive review and evaluation of the continuing education requirements, course quality and relevance, distance education, and auditing practices.

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**Acupuncture Board's Update and Response to the  
Joint Legislative Sunset Review Committee's  
2002 Final Recommendations  
Submitted September 1, 2004 to the  
Joint Committee on Boards, Commissions, and Consumer Protection  
(AB 1467, Chapter 33, Statutes of 2004)**

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**Sunset Review Committee's 2002 Issue #1: (CONTINUE REGULATION OF THE PROFESSION AND THE EXISTENCE OF THE BOARD?) Should the licensing and regulation of acupuncturists be continued, and the profession be regulated by an independent board rather than by a bureau under the Department?**

**Sunset Review Committee's 2002 Recommendation:**

*Continue regulation of the profession by the Board and review the Board again in two years.*

**Committee's 2002 Comments:**

Continued regulation of the practice of acupuncture is necessary, given the direct patient care performed by acupuncturists. Acupuncturists diagnose, administer treatment, and prescribe various treatments and herbs to promote patient health. Consumers rely upon the licensing process to ensure that acupuncturists are properly trained and competent to provide care.

The Acupuncture Board should be continued as the entity responsible for regulation of acupuncturists; however, the Department concurs with the Joint Committee's preliminary recommendation that the Board be reviewed again in two years. This limited sunset review cycle would permit the Joint Committee and the Department to have increased oversight of the Board's efforts to remedy problems identified in this sunset review cycle.

**Actions Taken in 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, amended Business and Professions Code Section 4928 by extending the Board's sunset date to January 1, 2006 and subsequently SB 136 further extended the Board's sunset date to January 1, 2007.

**Board's 2004 Recommendation:**

The State should continue licensure and regulation of acupuncturists by the Acupuncture Board. The Board believes licensing and regulation of acupuncture and Oriental medicine practitioners is necessary, as they are primary health care professionals directly affecting the health, safety and welfare of a patient and the public. The scope of practice for acupuncture and Oriental medicine includes modalities and treatment procedures unique to the profession. Acupuncture and Oriental medicine is based upon a different philosophy than allopathic western-trained health care professionals. The profession is recognized and accepted in California's MediCal and Worker's

Compensation programs. The practitioners diagnose, administer treatment, perform treatments and prescribe herbs to promote patient health.

The Acupuncture Board should still continue to license and regulate the profession for the same reasons that existed in 1997 and 2002. The unregulated practice of acupuncture could result in incompetent or unethical practice and/or severe patient harm. In addition, it could adversely impact the consumers' right to alternative forms of health care in California. Continued regulation by the state is essential to provide consumer protection and availability of competent practitioners to consumers seeking complementary health care. The Board issues licenses to approximately 600-800 new applicants yearly. Currently 8,554 licensees practice in the State of California. A study in the Journal of the Family Practice (2000) showed 33% of the patients seeking health care used a complementary medicine practitioner as their primary health care provider. Additionally, a study in Archives of Internal Medicine (1998) showed 43% of medical doctors refer patients to alternative or complementary medicine providers.

As explained in the Executive Summary of this report, since the Board's 2002 review, the Board has made a number of changes to improve overall effectiveness and efficiency and respond to concerns and recommendations raised by the Sunset Review Committee. Throughout 2003 –2004 the Board worked intimately and extensively with the Little Hoover Commission on the comprehensive analysis of the scope of practice for acupuncturists, along with educational standards, and the school approval and examination processes. The Board also concluded its two-year comprehensive study and review of the use of unlicensed acupuncture assistants and the need to license and regulates those assistants. In addition an extensive review and evaluation was conducted of continuing education requirements, course quality and relevance, distance education, and auditing practice. The Board successfully completed regulations to implement the 3,000-hour educational standards that take effect January 1, 2005 (Business and Professions Code Section 4939, the results of AB 1943, Chapter 781, Statutes of 2002). The educational requirements consist of 2,050 hours of didactic training and 950 hours of clinical training. The regulatory process for this package was a two-year arduous process, but reflective of a collaborative spirit of all stakeholder perspectives to ensure a quality educational standard for the health, safety and welfare of the citizens of California. The enforcement program has been strengthened and the new licensing examination exam plan as defined in the 2001 Occupational Analysis has been fully implemented and monitored for performance. In the last fiscal year, the Board continued its work to protect the California Consumer and increase their access to acupuncture and Oriental medical care. The Board expanded the consumer services on its Web site, by modifying the capability of filing complaints on-line in addition to the ability to electronically correspond directly with the Board. The Board also completed revisions to the consumer brochure. Revisions were reflective of comments from the public, Sunset Review Committee and Little Hoover Committee.

**Sunset Review Committee's 2002 Issue #2: (CHANGE BOARD COMPOSITION?) The Board does not have a faculty member appointee.**

**Sunset Review Committee's 2002 Recommendation:** *Require one Board member to be on the faculty of a California acupuncture school.*

**Committee's 2002 Comments:**

The Department concurs with the Joint Committee's preliminary recommendation that Business and Professions Code Section 4929 should be amended to require that one of the licensee members shall be a member of the faculty of a California Acupuncture School. The Board's evaluation of acupuncture schools and curriculum would be enhanced by the expertise contributed by a faculty member.

**Actions Taken in 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, amended Business and Professions Code Section 4929 requiring one member of the Board to be a licensed acupuncturist who is also a faculty member of any Board approved acupuncture college.

**Board's 2004 Recommendation:**

The Governor is the appointing power for this position. As of this date no appointment has been made to the Board for a licensed acupuncturist/faculty member. The Board agrees the evaluation of acupuncture schools and curriculum would be enhanced by the expertise contributed by a faculty board member and encourages the appointment of such a member.

**Sunset Review Committee's 2002 Issue #3:** (HOW MANY MEMBERS OF THE BOARD SHOULD CONSTITUTE A QUORUM?) The law provides that a majority of the appointed members of the Board shall constitute a quorum.

**Sunset Review Committee's 2002 Recommendation:** *Five members of the Board should constitute a quorum.*

**Committee's 2002 Comments:**

The Department concurs with the Joint Committee's preliminary recommendation that Business and Professions Code Section 4933 (c) should be amended to require that five members of the Board constitute a quorum for the transaction of business at any meeting. The current requirement that a majority of the appointed members of the Board shall constitute a quorum to conduct business is consistent with the policy of other regulatory boards within the Department.

**Actions Taken in 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, amended B&P Code Section 4933 (b), requiring that five members of the Board constitutes a quorum to conduct business.

**Board's 2004 Recommendation:**

The Board continues to support this and has functioned under the requirement that five members of the Board constitute a quorum. It is essential, however, that the appointing authorities (i.e., Governor, Senate Rules Committee and the Assembly Speaker) make new appointments in a timely manner as terms expire and maintain the Board's membership at a full complement. Since the amendment to B&P Code Section 4933 (b) in 2003, the Board has functioned with only six appointees to the Board – two professional members and four public members, and fortunately all appointees have been present at scheduled Board meetings. However, effective June 1, 2004 the term ended for two Board members appointed by the Governor (one professional and one public) and an Assembly Speaker appointee on July 1, 2004. The members with terms ending served in their 60-day grace period, which concluded August 1<sup>st</sup> and September 1<sup>st</sup> respectively. Since August 1, 2004 the Board for the first time has been without a quorum to make policy decisions. Enforcement has been the most critically impacted program and no decisions can be made in the timeframe required by law without a quorum (Government Code sections 11500-11529 etal.). Deadline requirements range from 10 days to 100 days depending upon the type of decision it is.

**Sunset Review Committee's 2002 Issue #4:** (MAINTAIN THE CURRENT NAME OF THE BOARD?) The Board supports a name change to the "California Board of Acupuncture and Oriental Medicine," stating that acupuncture is one modality within the

**whole practice and philosophy of Oriental medicine.**

**Sunset Review Committee's 2002 Recommendation: *Maintain the current name of the Board.***

**Committee's 2002 Comments:**

The Department is not inclined to support suggestions that the Board name be changed. In our view, changing the name of the Board to the "California Board of Acupuncture and Oriental Medicine" is likely to confuse and mislead consumers. Currently, the Board does not issue licenses solely for practitioners of oriental medicine, nor does it exercise separate enforcement authority over that aspect of the practice. Additionally, the practice of "oriental medicine" is not defined specifically in the statute and is not a licensed profession separate and removed from acupuncture. Consequently, the proposed name change is premature. The Board should not change its name until such time as a profession of Oriental Medicine is defined in statute, and the Board's authority to regulate and enforce the conduct of such practice is clear.

**Actions Taken in 2002:**

No recommendation or status change occurred at that time.

**Board's 2004 Recommendation:**

During the Board's sunset review process the Board formally requested a name change to the "California Board of Acupuncture and Oriental Medicine" to better describe the profession and the practice. The Board testified that its current name did not adequately describe the full scope of practice as described in the Acupuncture Act. The Joint Legislative Sunset Review Committee also identified this and recommended a name change in their 1997 Issues and Preliminary Recommendations report when they stated, "...Consideration should be given to.....and changing the name of the Acupuncture Committee to the 'Acupuncture Licensing Board of California,' 'Acupuncture Board,' or the 'State Board of Acupuncture and Oriental Medicine.'" (1997 JLSRC Recommendation for Issue #2).

The Department of Consumer Affairs was concerned that adding Oriental medicine to the Board's name would confuse and mislead consumers or expand the professions' scope of practice, **which the Board disagrees with.** The definition and practice of acupuncture set forth in B&P Code Section 4927(d). Section 4927 defines acupuncture to include the insertion of needles and the stimulation of point(s) on or near the surface of the body and includes techniques of electroacupuncture, cupping and moxibustion. Section 4937(b) authorizes an acupuncturist to perform or prescribe Oriental massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements, which make up a portion of what is considered Oriental medicine. Therefore, the use of "Acupuncture and Oriental Medicine" (AOM) would more accurately represent the full scope of the medicine to the public. The AOM acronym is used globally, in education, the profession, professional associations, and examination arenas. California's educational curriculum consists of an in-depth study of Oriental medical theory and diagnosis, acupuncture and herbs. Acupuncture is only one of the procedures included in the philosophy and scope of Oriental medicine. Adding Oriental medicine to the Board's name does not change, expand or affect the scope of practice of the profession, which has been regulated in California since 1975.

**Sunset Review Committee's 2002 Issue #5: (MAXIMIZE USE OF THE INTERNET?)**  
**Is the Board utilizing Internet capabilities to improve services and provide better information to consumers and licensees?**

**Sunset Review Committee's 2002 Recommendation:** *All Board reports, newsletters and brochures should be available on the Board's website.*

**Committee's 2002 Comments:**

To facilitate dissemination of information to Board licensees and the general public, the Board should post all reports, including the Board's annual report to the Legislature, on its web page. Additionally, the Board's newsletter and informational brochures should also be available on-line.

**Actions Taken in 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs.

**Board's 2004 Recommendation:**

The Board has been proactive in keeping its website updated with pertinent documents, data and reports beneficial to the public, exam candidate and licensee and felt this was not an issue. Since 2002, the Board expanded the consumer services on its website. The website was expanded to accommodate electronic filing of complaints online, enforcement decision reports were modified to be more user-friendly to the public, and the ability for the public to electronically correspond directly with the Board was added.

**Sunset Review Committee's 2002 Issue #6.** (CONTINUE TO CONTRACT OUT EXAM ADMINISTRATION?) The licensing examination is administered by a private company, the cooperative personnel services (CPS).

**Sunset Review Committee's 2002 Recommendation:** *Continue to contract out exam administration to an independent consultant.*

**Committee's 2002 Comments:**

Due to the Board's historical problems with development and administration of the licensing exam, the requirement that the Board contract with an independent consultant for exam administration should be reinstated.

**Actions Taken in 2002:**

The Board supported this recommendation and historically has contracted out with an independent contractor for the development and administration of the licensing examination. No actions were taken.

**Board's 2004 Recommendation:**

Since 1999 the California Acupuncture Licensing Examination (CALE) has been developed by the Department of Consumer Affairs Office of Examination Resources and administered by Cooperative Personnel Services, both of Sacramento. Long-term contracts are in effect with each agency to ensure the development and administration process continues to be contracted out.

**Sunset Review Committee's 2002 Issue #7:** (SHOULD ADDITIONAL COURSEWORK BE REQUIRED OF AN APPLICANT WHO FAILS THE EXAM?) The Board is proposing the adoption of legislation that would require an applicant who fails the examination after three attempts to complete additional education before they can sit for the exam.

**Sunset Review Committee's 2002 Recommendation:** *Additional coursework should not be required of applicants who fail the exam.*

**Committee's 2002 Comments:**

Applicants should be permitted to continue to sit for the examination, even after failed attempts, without being required to sit for additional coursework or continuing education. It is up to the applicant to pursue supplementary education needed for passage of the examination. As long as applicants meet the educational requirements and pay the fee to sit for the examination, they should be allowed to continue to take the exam, as many times as necessary.

**Actions Taken in 2002:**

Applicants continue to be able to sit for the examination with no restrictions for additional coursework or continuing education as long as needed.

**Board's 2004 Recommendation:**

The Board originally proposed an amendment to B&P Code Section 4938.2 requiring that the applicant who fails to pass the licensing examination after three attempts to not be eligible for further reexamination until the applicant successfully completed 50 hours of education in the subject of acupuncture and Oriental medicine, based on the pattern of those candidates who repeatedly failed the licensing exam. After discussing this issue with the Sunset Review Committee, the Board modified the pass/fail notices sent to the candidates to include a subscore report breaking down the candidates performance for each part of the exam. The primary purpose in providing the subscore for each part of the exam is to guide candidates in areas requiring additional preparation for re-testing. Based on the positive feedback from the exam candidates, the Board has determined this has provided enough additional information to the candidate to help alleviate this issue.

**Sunset Review Committee's 2002 Issue #8:** (SUBJECT ACUPUNCTURISTS TO THE PROFESSIONAL REPORTING LAWS?) Unlike most health boards and health care licensees, neither the Board nor their licensees are subject to the professional reporting laws (Section 800 et seq. of the Business and Professions Code).

**Sunset Review Committee's 2002 Recommendation:** *Acupuncturists should be subject to professional reporting laws.*

**Committee's 2002 Comments:**

The Department concurs with the Joint Committee's preliminary recommendation. Like other health care professionals licensed in California, acupuncturists should be subject to professional reporting laws (Section 800 of the Business and Professions Code).

**Actions Taken In 2002:**

The Board supported this recommendation and it was determined that the Board was meeting necessary professional reporting laws.

**Board's 2004 Recommendation:**

No further recommendation at this time on this issue.

**Sunset Review Committee's Issue #9:** (FURTHER STUDY NEEDED TO DETERMINE EDUCATIONAL STANDARDS AND SCOPE OF PRACTICE?) The Board appears to be proposing to increase the education requirement for the practice of acupuncture and oriental medicine. The Board is proposing to change the law so that acupuncturists can diagnose within the scope of their practice.

**Sunset Review Committee's 2002 Recommendation:** *Further study of the profession by an independent consultant is needed to determine educational requirements and scope of practice.*

**Committee's 2002 Comments:**

There is much debate within the acupuncture profession surrounding the level of education that is needed for acupuncturists to practice effectively, and the scope of practice which determines exactly what tasks they may or may not perform. The Board has acknowledged this debate by establishing the Task Force on Competencies and Outcomes.

The Department concurs with the Joint Committee's preliminary recommendation that the scope of practice for acupuncturists needs to be clarified and codified in statute.

To resolve this debate, the Department recommends an independent consultant be retained by the Department, with funding provided by the Board, to assess the educational needs of practitioners and the scope of practice of acupuncturists. As the practice of acupuncture evolves, it may be necessary to make changes to the practice act in order to reflect contemporary health care. To prepare for these changes, this independent health care consultant working with the Department should assess the practice and report to the Board, the Department, and the Joint Committee prior to the Board's next sunset review.

**Actions Taken In 2002:**

The Board supported this recommendation. SB 1951, Chapter 714, Statutes of 2002, added B&P Code Section 4934.1 (a)(1) and (2), requesting the Little Hoover Commission (LHC) to review and conduct a comprehensive analysis on the educational requirements and on the scope of practice for acupuncturists. The Commission's recommendations are due to the Legislature by September 1, 2004.

**Board's 2004 Recommendation:**

The Board has met on several occasions with the LHC regarding these issues and has provided data and support documents as requested, and the LHC attended the March 2003 Board meeting to discuss these issues with the Board and the public. The LHC also conducted public hearings on August 28, 2003 and September 25, 2003 in Sacramento to obtain public and professional testimony. In addition three Advisory Committee meetings were held on August 27, 2003, September 24, 2003, and October 22, 2003. The Board is funding all costs associated with the Commissions' comprehensive analysis.

Following, the Board breaks down separately, its position and recommendation on an acupuncturists' educational standard and scope of practice. These positions and recommendations were also submitted to the LHC for their consideration in rendering their opinion.

**Acupuncturists Scope of Practice**

A definitive scope of practice does exist for a practitioner of acupuncture and Oriental medicine. B&P Code Sections 4927 and 4937, in conjunction with *Legal Opinion 93-11*, prepared by Board's legal counsel in 1993, defines acupuncture and the wide range of

modalities to treat most common disorders and diseases. In April 1997, the Board also adopted as a reference document the Council of Acupuncture and Oriental Medical Associations' March 1997 *Scope of Practice for Licensed Acupuncturists*.

The current scope of practice is a product of a dynamically evolving system of health care, incorporating new and proven technology when appropriate, so that the patients of Traditional Chinese Medicine (TCM) have access to the most current techniques available. This allows for greater patient safety and assures better treatment results.

In 2002, the Board discussed the need to revise the *Legal Opinion 93-11* document with the Sunset Review Committee and/or to codify a more definitive scope of practice into statute or regulation. The need to do so is a result of legislative changes that have occurred since 93-11 was originally written. The Sunset Review Committee interpreted codifying the scope of practice modalities and definitions described in 93-11 into law as expanding the scope. However, doing so has no effect on the existing scope of practice, but only provides a more specific articulation of the legal basis for the scope that exists in the medicine today. The Board believes the current scope of practice for a practitioner of acupuncture and Oriental medicine is adequate. The legislative intent in B&P Code Section 4926 defines an acupuncturist as individuals practicing acupuncture subject to regulation and control as a primary health care profession. B&P Code Section 4927(d) defines acupuncture to mean "the stimulation of 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 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)). Since the elimination of requiring a prior diagnosis or referral in 1979, an acupuncturist's scope of practice has expanded to include diagnosis. Thus an acupuncturist is allowed to diagnose, prescribe and administer treatment in the practice of acupuncture and Oriental medicine.

Though the Board considers the current scope of practice adequate, there are two issues/areas that the Board still feels need to be addressed in legislation. As stated above, the need to do so is a result of 'legislative changes' that have occurred since *Legal Opinion 93-11* was originally written. These issues were discussed with the Sunset Review

Committee in 2002, but were referred to the Little Hoover Commission to review per the requirements of SB 1951 (Chapter 714, Statutes of 2002). To legislate these issues would not expand an acupuncturist's scope of practice.

(1) *Amend B&P Section 4937 to Add Term "Diagnose"*

*Legal Opinion 93-11* found that the Legislature in repealing B&P Code Section 2155 (i.e., eliminating the need for a prior diagnosis or 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, although an acupuncturist is authorized to diagnose this critical

function, it is not clearly stated in the law. Adding the term “diagnose” to B&P Section 4937 would not expand the scope of practice. Since 1980 acupuncturists have been authorized to diagnose within their current scope and in their daily practice. As defined in B&P Section 4926, acupuncturists are primary health care professionals. Primary health care professional 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 initial diagnosis and treatment, health supervision, preventative health services, and referral to other health care providers when specialized care is indicated. As a primary health care professional an acupuncturist may provide comprehensive, routine and preventative treatments, that includes but is not limited to, TCM diagnosis, palliative, therapeutic and rehabilitative care. Amending Section 4937 would accurately reflect the current scope and practice. On a daily basis acupuncturists assess and diagnose patients in order to provide an effective and quality treatment plan.

This was further recognized in 2002 by the Joint Legislative Sunset Review 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.”

The Board is re-submitting draft language to the Joint Committee on Boards, Commissions, and Consumer Protection (formerly known as Joint Legislative Sunset Review Committee [AB 1467, Chapter 33, Statutes of 2004, effective April 13, 2004]) requesting the term “diagnose” be amended into Section 4937. (Attachment A)

*(2) Revise and Codify Legal Opinion 93-11 into Statutes and Regulations*

The definition and practice of acupuncture is set forth in B&P Code Section 4927 (e) and 4937 (b), however specific treatment modalities addressed, defined and approved in 93-11 are not addressed in statute or regulation. For instance, *Legal Opinion 93-11* states that “the Legislature in repealing former Section 2155 has authorized acupuncturists to diagnose a patient’s condition prior to providing any treatment.” In addition, *93-11 opines* an acupuncturist is legally authorized to order blood tests, laboratory tests, and x-rays, and use naturopathic techniques. *Legal Opinion 93-11* goes further to identify unauthorized modalities such as ultrasound devices or chiropractic services. Amending all specific treatment modalities an acupuncturist is authorized to use into statute and regulation would provide the public, legislature, insurance companies and the profession with a clear and succinct reference document.

**Educational Standards for an Acupuncturist**

Since the commencement of licensure in California in 1975 health care and related technology have changed tremendously. The current level of education (i.e., 2,348-hours) has not kept pace with the expanded roll of a primary health care practitioner. 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. The Board’s goal is to ensure an acupuncturist possesses a level of education that is consistent with levels of education for other primary health care professions in the United States. China, Korea and Taiwan have established international education standards for their health care professions. The profession of

acupuncture and Oriental medicine must be able to adapt its educational standards to the ever-changing dynamics of science and technology applicable to the practice. The Board continues to support an eventual entry-level standard of 4,000 hours commensurate with the profession's status as a primary health care professional, which is also in alignment with international accepted standards, however, the Little Hoover Commission's review and recommendation must precede any increase in excess of the 3,000-hour program defined in B&P Code Section 4939.

When the Board has discussed increasing educational standards in the past, numerous questions have surfaced about current licensed practitioners and whether or not additional continuing education requirements are needed. Graduation requirements for the majority of acupuncture schools are currently at levels of 2,623 to 3,642 hours. The Board also recognizes the significant educational value for years of practice after an acupuncture license is obtained. Therefore, with the current 3,000-hour curriculum requirement the Board does not recommend changes to the continuing education requirements for currently licensed practitioners or re-testing practitioners licensed with different education levels. However when the entry-level requirements for licensure exceed 3,000 hours the Board supports an increased level of continuing education requirement of all current licensees. A special task force would be convened by the Board to determine the details of the requirements, such as specific hours, coursework, and competency exams, etc.

The Board's main objective is to set a standard that protects the consumer and assures a level of education that is consistent with all other first-contact health care professionals who provide comprehensive and routine care. All primary health care professionals need a core medical curriculum leading to basic medical understanding and an awareness of the strengths and weaknesses of other modalities to know when to refer and how best to communicate with other practitioners. All health care professionals must keep up with constant changes and improvements in modern science and medicine.

The Board was concerned by the results of a survey to new licensees performed in 2000, which indicated that a significant percentage of graduates from California's acupuncture schools do not feel they are adequately trained to begin practice. Specifically they indicated a lack of skills in clinical practice, western medicine and herbal medicine. To further confirm this finding, the 2001 Occupational Analysis performed by the Department of Consumer Affairs Office of Examination Resources showed three key content areas of practice which had increased since the previous analysis: western sciences diagnosis, clinical practice and use of herbs.

Surveys of other health care professions and schools of TCM in China show that all of these call for greater than 4,000 hours of training for entry level practitioners. In California, medical doctors complete 6,000+ hours and chiropractors have minimum requirements of 4,200 hours. In China, Beijing TCM College has a curriculum requirement of 5,651 hours while Chendu TCM College teaches 5,426 hours. The World Health Organization defines a minimal standard for basic training in acupuncture of 2,500 hours, not including any clinical hours or an additional 450-600 hours for training in herbal medicine. Also a 1997 California Senate Office of Research report indicated that educational requirements for licensure of acupuncturists compared to other workers compensation "physicians" is inadequate, and by contrast, most other categories of workers compensation "physicians" are required to have 4,000 hours or four years of specialized academic and clinical training.

The Board then assigned a task force to look further at the issue and to make recommendations to the Board. This Competencies and Outcomes Task Force was composed of 20 stakeholders from the profession and acupuncture schools. The Task Force met five times over a ten-month period to perform a detailed review of competencies and subject matter. The result was range of hours for each subject area, with a total of 3,251 at the low end and 4,045 at the high end of the range, for an average of 3,648. The task force recommended that the Board adopt 3,000 hours as a compromise standard that schools could meet within a relatively short time to address the schools concerns that they lack the resources to meet much higher standards at this time.

At about the same time in spring 2002, AB1943 was introduced in the Legislature to require that acupuncture schools teach a minimum of 3,000 hours of study in curriculum pertaining to the practice of acupuncture and that this revised standard would go into effect on January 1, 2005. The bill further declared the intent, upon passage of SB1951, to consider recommendations to increase curriculum hours for the licensure of acupuncturists in excess of 3,000 up to 4,000. The Board supported AB1943, which was passed by the Legislature and signed into law by the governor in September 2002

The Board's 2002-2003 Strategic Plan defined our education program as our Strategic Issue #1, with the goal of improving education to be commensurate with our status as primary health care professionals. The Board will continue to work toward accomplishing our defined objectives, including updating the curriculum to ensure that students are receiving appropriate training for practice, ensuring that curriculum requirements are reflective of the 2001 Occupational Analysis, and ensuring that all applicants are minimally qualified to treat patients in a safe and effective manner.

Again, the Board continues to support an eventual entry-level standard of 4,000 hours, which is in alignment with international, accepted standards and commensurate with the profession's status as a primary health care professional.

**Sunset Review Committee's 2002 Issue #10: (EVALUATE NATIONAL EXAMINATION?)** The last time the Board was reviewed, the Joint Committee recommended that the Board should continue evaluating the National Examination, given the time, effort and cost involved in providing the Board examination.

**Sunset Review Committee's 2002 Recommendation:** *The national examination should be evaluated.*

**Committee's 2002 Comments:**

The Board should evaluate the national examination, administered by the National Certification Commission for Acupuncture and Oriental Medicine, and determine whether

or not the national examination should be offered in California in lieu of or as part of the state examination. To assess the scope of the national exam and its relevance to the practice in California, the Department's Office of Educational Resources (OER) should conduct or oversee a comparative analysis of the national examination.

**Actions Taken In 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, added B&P Code Section 4934.1 (a)(3), requesting the LHC to review and conduct a comprehensive analysis on the national acupuncture examination administered by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). The Commission's recommendations are due to the Legislature by September 1, 2004.

**Board's 2004 Recommendation:**

Pursuant to Business and Professions Code section 4938 (c), in California, a candidate for licensure is required to "pass a written examination administered by the Board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Examination Resources (OER) of the Department of Consumer Affairs." The California Acupuncture Licensing Examination (CALE) is developed by OER according to the Standards for Educational and Psychological Testing (Standards) published in 1999 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 CALE development is an iterative process that requires multiple workshops using independent groups of licensed acupuncturists to write and review the questions and finally to select the questions for publishing in the CALE. Licensed acupuncturists are trained by OER staff to develop questions according to pre-established guidelines and procedures. The content of the CALE is based upon the results of the 2001 Occupational Analysis and constructed to test specifications derived from the Occupational Analysis. At this time there are no changes in the CALE development or administrative process that the Board would recommend. OER possesses the requisite psychometric expertise to serve as a provider of services for examination development, occupational analysis, standard setting, and program review and evaluation, and the examination is performing at its highest level ever and has maintained a reliability level ranging from 92 to 97 percent.

The Board and OER has met on several occasions with the LHC regarding this issue and has provided extensive data and support documents as requested. In keeping with the intent of the policy of the Board to evaluate all avenues of testing, including consideration of utilizing a national exam provider, the Board invited the NCCAOM to attend the November 2002 Board meeting to publicly discuss the national examination with the Board. Tracy Farrell, Manager of the Department of Consumer Affairs Office of Examination Resources, was also in attendance at this meeting, but a representative of the LHC was unable to attend. Ms. Farrell recommended to the Board that a full audit be conducted of the national examination before passage of it is accepted as entry level for licensure in California. Since LHC was unable to attend the November 2002 meeting, a copy of the verbatim discussion was provided to the LHC.

Both the Board and OER have historically shared the same position and concerns about the national examination. NCCAOM's "certification" examination serves a different purpose than

California's "licensing" examination. In California the quality and reliability of the acupuncture licensing examination is a priority of the Board, but if California recognizes the national exam the states concerns and needs are only one of forty leaving the state with a limited voice and vote regarding exam content and level of challenge. The Board feels there are five issues that must be addressed before any further consideration is given for California to utilize the national certification exam.

#### 1. Pre-graduation eligibility

Students who have not yet graduated may take the national certification exam by documenting the completion of a minimum of 1,350 hours of education. However, graduation requirements for the majority of acupuncture schools are currently at levels of 2,623 to 3,642 hours, or an average of 3,035 hours. Therefore, individuals could qualify for pre-graduation eligibility during the second year of their education, which, the Board understands a majority of the students do. The national certification exam has consistently maintained a minimum of an 80% passing rate and often upward of 90%, which is high, especially considering a great number of applicants have not even completed their education.

#### 2. Excessive Cost of the National Examination

The cost of the CALE versus the national certification exam fee has been a genuine concern to the Board. The cost to a CALE applicant is \$550. NCCAOM administers separate examinations for acupuncture, Chinese herbology and Asian bodywork therapy. A candidate applies for, pays and takes each exam separately. NCCAOM's fee for the acupuncture certification exam is \$900, plus a \$200 surcharge if a candidate is taking their exam in the Chinese or Korean language, \$750 for the Chinese herbology certification exam, plus \$200 for the language exams, and \$750 for the Asian bodywork therapy exam.

Once a NCCAOM exam candidate passes one of the separate testing modules, a certification is issued in that module, which is valid for four years from the month of issue. In order for the diplomates to maintain an active status with NCCAOM, they also require a recertification application and \$200.00 fee with each certification module every four years.

#### 3. Separation of Modalities or Modular System of Testing

The Board does not support the separation of the modalities of the medicine in the examination because it is inconsistent with the practical integration of the medicine and administration of the modalities in daily practice. NCCAOM develops and administers the acupuncture, herbology and Asian bodywork certification exams in separate testing modules.

#### 4. Audit Quality of Each Examination by a Panel of Experts in Testing

The Board would support a full audit to be conducted of the national examination before passage could be considered as entry level for licensure in California. Students consistently have communicated and testified before the Board that they view the national exams as preparatory to the CALE and equate the national exam quality to their second year comprehensive exams at school. This testimony over the years has caused the Board to maintain a skepticism and concern regarding utilizing the national exam.

#### 5. California's Scope of Practice Broader

California's scope of practice is much broader than most other states scope of practices. NCCAOM's exam is designed to cover the diverse variations of the scope of practice of forty states, the largest majority of which have much lower educational requirements and scope of

practice than California. Accordingly, the NCCAOM job performance and exam is constructed at a lower level to reflect the lowest requirements. This does not adequately test at the level of California's higher educational requirements and scope of practice. Also if California recognizes and joins the NCCAOM examination, California would lose the ability to oversee and control the examination quality and level of expertise needed in practice in this state. California would only be one vote out of forty-one state votes in making any changes in the NCCAOM exam.

The Board has considered the above four issues and the public's oral and written testimony on this issue and took action at the March 12, 2003 Board meeting to support retaining the CALE as entry requirement into the profession in California at this time. However, consistent with the Board's policy to ensure a psychometrically sound and valid licensing examination, the Board will continue to review and evaluate testing alternatives.

**Sunset Review Committee's 2002 Issue #11: (INVESTIGATE THE EXTENT OF THE USE OF UNLICENSED ACUPUNCTURE ASSISTANTS?) Are "Assistants" being used by licensed acupuncturists to perform activities that could be considered engaging in the practice of acupuncture?**

**Sunset Review Committee's 2002 Recommendation: *Investigate the use of unlicensed acupuncture assistants.***

**Committee's 2002 Comments:**

The Board and the Joint Committee have expressed concerns about the use of unregulated, unlicensed acupuncture assistants. The Board should actively investigate whether licensees are utilizing assistants. If the Board determines that this is a common yet unregulated practice, the Board should examine the need for licensure of these assistants and return to the Joint Committee in two years with a report on the frequency of the practice and the

potential need for a new licensure category.

**Actions Taken In 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, added B&P Code Section 4934.2 (a), requiring the Board to review and conduct a comprehensive study of the use of unlicensed acupuncture assistants and the need to license and regulate those assistants. A report of the Board's findings and recommendations are due to the Department and Legislature by September 1, 2004.

**Board's 2004 Recommendation:**

Pursuant to B&P Code Section 4934.2(a), the Board has conducted a comprehensive study of the use of unlicensed acupuncture assistants in California. In order for the Board to obtain information about the use of or need to regulate acupuncture assistants in California two surveys were distributed to all licensees. In addition, the Board reviewed the statistics on complaints filed with the Board against unlicensed activity (Attachment B), the laws and regulations relating to the use of assistants of other states and other California health care professions, as well as miscellaneous correspondence relating to the use of assistants. The Board established a subcommittee, consisting of two members of the Board, to evaluate the data and testimonies received and bring a recommendation or plan back to the Board. The following further provides the background and findings of this study.

**Background**

Unlicensed Activity has remained in the top three categories of new complaint cases opened by the Board in the last three fiscal years. In Fiscal Year 2001/2002 nineteen percent of the complaints submitted were for unlicensed activity and in Fiscal Year 2002/2003 twenty-one percent were for unlicensed activity. However while still in the top three categories, Fiscal Year 2003/2004 reflected a sharp decline in complaints regarding unlicensed activity, down to eleven percent. The Board accredited this reduction to the May 2003 Points of Interest newsletter article and two surveys which explained that use of such individuals for direct patient care is considered unlicensed practice.

In May 2002, the Acupuncture Board distributed a the preliminary survey to all licensees to assess the extent that the profession was using unlicensed acupuncture assistants (Attachment C). The data gained from this survey helped the Board define the goals, objectives and outcomes to perform the comprehensive study on the use of assistants. The preliminary survey was sent out to 6,371 licensed acupuncturists. A total of 1,033 licensees responded to the survey, for a 16% return. The preliminary survey results indicated that 12% of those who responded were using assistants in their practice and 35% felt there was a need for licensure of acupuncture assistants.

In May of 2003, the Acupuncture Board developed a more comprehensive survey to re-assess the use of unlicensed acupuncture assistants in California, scope of services performed by the assistant, services the practitioner would like to see an assistant be able to perform, benefits to the patient, benefits to the licensee, certification versus licensing, and experience/training standards (Attachment D). The survey was sent out with the May 2003 Points of Interest newsletter to 7,067 licensed acupuncturists. A total of 767 licensees responded to the survey, for a 10% return. The results of the survey were compiled and

presented to the Board at the September 2003 meeting and is included in Attachment D.

The 767 responses revealed the following:

- 13% reported use of one or more assistants.
- 86% reported no use of assistants.

Of the 665 who do not use assistants:

- 73% reported they had no desire for assistants.
- 27% said they might hire assistants in the future.

Of those who have hired or may consider hiring assistants, the majority of responses included the following reasons:

- Treat more patients/better service to patients
- Massage services
- Front office/receptionist
- Remove needles, moxa
- Prepare herbs
- Patient intake

The survey asked those licensees who currently do use assistants and those who may hire one in the future to indicate the services their assistants do perform or those they would want future assistants to perform. The survey listed 20 services, plus a place to add “other” services, to find out what procedures an unlicensed assistant may be performing. The survey results contain the complete responses of both the 102 licensees who do use assistants and the 177 who said they might hire assistants in the future.

Three questions dealt with training of assistants, benefits or advantages to having them, problems or issues that would need to be addressed. The final four questions were only for those who currently use assistants and asked about duties that are and are not directly related to patient care; presence of licensee when assistant performs direct patient care; training, experience, and qualifications of the assistant prior to beginning work; and training provided.

At the September 23, 2003, Board meeting, a subcommittee was formed to review the results of the surveys, relevant data, miscellaneous correspondence submitted to the Board relating to the use of assistants, and make a recommendation to the Board at the December 9, 2003 meeting. The subcommittee members were Board Chairs Pei Li Zhong-Fong and Shari Asplund. Subsequent to the December meeting, the subcommittee met and reviewed the laws and regulations pertaining to the use of unlicensed individuals of other California professions, such as Chiropractic, Dental Assistants, Medical Assistants, Occupational Therapy Assistants, Speech-Language Pathology Assistants, Physical Therapy Assistants and Physician Assistants. The areas reviewed and addressed in their laws included; the definition of assistants, educational requirements, jurisdiction, supervisory requirements, examination requirements, licensing/certification requirements, and scope of practice. The Massachusetts model for assistants was also reviewed again.

At the December 9, 2003, Board meeting, the subcommittee reported their initial findings that there is a need to regulate acupuncture assistants. While the current usage reported in

the surveys returned to the Board is only 13% of licensees, another 27% indicated they may use them in the future; the actual use of assistants may be higher than reported. They noted the Board would need to clarify the responsibilities of both the licensee and the assistant, what the assistant can and cannot do, and the training required for the assistant. The public was given the opportunity to comment on the use of assistants and a number of suggestions were made. The subcommittee presented their final report to the Board at the February 24, 2004 meeting.

### **Findings and Recommendations**

At the February 24, 2004 meeting, by unanimous vote, the Board took action to support regulating the use of acupuncture assistants to assure consumer protection and safety by clearly defining the scope of what an assistant may do and the responsibilities of the licensee using an assistant. Based on models reviewed in both the acupuncture and chiropractic professions, the Board found that the 'licensing' of acupuncture assistants is not required; but supported establishing regulations to define the requirements under which a licensed acupuncturist may employ an unlicensed assistant. These requirements would include, but not be limited to, the following:

- The licensee is responsible for the performance of assistants.
- A licensee shall inform the Board of the name of any assistant employed, and shall forward to the Board proof that the assistant has received training (yet to be defined).
- An assistant shall be at least 18 years of age.
- An assistant shall not do any of the following procedures involving patients (to be defined).
- An assistant may do only the following procedures involving patients (to be defined).
- An assistant shall wear a tag identifying him/her to patients as an assistant.
- If the Board determines that an assistant or licensee has not complied with the pertinent regulations, or that an assistant has committed any offense defined by pertinent law, the Board may:
  - Withdraw the assistant's permission to work as an acupuncture assistant;
  - Withdraw the licensee's permission to hire acupuncture assistants;
  - Discipline the licensee (to be defined).

### **Conclusion**

The Board recommends that the Joint Committee on Boards, Commissions, and Consumer Protection accepts and supports the Board's findings and recommendations. If accepted, the Board would convene a task force to define the procedures that an assistant may and may not perform, the type of coursework and on-the-job training required, the responsibilities of the licensee, the number of assistants that may be employed, and draft a training manual.

Attached are copies of the Fiscal Year 2001/2002, 2002/2003 and 2003/2004 Enforcement Case Breakdown with Complaint Statistics on Unlicensed Activity (Attachment B); May 2002 Acupuncture Assistant Survey and Results (Attachment C); May 2003 Acupuncture Assistant Survey and Results (Attachment D); and February 2004 Acupuncture Assistant Subcommittee Report and Recommendations (Attachment E).

**Sunset Review Committee's 2002 Issue #12: (THE BOARD FEELS THAT EXEMPTED HEALTH PRACTITIONERS ARE A RISK TO CONSUMERS.) Under certain instances, other licensed health practitioners, such as physicians, podiatrists and dentists may also practice acupuncture.**

**Sunset Review Committee's 2002 Recommendation: *The Joint Committee recommends that the Board examine ways to ensure consumers are not harmed by exempted practitioners and report the results to the Committee at the next review.***

**Committee's 2002 Comments:**

The Board feels that the 200-300 hour course in Oriental medicine often taken by an allopathic doctor, podiatrist or dentist is totally inadequate. The Board feels that proper, adequate and complete program training in Oriental medicine diagnosis is essential to ensure safe and effective acupuncture treatment.

**Actions Taken In 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs.

**Board's 2004 Recommendation:**

The Board's position that proper, adequate and complete program training in Oriental medicine diagnosis is essential to ensure safe and effective acupuncture treatment remains. The Board started gathering the curriculum requirements, course syllabi and educational objectives from colleges (i.e., UCLA) that offer the 200-300 hour course in Oriental medicine often taken by an allopathic doctor, podiatrist or dentist, however due to the extensive workload on special projects the last couple of years, the Board has been unable to complete the review of this issue. It is the impression of the Board that the majority of allopathic doctors, podiatrist or dentist who perform acupuncture and Oriental medicine in their practices, do so without having taken any coursework or training. This issue remains of a concern to the Board and is an objective in the Board's strategic plan to be continued over the next year or so.

**Sunset Review Committee's 2002 Issue #13: (CHANGE THE BOARD'S CONTINUING EDUCATION PROGRAM?) Are changes needed to the Board's continuing medical education (CE) program? It is unclear whether the Board uses their authority to audit licensees to ensure compliance with the continuing education requirements. The Board has authorized licensees to complete up to 50% of their continuing education requirements on an independent or home study basis.**

**Sunset Review Committee's 2002 Recommendation: *The Board should study ways to improve the frequency and consistency of their auditing and the quality and relevance of their courses. The Board should provide the results of its study of the CE program and make recommendations on any changes that are necessary to improve the overall quality of the program at the next review.***

**Committee's 2002 Comments:**

Acupuncturists are required to complete 30 hours of continuing education every two years as a condition for renewal of their licenses. The Board is authorized to audit, once each year, a random sample of acupuncturists who have reported compliance with the continuing education requirement. However, the frequency and consistency of the Board's auditing and

the quality and relevance of Board approved course continues to be a concern to the Joint Committee.

### **Actions Taken In 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs.

### **Board's 2004 Recommendation**

Pursuant to B&P Code Section 4934.2(b), the Board has studied and evaluated ways to improve the continuing education (CE) auditing process and quality and relevance of the CE courses offered to its licensees. Following, the Board addresses each of these issues separately and concludes with a recommendation:

#### **I. Continuing Education Auditing Process**

The Board conducted a review of the continuing education (CE) audit process and implemented effective changes to the program. In reviewing old processes, it was noted that many areas of concern surfaced with the results and findings of the Board's 1998 CE audit. In an attempt to rectify these concerns, the license renewal forms were modified in 1999 to require licensees to submit copies of their CE certificates with their license renewal in lieu of self-certification. While this process seemed adequate in the planning and preparation, the thousands of documents collected soon became uncontrollable. In mid 2000, a new plan to verify CE was being developed, but due to resource limitations and prioritizing processes the Board had not been able to implement the plan. Late 2001 implemented the first phase of the new plan implemented when we started a system for recording and retaining CE provider attendance records within a monthly filing system. One full year of records needed to be acquired to begin the auditing process. These attendance records were used to verify the CE records provided by licensees for audit purposes. Providers submit attendance records showing the name, signature and license number of the acupuncturist who attended the

approved course within ten days of completion of an approved course. Effective February 2003 the second phase of the new plan was implemented and the first 20 letters under the new auditing process were sent to individuals renewing their license. A random sample of acupuncturists who reported compliance with the CE requirement (10 for the month of January and 10 for the month of February) was selected for audit. The audit process is fully implemented now that the Board has collected two years of attendance records and the Board sends the audit letter to the selected licensees monthly. The audit letter the licensee receives also contains language that would allow the Board to issue a citation and levy a fine should the licensee fail to comply with California Code of Regulations (CCR) section 1399.489 (Attachment F).

### **Conclusion**

For the calendar year 2003, 120 letters (10 each month) were sent to licensees advising them they were being audited of their reported CE pursuant to CCR section 1399.489(c). Results of the audit for 2003 were as follows:

One hundred twelve licensees (93% of those audited) were in compliance with the CE requirement. However, eight licensees were not in compliance and are in the process of being issued a citation and fine pursuant to CCR section 1399.463. The basis for issuing a citation and fine to the eight licensees is as follows: two never responded to the Board's

request for documentation, one could not produce any certificates/records of courses taken as required by section 1399.489(e) and five provided certificates which were less than the required 30 hours and less than what they had certified under penalty of perjury on their renewal application.

## **II. Improving the Quality and Relevance of Board Approved CE Courses**

The Board studied and evaluated ways to improve the quality and relevance of approved courses as charged. A licensee survey was sent to all licensees requesting their assistance to answer questions relating to quality and relevancy (Attachment G). In addition, the Board held three different review panels that discussed and evaluated the quality and relevance of approved CE courses, current regulations relating to the CE program, the Department of Consumer Affairs' policy regarding CE, policies and regulations of other California licensing boards (i.e., Medical Board, Nursing, Psychology, Chiropractic, and Veterinary), the results of the licensee survey, the continuing education process, including the provider, course application, approvals, audits, distance education, currently approved and pending CE courses, and other Board program processes.

The first CE Focus Group, consisting of ten CE provider and licensed members, was held in August 2002 (Attachment H). The panel identified the strengths and weaknesses of the CE program and developed the first list of criteria to be built upon by the succeeding CE Review Panels. Two additional CE Review Panels, consisting of twelve Subject Matter Experts (SMEs), were held in April and May 2004, and one panel was held in July 2004 which focused primarily on distance education (Attachments I, J and L). Panel discussions and evaluations were thorough, focused, and productive. The Board established a subcommittee, consisting of two members of the Board, to evaluate the results of the licensee survey and the consolidated recommendations of the review panels and bring a recommendation or plan back to the Board (Attachment K).

### **Findings and Recommendations**

At the June 6, 2004 meeting, by unanimous vote, the Board took action to adopt the following revisions to the CE program requirements.

1) CE course credits are classified into 2 categories, plus 1 mandated subject.

Category 1: Courses related to knowledge or technique skill required for the practice acupuncture. Up to 24 hours allowable per 2-year renewal period.

- a. Acupuncture & Oriental medicine
- b. Western medicine as related to acupuncture practice  
(maximum allowable hours to be discussed)
- c. Other Subjects under Scope of practice  
(maximum allowable hours to be discussed)

Category 2: Other subjects (allowable up to 4 hours for subjects listed below)

- a. Research and evidence-based medicine as related to acupuncture & Oriental medicine
- b. Practice management subjects, which will improve the health of the patient or for the patient's benefit such as risk management, record keeping, acupuncture law and regulation, ICD9 code, report writing, workers comp law and regulation, and Ethics related.

- c. Breathing & other exercises (i.e., qi gong, tai qi quan, etc) with emphasis on utilization for patient care and not only for practitioner benefit.

Mandated courses:

- a. Drug-herb interaction (4 hours per renewal cycle)
  - b. CPR certification course approved by the American Red Cross or American Heart Association.
  - c. Ethics Course (4 hours required of new licensee with first license renewal)
- 2) CE credits will not be accepted for retaking of courses previously taken within 2 years.
  - 3) CE course instructor's experience in the subject area is increased from 1 year to 5 years, consistent with the requirement for instructors under the new 3000-hour curriculum. This is also consistent with Dental Board instructor requirements.
  - 4) If the CE course is taught in a foreign language with translation, only 50% credit is allowed. However, on a case-by-case review, a higher percentage credit may be approved if translation is done simultaneously with no lost of course time due to the translation (such as the simultaneous listening to the translation via headsets.).
  - 5) Maximum credits allowed per day are 8 hours.
  - 6) Advertisements for CE courses must provide the following information:
    - a. Level of difficulty (i.e. "beginner", "intermediate", or "advance", etc).
    - b. Disclosure of products if made available to participants of the seminar (needs further discussion).
    - c. Course titles shall reflect course content and not contain marketing language.
  - 7) Board will continue to randomly audit 10% of the licensees for CE compliance, exceeding California regulation code 3862 (f) requirement of 5% random auditing.
  - 8) Make filing of complaints and feedback easier via online CE course complaint forms and onsite CE course feedback forms directly mailed to the board.
  - 9) Investigation of complaints related to CE courses may include but not limited to the auditing of the course by Board staff, subject expert, auditing pool, or other consultants, and may also include a survey of all attendees of the course, request for video tape of the course for review, etc.
  - 10) The CE Panel, along with the CE Focus Group, both concurred that 50% of CE credits may be allowed for distant learning CE courses. Each distant learning course shall require attendees to pass a written examination (of at least 10 questions) to receive credit. "Hands-on" diagnostic or treatment techniques are not allowed for "distant learning" credits. It was the consensus of the CE Committee that more work needs to be done in regard to quality control and regulation of distant learning courses.
  - 11) All panel members agree that CE providers should be subject to enforcement action for unethical, fraudulent or unprofessional conduct. This issue should be forwarded to the Enforcement committee for further review and recommendation.

Other Recommendations:

The fee schedule for approval of CE providers and courses were not discussed during the Panel meetings. However, the CE committee recommends the following changes in the fee schedule, in order to cover the expenses involved in the approval, record-keeping, and other tasks related to the CE system.

- a. Fee for CE Provider application/approval is \$150 for a 2-year period.
- b. Fee for the initial approval of a CE course is \$45. An approved CE course may be conducted again with a \$10 registration fee.

**Conclusion**

The Board recommends that the Joint Committee on Boards, Commissions and Consumer Protection accepts the Board's findings and recommendations, and endorses the proposed regulatory language amending the CE requirements and process.

Attached are copies of the May 2003 CE Survey (Attachment G); August 2002 CE Focus Group Report (Attachment H); April 2004 CE Review Panel Decisions (Attachment I); May 2004 CE Review Panel Decisions (Attachment J); June 6, 2004 CE Subcommittee Report (Attachment K); July 2004 Distance Education Workshop Decisions (Attachment L); and Proposed Regulatory Language amending CE requirements (Attachment M).

**Sunset Review Committee's 2002 Issue #14: (EXAMINE THE BOARD'S SCHOOL APPROVAL PROCESS?) The last time the Board was reviewed, the Joint Committee concurred with the Board that the Bureau of Private Postsecondary and Vocational Education (BPPVE), or similar approval for schools outside California, should be a prerequisite for Board approval of schools.**

**Sunset Review Committee's 2002 Recommendation: The Board should examine the pros and cons of the approval process of the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), the approval process of BPPVE, and its own approval process. The Board should provide results of its study and make recommendations on any changes that are necessary to improve the overall quality of the process at the next review.**

**Committee's 2002 Comments:**

The Board continues to look at this issue without resolution. In their current report to the Joint Committee, the Board states that they have not focused on the acupuncture school approval process since the time of the last reporting, due to limited resources. However, the Board's report does state that beginning fiscal year 2000/2001, their Educational Committee commenced focusing on this issue. The Committee has held public meetings to review the application and review processes for the BPPVE, and the ACAOM. The Board is also reviewing its current school approval process, and the program's policies and regulations to determine if they are adequately defined.

### **Actions Taken In 2002:**

The Board supported this recommendation, as did the Department of Consumer Affairs. SB 1951, Chapter 714, Statutes of 2002, added B&P Code Section 4934.1 (a)(4), requesting the Little Hoover Commission (LHC) to review and conduct a comprehensive analysis on the school approval process of the Accreditation Commission of Acupuncture and Oriental Medicine (ACAOM), the approval process of the Bureau of Private Postsecondary and Vocational Education (BPPVE), and the Board's approval process. The Commission's recommendations are due to the Legislature by September 1, 2004.

The Board met on several occasions with the LHC regarding this issue and has provided data and support documents as requested, and the LHC attended the March 2003 Board meeting to discuss this with the Board and the public. The LHC also conducted public hearings on August 28, 2003 and September 25, 2003 in Sacramento to obtain public and professional testimony. In addition three Advisory Committee meetings were held on August 27, 2003, September 24, 2003, and October 22, 2003. The Board is funding all costs associated with the Commissions' comprehensive analysis.

### **Board's 2004 Recommendation:**

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 and Vocational Education (BPPVE) 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. The approval process requires extensive review of the application, governance, program curriculum, catalogs, admission policies, student and faculty policies and procedures, and 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 and the BPPVE may perform a joint on-site visit, if the educational institution has applied to both entities for approval. The Board has no authority to review an institution that has not submitted an application. Institutional standards are defined in the Board's *School Site Visit Manual* and curriculum standards are defined in CCR Section 1399.436, copies of which were submitted to the Commission.

In 2001, the Board began to focus on reviewing and evaluating the school approval process. Public meetings were held to review the application and Board's site visit manual, 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 approval processes and how California could utilize or partner with them. ACAOM's didactic and clinical training program hour requirements have historically been well below that of California's. 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 removed from the Commission. Also in June ACAOM had undergone organizational restructuring with the deletion of the long-standing director and office in Southern California.

In May 2002, a new accrediting agency was incorporated and began the process to become recognized by the U.S. Department of Education. The National Oriental Medicine Accreditation Agency (NOMAA) will accredit acupuncture schools offering a professional Doctor of Oriental

Medicine (DOM) degree. South Baylo University in Los Angeles in June 2004 launched the first NOMAA Doctor of Oriental Medicine degree program in the state. The Board will be monitoring the progress of the program.

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).

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 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.

The Board, at its September 23, 2003 meeting, unanimously voted to retain the school approval process as a requirement for a graduate student to qualify for the California acupuncture licensing examination.