

California Acupuncture Board Sunset Review Report 2011

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



October 31, 2011

Members of the Board

Robert Brewer, Chair, Public Member

Charles Kim, Vice Chair, Public Member

Anyork Lee, L.Ac.

George Wedemeyer, Public Member

Paul Weisman, Esq, Public Member

Executive Officer

Janelle Wedge

California Acupuncture Board
444 North 3rd Street, Suite 260
Sacramento, CA 95811
Telephone: (916) 445-3021
Fax: (916) 445-3015

TABLE OF CONTENTS

Section 1 - Background & Description of Board & Regulated Professions	Page
Mission Statement.....	1
History	1
Function of the Board	2
Profession Regulated	2
Board Composition.....	3
Committees	3
Internal Changes	4
Strategic Planning	4
Legislative Actions	4
Regulatory Actions	7
Major Studies	8
 Section 2 - Performance Measures and Customer Satisfaction	
Performance Measures	9
Customer Satisfaction	9
 Section 3 - Fiscal and Staff	
Budget Change Proposals	9
Fund Condition.....	11
Staffing.....	12
 Section 4 - Licensing Program	
Licensing/Examination	12
Continuing Education/Competency Requirements.....	14
Examination	15
School Approvals	16
 Section 5 - Enforcement Program	
Performance Targets.....	17
Enforcement Trends.....	17
Cite and Fine.....	21
Cost Recovery and Restitution.....	22
 Section 6 - Public Information Policies	
Internet.....	23
Webcasting	23
Disclosure of Information.....	23
Outreach and Education.....	23
 Section 7 - Online Practice Issues	
Online Practice.....	24

Section 8 - Workforce Development and Job Creation	
Workforce Development.....	24
Section 9 - Current Issues	
Current Issues.....	25
Section 10 - Board Action and Response to Prior Sunset Issues	
Prior Sunset Review and Board's Response.....	26
Section 11 - New Issues	
New Issues.....	28
Section 12 - Attachments	
#1 – Board Administrative Manual	
#2 – Board Member Attendance Records	
#3 – Year-end Organization Charts for last four fiscal years	
#4 – Board's Record Retention Schedule	
#5 – Quarterly and Annual Performance Measures	
#6 – Workforce Profile	
#7 – Proposed Uniform Standard for Substance Abusing Licensees Regulations	
#8 – January 4, 2005 Background Paper for Sunset Hearing	

ACUPUNCTURE BOARD

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of October 31, 2011

Section 1 – Background and Description of the Board and Regulated Profession

Mission Statement

The mission of the Acupuncture Board is to benefit, educate, and protect the public through regulation of licensure; development of education standards; provision of consumer information; and enforcement of the Acupuncture Licensure Act.

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 et seq. The Board's regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR).

The primary responsibility of the Acupuncture Board is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board promotes safe practice through the improvement of educational training standards, continuing education, enforcement of the B&P Code, and public outreach.

Profession Regulated

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. An acupuncturist may diagnose within their scope of practice and treat illnesses and injuries, in addition to prescribing herbs and herbal formulas, perform Oriental massage, electroacupuncture and moxibustion. The Board regulates over 11,000 licensed acupuncturists.

The ethnic diversity of the profession often brings about language barriers and accepted practices which vary between the different ethnicities. Eastern and Western medicine, while distinctly separate entities, continue to integrate. 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 expanded our consumer outreach by translating and publishing our Consumer Guide to Acupuncture and Asian Medicine into Chinese and Korean.

Board Composition

The Board is composed of seven members with a public majority (i.e., 4 public members and 3 professional members). Five members are appointed by the Governor, one by the Speaker of the Assembly and one by the Senate Pro Tempore. Four members of the Board, including at least one member who is an acupuncturist, shall constitute a quorum.

Board members serve a critical role as policy and decision makers in disciplinary hearings, approval of new schools, contracts, budget issues, legislation and regulatory proposals.

Table 1. Board Member Roster					
Board Member Names	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Composition
Robert Brewer, Chair	9/14/06	3/10/10	6/1/2013	Senate	Public
Charles Kim, Vice Chair	3/14/08	7/13/09	6/1/2013	Governor	Public
Anyork Lee	7/31/09		6/1/2013	Governor	Acupuncturist
George Wedemeyer	6/18/09		6/1/2013	Assembly	Public
Paul Weisman	7/31/09		6/1/2013	Governor	Public
Vacant	Vacant since 8/17/2011		6/1/2013	Governor	Acupuncturist
Vacant	Vacant since 8/17/2011		6/1/2013	Governor	Acupuncturist

Board member attendance records are included as attachment #3.

Committees of the Board

Committees serve as an essential component of the full Board to address specific issues referred by the public or recommended by staff. Committees are composed of 2 Board Members who are charged with gathering public input, exploring alternatives to the issues and making a recommendation to the full Board. The Acupuncture Board has four committees as follows:

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.

Major Changes Since the Prior Sunset Review

Internal Changes

Since the Board's last Sunset Review, the Board was reconstituted. The nine-member Board was repealed and a new seven member Board was created. This also led to the hiring of a new Executive Officer.

Strategic Planning

The Board adopted a new Strategic Plan effective March 17, 2007. Successful achievement of the Board's strategic planning goals is measured by completion of applicable objectives, meetings with licensees, consumer groups, program directors, professional organizations and staff input. A new strategic planning session is scheduled for early 2012.

Legislation

The following legislative actions, as they affected the Board, were submitted and/or enacted during the past six years:

- Bill Number: **SB 821 (Senate B&P), Chapter 307, Statutes of 2009**

Subject Matter: Quorum

Sections Affected: B&P Code 4933

Effective Date: January 1, 2010

Summary of Action: This bill amended the Acupuncture Licensure Act to require that 4 members of the Board, including at least one acupuncturist, shall constitute a quorum for transaction of business.

- Bill Number: **SB 819** (Yee), Chapter 308, Statutes of 2009

Subject Matter: Reporting Requirements

Sections Affected: B&P Code 800 and 801

Effective Date: January 1, 2010

Summary of Action: This bill added the Acupuncture Board to the Section 800 reporting requirements

- Bill Number: **AB 1260** (Huffman)

Subject Matter: Approval of Schools and Elimination of Tutorial Program

Sections Affected: B&P Code 4938, 4939 and 4940

Effective Date: None

Summary of Action: This bill would have required that an acupuncture training program be located in a school or college accredited by an accrediting agency recognized by the United States Department of Education and would have eliminated the tutorial program as an avenue to licensure. This bill was opposed by one of the acupuncture associations which resulted in the bill being amended to remove all reference to acupuncture.

- Bill Number: **SB 1441** (Ridley-Thomas), Chapter 548, Statutes of 2008

Subject Matter: Substance Abuse Coordination Committee

Sections Affected: B&P Code 315

Effective Date: January 1, 2009

Summary of Action: This bill required the establishment of a Substance Abuse Coordination Committee comprised of the executive officers of the DCA healing arts boards. The bill required the committee to formulate by January 1, 2010, uniform and specific standards that each healing arts board would be required to use in dealing with substance-abusing licensees.

- Bill Number: **SB 1476** (Figueroa), Chapter 658, Statutes of 2006

Subject Matter: Sunset Date

Sections Affected: B&P Code 800 and 801

Effective Date: January 1, 2010

Summary of Action: This bill extended the Board's sunset date until January 2010.

- Bill Number: **AB 3014** (Koretz)

Subject Matter: Asian Massage

Sections Affected: B&P Code 4937

Effective Date: None

Summary of Action: This bill would have defined Asian massage as including the use of pressure techniques, including myofascial release, or manual therapy. The bill was vetoed by the Governor stating it failed to establish a clear statutory definition of Asian massage, lacks protections to ensure practitioners are appropriately trained, and may increase the potential for insurance fraud.

- Bill Number: **AB 1113** (Yee)

Subject Matter: Diagnosis

Sections Affected: B&P Code 4927 and 4937

Effective Date: None

Summary of Action: This bill would authorize a licensee to diagnose within his or her scope of practice. This bill was vetoed by the Governor stating this bill as worded, would authorize a licensed acupuncturist to diagnose within his or her own scope of practice. The term scope of practice is vague and leaves room for interpretation. I would consider signing a bill that authorizes an acupuncturist to diagnose specifically for the purpose of providing acupuncture treatment.

- Bill Number: **AB 1114** (Yee), Chapter 648, Statutes of 2005

Subject Matter: Continuing Education

Sections Affected: B&P Code 4945

Effective Date: January 1, 2006

Summary of Action: This bill increased the continuing education hours a licensed acupuncturist must complete in order to renew their license from 30 hours to 50 hours.

- Bill Number: **AB 1115** (Yee)

Subject Matter: Acupuncture Assistants

Sections Affected: B&P Code 4950 et seq.

Effective Date: None

Summary of Action: This bill would have defined the term “acupuncture assistant” to include administrative, clerical, and supportive services and prohibited an acupuncture assistant from performing acupuncture. This bill was vetoed by the Governor stating the bill is unnecessary. Existing law clearly prohibits any person other than a licensed acupuncturist or other specified health professional from practicing acupuncture. The functions performed by the acupuncture assistant as defined in this bill are administrative and clerical in nature and do not require regulation in order to enhance public health and safety.

- Bill Number: **AB 1117** (Yee), Chapter 649, Statutes of 2005

Subject Matter: Asian Medicine

Sections Affected: B&P Code 4926, 4935, 4937 and 4939

Effective Date: January 1, 2006

Summary of Action: This bill changed to term “oriental medicine” to “Asian medicine” and changed “oriental massage” to “Asian massage”.

- Bill Number: **SB 248** (Figueroa), Chapter 659, Statutes of 2005

Subject Matter: Reconstitution of the Board

Sections Affected: B&P Code 4928, 4929 and 4934

Effective Date: January 1, 2006

Summary of Action: This bill provided for repeal of the board on January 1, 2006. The bill created a new board of 7 members with a revised membership. The bill authorized an appointing power to appoint a member to the new board who was a member of the prior board. The provisions governing the new board and its executive director would become inoperative on July 1, 2008, and would be repealed on January 1, 2009.

Regulatory Actions

The Board annually reviews its regulations within the California Code of Regulations (CCR), Title 16, for clarity, consistency, necessity, non-duplication, and authority. As such, the following regulatory changes were enacted by the Board during the past five years and/or are currently underway:

- Subject Matter: **Disciplinary Guidelines including Uniform Standards**

Sections Affected: CCR 1399.405, 1399.419, 1399.462, 1399.469 and 1399.469.1

Effective Date: Public Hearing scheduled for January 18, 2012

Summary of Action: The purpose for amending and adopting these regulations is to update the Disciplinary Guidelines that are incorporated by reference in § 1399.469, revise the “Disciplinary Guidelines’ 1996” and to enhance the Board’s disciplinary functions and strengthen its enforcement program to better achieve its public protection mandate.

- Subject Matter: **TOEFL Requirement**

Sections Affected: CCR 1399.435

Effective Date: Pending

Summary of Action: Require candidates for admission to a training program taught in a language other than English, to submit proof of passing the Test of English as a Foreign Language (TOEFL), at an internet based testing (iBT) facility. The iBT facility shall not be associated with the acupuncture and Asian medicine training program. A total score of 85 is necessary with the following minimum section requirements: reading - 18; speaking – 26; listening – 21; and writing - 20.

- Subject Matter: **Retroactive Fingerprinting**

Sections Affected: CCR 1399.419.1 and 1399.419.2

Effective Date: October 23, 2010

Summary of Action: Require, as a condition of license renewal, licensed acupuncturists that were licensed prior to January 1, 2001 or whom an electronic record of the submission of their fingerprint no longer exists, to furnish to the California Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search.

- Subject Matter: **Continuing Education**

Sections Affected: CCR 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489 and 1399.489.1

Effective Date: September 25, 2008

Summary of Action: A statutory change occurred increasing the continuing education (CE) hours from 30 to 50 thereby necessitating an amendment to the regulations increasing the hours. The Board also amended the regulations to specify CE courses to keep practitioners current on certain conditions and procedures (for purposes of patient safety).

- Subject Matter: **Citation and Fine**

Sections Affected: CCR 1399.465

Effective Date: May 17, 2006

Summary of Action: This regulation increased the administrative fine allowed by B&P Code section 125.9 and imposed the greater penalty where exceptional circumstances were present.

- Subject Matter: **Single Use Needles – Certificate of Compliance**

Sections Affected: CCR 1399.450, 1399.451 and 1399.454

Effective Date: October 19, 2005

Summary of Action: Pursuant to OAL's emergency regulation procedures, the Board was required to prepare a Certificate of Compliance to make the emergency regulation of requiring single use needles that was approved July 5, 2005 permanent.

- Subject Matter: **Single Use Needles (Emergency Regulations)**

Sections Affected: CCR 1399.450, 1399.451 and 1399.454

Effective Date: July 5, 2005

Summary of Action: These "emergency" regulations authorized the Board to immediately implement the requirement that acupuncturists use single use needles only. These regulations deleted all reference to non disposable needles, deleted all reference to sterilizing and reuse of acupuncture needles, and amended language for the proper disposal of needles. These regulations also made it unprofessional conduct for an acupuncturist to use a needle more than once.

Major Studies

The Board is authorized to issue an acupuncturist license to eligible candidates who demonstrate possession of the minimal level of competence required for safe and effective practice upon entry into the profession. The licensure examination is the method by which such competence is demonstrated and measured.

The Board develops and administers its own licensure examination, the California Acupuncture Licensing Examination (CALE). As mandated by B&P Code section 4938(c), the Board contracts with the DCA Office of Professional Examination Services (OPES) for its examination development services. The CALE is constructed based upon an analysis of occupational findings identified in the occupational analysis of the acupuncture profession. Board policy requires that an occupational analysis be conducted every five (5) to seven (7) years.

In 2007, the Board contracted with OPES to conduct an in depth study to define the practice for acupuncturists in terms of actual job tasks that new licensees must be able to perform safely and competently and the knowledge required to perform those tasks. The Validation Report of the Occupational Analysis of the acupuncture profession and the Test Plan was adopted by the Acupuncture Board on February 19, 2009. This serves as the blueprint for the ongoing development of the CALE.

**Section 2 –
Performance Measures and Customer Satisfaction Surveys**

Performance Measures

The Board’s quarterly and annual performance measure reports as published on the DCA website are included as attachment # 4. Currently, the Board is meeting its target expectations for all measures except for our formal discipline cycle time. As older investigations and pending disciplinary cases close out, the Board’s cycle time will be right on target.

Customer Satisfaction Surveys

With all closure letters the Board sends to complainants, we include a postage paid postcard with a Customer Satisfaction Survey. To date, the Board has not received any responses to the survey. The Board also has a Customer Service Survey posted on our website. We’ve received two positive responses and no negative responses as to the service we have supplied.

**Section 3 –
Fiscal and Staff**

Budget Change Proposals (BCPs)

In the last several years, the Board has not individually submitted any budget change proposals. The Board was included in a BCP submitted by DCA on behalf of all healing arts boards. The purpose of that BCP was for position authority for the purposes of enforcement. As a result, the Board did receive position authority for a special investigator (non-sworn) position. Unfortunately, the Board has not received authorization to fill this position.

Table 4. Budget Change Proposals (BCPs)

BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved
n/a								

The Board is a “special fund agency” that is totally self-supporting. The Board derives all of its revenue from its applicants and licensees through the collection of examination, licensing and renewal fees. The Board has not had a fee change in the last ten years. Table 2 lists all of our current fees.

Table 2. Fee Schedule and Revenue							
Fee	Current Fee Amount	Statutory Limit	FY 2007/08 Revenue	FY 2008/09 Revenue	FY 2009/10 Revenue	FY 2010/11 Revenue	% of Total Revenue
Duplicate Renewal Receipt	10.00	10.00	870	1,040	690	730	.03%
Endorsement	10.00	10.00	1,380	1,010	1,210	1,420	.06%
Duplicate Cert – Add'l Office	15.00	15.00	4,965	4,785	4,755	5,070	.2%
CE Approval Fee	150.00	150.00	27,150	35,400	31,500	29,100	1%
Application Fee – Schools	1,500.00	3,000.00	4,500	4,500	4,500	3,000	.1%
Application Fee – Acupuncturist	75.00	75.00	59,700	62,625	67,125	53,925	2%
Re-Exam Fee – Acupuncturist	550.00	550.00	222,200	219,450	212,300	179,300	7%
Application Fee – Tutorial Supvr	200.00	200.00	2,800	4,000	3,400	2,800	.1%
Application Fee – Tutorial Trainee	25.00	25.00	350	525	425	350	.01%
Examination Fee Acupuncturist	550.00	550.00	380,600	391,050	422,400	338,800	14%
Initial Cert – Acupuncturist	* 325.00	325.00	170,665	153,920	161,385	158,996	7%
Biennial Renewal Fee – Acupuncturist	325.00	325.00	1,288,950	1,533,025	1,444,950	1,639,950	68%
Annual Renewal – Tutorial Supvr	50.00	50.00	1000	400	550	650	.03%
Annual Renewal – Tutorial Trainee	10.00	10.00	180	80	110	120	.005%
Delinquent Renewal Acupuncturist	25.00	25.00	8,900	11,600	10,900	11,925	.5%
Delinquent Renewal Tutorial Trainee	5.00	5.00	10	0	5	5	.0002%
Delinquent Renewal Tutorial Supervisor	25.00	25.00	200	0	50	75	.003%

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

The license to practice acupuncture must be renewed every two years. All acupuncturists renewing their license are required to complete and list 50 hours of board-approved continuing education courses on their renewal application and sign under penalty of perjury.

Fund Condition

Pursuant to B&P Code, section 128.5, the statutory reserve requirements for most of the boards within DCA specify that:

“Notwithstanding any other provision of law, if at the end of any fiscal year, an agency within the Department of Consumer Affairs, except the agencies referred to in subdivision (b), has unencumbered funds in an amount that equals or is more than the agency's operating budget for the next two fiscal years, the agency shall reduce license or other fees, whether the license or other fees be fixed by statute or may be determined by the agency within limits fixed by statute, during the following fiscal year in an amount that will reduce any surplus funds of the agency to an amount less than the agency's operating budget for the next two fiscal years.”

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

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

Table 5. Expenditures by Program Component								
	FY 2007/08		FY 2008/09		FY 2009/10		FY 2010/11	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	\$111,061	\$402,371	\$111,061	\$350,803	\$111,061	\$477,567	\$111,061	\$485,956
Examination	\$147,519	\$531,945	\$147,519	\$514,899	\$147,519	\$499,739	\$147,519	\$540,390
Licensing	\$147,519	\$121,588	\$147,519	\$122,131	\$147,519	\$126,855	\$147,519	\$131,011
Diversion (if applicable)	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
TOTALS	\$406,099	\$1,055,904	\$406,099	\$987,833	\$406,099	\$1,104,161	\$406,099	\$1,157,357

Staffing Issues

The Board is authorized 9 staff positions and we currently have three of those positions vacant. Due to the hiring freeze, the Board cannot fill these key positions, which has had a negative impact on the Board's ability to handle our workload. The Board's organization charts for the last four fiscal years are included as attachment # 5.

The Board was successful in reclassifying our enforcement position from a staff services analyst to an associate governmental program analyst. The reclassification of this position was essential to our enforcement program.

With furloughs and vacancies staff development has been limited. However, staff are encouraged to sign up and attend training classes offered through DCA. Kristine Brothers, Enforcement Program Analyst, participated in DCA's first Enforcement Academy which was conducted April-June 2010. The Academy consisted of eight modules held during four two-day sessions. The primary purpose of the Academy was to provide a solid, standard baseline of knowledge and practice for employees who perform enforcement functions.

Section 4 – Licensing Program

Licensing/Examination

It is the Board's goal to expeditiously and efficiently process all applications for examination and licensure. The Board has achieved this goal and has no backlog in the examination or licensing programs.

Individuals for examination are required to submit an application at least 120 calendar days prior to the date of examination for which the application is made. Furthermore, their application must be complete and all transcripts and supporting documents must be received at least 30 calendar days prior to the date of the examination for which the application is made or their application is denied and the filing of a new application is necessary for future examinations. Upon passing the examination, individuals need to file an application for licensure and pay the initial license fee. The turn around time from receipt of an application for license to issuance of the license is on an average of seven to ten days.

Table 6. Licensee Population

		FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
Acupuncturist	Active	8982	9387	9689	10066

	Out-of-State	694	732	733	775
	Out-of-Country	199	203	208	228
	Delinquent	659	710	776	842

Table 7a. Licensing Data by Type

	Application Type	Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
						Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2008/09	(Exam)	1110	1048	10	--	-	-	-	-	-	-
	(License)	611	607		607	-	-	-	-	-	-
FY 2009/10	(Exam)	1154	1123	29	--	-	-	-	-	-	-
	(License)	631	626		626	-	-	-	-	-	-
FY 2010/11	(Exam)	1021	1041	7	--						
	(License)	633	633		633						

Table 7b. Total Licensing Data

	FY 2008/09	FY 2009/10	FY 2010/11
Initial Licensing Data:			
Initial License/Initial Exam Applications Received	1511	1655	1279
Initial License/Initial Exam Applications Approved	1342	1385	1262
Initial License/Initial Exam Applications Closed	10	29	7
License Issued	607	626	633
Initial License/Initial Exam Pending Application Data:			
Pending Applications (total at close of FY)	-	85	95
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE)			
Average Days to Application Approval (All - Complete/Incomplete)	29	38	34

B&P Code section 4938 requires that all applicants for license furnish satisfactory evidence of completion of one of the following:

- Completion of an educational and training program approved by the Board.
- Completion of a tutorial program approved by the Board.
- In the case of an applicant who has completed education and training outside of the

United States, documented educational training and clinical experience which meets the standards established pursuant to B&P Code sections 4939 and 4941.

All applicants are required to have submitted to the Board original transcripts directly from the institution where their education was obtained. All foreign trained applicants are also required to submit documentation of his or her education to a credentials evaluation service that is a member of the National Association of Credentials Evaluation Services, Inc. for review and a report to the Board.

Since the Board began licensing in 1976, applicants for licensure were required to submit rolled fingerprints on paper cards for the purpose of conducting criminal history background checks through the Department of Justice. In 1995, the Board began to also require that fingerprints undergo a federal criminal offender record information search. Since 2001, with limited exceptions, all applicants for licensure as an acupuncturist have been required to submit their prints via Live Scan. New fingerprint regulations went into effect January 1, 2011, requiring those that were issued a license prior to 2001 to be live scanned as a condition of renewal.

All applicants are required to answer under penalty of perjury whether they had any prior criminal history or prior disciplinary action regarding any healing arts license held or by any other state. If yes, court documents, police reports and certified records of disciplinary actions are obtained and reviewed to determine whether the license should be denied. If the applicant falsifies the application and the fingerprint check reveals a criminal history, court documents, policy reports and the applicant's full explanation of the conviction(s) and falsification are obtained and reviewed to determine the appropriate course of action.

Continuing Education/Competency Requirements

In 2008, the Board adopted regulations increasing the continuing education (CE) hours from 30 to 50 hours every two years as a condition of renewal. These regulations were submitted in compliance with AB 1114 (Yee), Chapter 648, Statutes of 2005. In addition to the increase in hours, the adopted regulations categorized the permissible CE courses into two categories. Category 1 are courses related to clinical matters or the actual provision of health care to patients and category 2 are courses unrelated to the actual health care. No more than five (5) hours of CE in each two-year period may be obtained in category 2.

At the time of renewal, the amount of CE is verified that it meets the minimum requirements. Each month, the Board tries to randomly select ten licensees for audit of their reported continuing education record. The Board's goal is to audit 25 licensees per month. Unfortunately with furloughs and now vacancies, the Board has been unable to add that additional workload. The results of our audits show that 93% of the licensees are in compliance with the CE requirement. Those licensees who are found not to be in compliance, are issued a citation and fine.

Providers may not offer a course for CE hours without prior approval from the Board. To obtain approval for a course, a provider must first be approved by the Board to offer continuing education. In order to be a provider, those persons, organizations, schools or other entities

seeking approval must submit a Continuing Education Provider Application to the Board accompanied by the fee. Once approved, the provider may offer as many classes as he/she wishes within a two-year period; however, each class must be approved by the Board. The approval of the provider by the Board shall expire two years after it is issued by the Board and may be renewed upon the filing of the required application and fee.

Once approved, providers must submit an application for course approval at least 45 days prior to the course being offered. The Board requires that all course content be relevant to the practice of acupuncture and Asian medicine. If Board staff questions any content of a CE course, an expert is contacted for their input prior to approval or denial. All applications must also include for each course offered, a method by which the course participants evaluate: 1) the extent to which the course met its stated objectives; 2) the adequacy of the instructor's knowledge of the course subject; 3) the utilization of appropriate teaching methods; and 4) the applicability or usefulness of the course information. This information must be provided to the Board upon request.

There are currently 723 approved continuing education providers. The Board receives on an average 150-200 CE course requests a month.

The Board does have the authority to audit or monitor courses given by any provider; however, with travel restrictions and staff vacancies, the Board has not recently audited any provider. During our audits of licensees CE records, we have found CE provider violations which do result in a citation and fine to the provider.

Currently the Board is looking into "continuing competency" for the purpose of moving toward performance based assessments. The Board briefly discussed this issue in 2011 and it will continue to be an agenda item for the Board in 2012.

Examinations

The Board administers one examination, the California Acupuncture Licensing Examination (CALE), which must be taken by all qualified applicants for licensure. No other exam is required for California licensure. The CALE is a written exam consisting of 200 multiple choice questions and is administered twice a year. The Board is not using computer based testing at this time.

The Board currently administers the CALE in English, Chinese and Korean. Adapting the English examination into Chinese and Korean creates an unstandardized exam and are not equivalent measures of minimum competency. The tests vary in terms of difficulty and equivalency when translated. The Board is considering a regulatory change to CCR section 1399.441 to only administer the CALE in the English language.

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

* The total number of candidates referenced in the above chart for FY 2007/08 and FY 2008/09 include all candidates, not just 1st time candidates. In 2005, the Board switched to a new exam database, which did not capture the previous exam taking history. This prevented the Board from reporting statistics on 1st time candidates versus re-examinees for a couple of years.

School approvals

The Acupuncture Board establishes standards for approval and "approves," rather than accredits, institutions and colleges offering education and training programs in the practice of acupuncture and oriental medicine. There are currently 36 schools/training programs approved by the Board (20 in California and 16 in other states). The Board does not approve any international schools. There is an avenue for applicants to qualify for examination by way of foreign equivalency without their school being approved by the Board.

B&P Code Section 4938 establishes the Board's authority to approve acupuncture schools. Section 4939 also requires schools in California to be approved by the Bureau of Private Postsecondary Education (BPPE) and for out-of-state schools, an appropriate "governmental" educational authority using equivalent standards. The Board does not accredit acupuncture schools, but approves the school and its curriculum program to ensure it meets the standards adopted by the Board. 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 BPPE 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. Curriculum standards are defined in CCR Section 1399.434.

In 2010, the Board began scheduling and conducting annual onsite reviews of approved schools; however, with vacancies and travel restrictions, this has temporarily been postponed.

Section 5 – Enforcement Program

Performance Targets

As a result of the Consumer Protection Enforcement Initiative, the Board identified specific time frames to meet in our enforcement program. The following time frames/targets have been set by the Board:

- a. Ten days for complaint intake cycle time
- b. 200 days average for days to complete cases not resulting in formal discipline
- c. 540 days average for days to complete cases resulting in formal discipline
- d. 10 days average for the Board to take appropriate action on a probation violation

Currently, the Board is meeting its target expectations except for our formal discipline cycle time. As older investigations and pending disciplinary cases close out, the Board's cycle time will be right on target.

Since 2009 the Board has worked on investigation times and cases with the Attorney General's Office being reduced. This is being achieved by regularly tracking statuses on cases with Division of Investigation and the Attorney General's Office. In addition, the Board has given direction the Attorney General's Office to schedule hearings as soon as a notice of defense is received from respondents.

Enforcement Trends

Over the last three fiscal years the statistics show that complaints received from outside sources are generally remaining around the same, whereas, subsequent arrests and dispositions under the category of convictions received has risen greatly. Additionally, our cycle times for complaint intake and sworn investigations have reduced. We continue to initiate more formal disciplinary actions and use the citation and fine process. Some performance barriers are the cycle times for formal disciplinary actions because most of the cases that go on for formal action are cases that spent some time with Board staff for preliminary information gathering, spent time with a sworn investigator, and then spent time

with the Attorney General's Office. Collectively, all of this time can add up. To address this performance barrier the Board has set cycle time targets to meet, worked more closely with the sworn investigators at Division of Investigation to keep tabs on pending investigations, have staff work more cases, and resolved disciplinary cases with settlements where appropriate. In addition, CPEI proposed regulations have been adopted to provide the Board more tools to enforce matters more efficiently.

Statistics show an increase in investigation assignments and a large increase in Statement of Issues being filed which have a direct result on disciplinary actions going up each fiscal year. Under Business and Professions Code section 801, insurers and uninsured licensees are required to report malpractice settlements and judgments of \$3,000 or more. It appears that the Board is receiving the required reports. However, we predominately receive copies of the insurer's reports to the National Practitioner Databank, which might not have all of the information we need to start an investigation. To address this issue, the Board could establish a form to capture all of the required information from the insurers and place it on our website for their use.

The Board does not have a statute of limitations. The Board uses DCA's complaint prioritization policy to address more urgent cases and cases involving criminal offenses. These cases are expedited with higher priority.

Table 9a. Enforcement Statistics			
	FY 2008-09	FY 2009-10	FY 2010-11
COMPLAINT			
Intake			
Received	158	151	135
Closed	11	11	10
Referred to INV	150	150	124
Average Time to Close	98	20	9
Pending (close of FY)	8	2	3
Source of Complaint			
Public	74	53	59
Licensee/Professional Groups	12	7	19
Governmental Agencies	33	17	20
Other	85	159	129
Conviction / Arrest			
CONV Received	56	85	92
CONV Closed	52	91	90
Average Time to Close	53	33	8
CONV Pending (close of FY)	3	2	4
LICENSE DENIAL			
License Applications Denied	0	8	3
SOIs Filed	0	3	7
SOIs Withdrawn	0	0	0

SOIs Dismissed	0	0	0
SOIs Declined	0	0	0
Average Days SOI	0	0	0
ACCUSATION			
Accusations Filed	13	12	14
Accusations Withdrawn	0	0	0
Accusations Dismissed	0	0	0
Accusations Declined	6	7	3
Average Days Accusations	1041	837	840
Pending (close of FY)	9	6	9

Table 9b. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions	2	5	4
Stipulations	3	10	15
Average Days to Complete	1105	711	706
AG Cases Initiated	15	26	33
AG Cases Pending (close of FY)	20	22	30
Disciplinary Outcomes			
Revocation	2	5	2
Voluntary Surrender	1	2	7
Suspension	0	0	0
Probation with Suspension	0	0	2
Probation	2	8	2
Probationary License Issued	1	1	5
Other	0	0	1
PROBATION			
New Probationers	3	9	9
Probations Successfully Completed	1	4	6
Probationers (close of FY)	16	23	25
Petitions to Revoke Probation	0	1	1
Probations Revoked	0	0	1
Probations Modified	1	0	0
Probations Extended	0	0	0
Probationers Subject to Drug Testing	1	3	5
Drug Tests Ordered	1	2	107
Positive Drug Tests	0	1	2
Petition for Reinstatement Granted	1	0	1
DIVERSION			
Diversion	n/a	n/a	n/a

Table 9c. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
INVESTIGATION			
All Investigations			
First Assigned	191	233	211
Closed	157	202	215
Average days to close	203	200	180
Pending (close of FY)	81	103	99
Desk Investigations			
Closed	113	161	175
Average days to close	45	83	115
Pending (close of FY)	32	70	49
Non-Sworn Investigation			
Closed	n/a	n/a	n/a
Average days to close	n/a	n/a	n/a
Pending (close of FY)	n/a	n/a	n/a
Sworn Investigation			
Closed	44	41	40
Average days to close	608	660	467
Pending (close of FY)	49	33	50
COMPLIANCE ACTION			
ISO & TRO Issued	0	0	1
PC 23 Orders Requested	2	3	2
Other Suspension Orders	0	2	1
Public Letter of Reprimand	0	0	0
Cease & Desist/Warning	0	0	5
Referred for Diversion	n/a	n/a	n/a
Compel Examination	0	0	0
CITATION AND FINE			
Citations Issued	22	55	42
Average Days to Complete	143	123	152
Amount of Fines Assessed	\$24,950	\$15,850	\$26,440
Reduced, Withdrawn, Dismissed	\$8,050	\$3,750	\$7,330
Amount Collected	\$7,450	\$8,700	\$9,960
CRIMINAL ACTION			
Referred for Criminal Prosecution	2	1	3

Table 10. Enforcement Aging						
	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year	0	0	6	4	10	3
2 Years	1	1	5	8	15	4
3 Years	2	1	1	4	8	2
4 Years	0	1	2	1	4	1
Over 4 Years	1	2	1	2	6	1.5
Total Cases Closed	4	5	15	19	43	11
Investigations (Average %)						
Closed Within:						
90 Days	81	105	101	83	370	93
180 Days	24	17	52	71	164	41
1 Year	19	9	21	32	81	20
2 Years	14	10	13	25	62	16
3 Years	7	8	8	3	26	7
Over 3 Years	11	8	7	1	27	7
Total Cases Closed	156	157	202	215	730	183

Cite and Fine

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

The Board uses citations for the purpose of educating the recipient and bringing him or her in compliance with the laws and regulations. Citations are generally issued for more administrative type violations, i.e. failure to register a business address, failure to keep adequate records, and continuing education deficiencies. In addition, citations are used to address unlicensed practice or an individual holding him or herself out as engaging in the practice of acupuncture through advertisements.

Individuals who have been issued a citation can request an informal office conference, a formal administrative hearing or submit a written appeal. In the last four years, 38 informal office conferences have been held.

The most common violations for which citations are used include continuing education violations, failure to register business locations, unlicensed activity, false/misleading

advertising, and failure to keep adequate records. The average fine pre appeal is \$660.00 and the average fine post appeal is \$550.00.

For collecting outstanding fines, cases involving unlicensed individuals who we have social security numbers for, the Board sends three collection letters, with the last being certified. If no payment is received, then the Board sends the person’s information to the accounting office to forward to the Franchise Tax Board interception program. In cases involving licensees, the Board sends one courtesy collection attempt and if no payment is received, then the outstanding fine is affixed to the licensee’s next renewal fee.

Cost Recovery and Restitution

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

In fiscal year 2010/2011, there were 11 cases with cost recovery totaling to \$76,741.90. In prior fiscal years, there were collectively 32 cost recovery cases. All outstanding cost recoveries have been sent to the Franchise Tax Board interception program. These outstanding cases amount to \$148,056.39.

Table 11. Cost Recovery				
	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Total Enforcement Expenditures	\$350,803	\$477,567	485,956	
Potential Cases for Recovery *	23	32	43	43
Cases Recovery Ordered	3	8	11	0
Amount of Cost Recovery Ordered	\$22,890	\$55,387.20	\$76,741.90	\$0
Amount Collected	\$9,471.26	\$19,616	\$27,070.40	\$11,980.96
* <i>“Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on a violation(s) of the license practice act.</i>				

The Board does not have legal authority to order restitution.

Table 12. Restitution				
	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
Amount Ordered	n/a	n/a	n/a	n/a
Amount Collected	n/a	n/a	n/a	n/a

Section 6 – Public Information Policies

Internet

The Board's website provides information and guidance to the public regarding the Board's roles, functions and services, as well as issues and concerns pertaining to healthcare.

Consumers may obtain information regarding board activities, such as Board and committee meetings, regulatory hearings and other public functions. Meeting agendas are posted on our website a minimum of ten days before the meeting along with board meeting materials. Board meeting minutes are posted after adoption by the Board which usually occurs at the next meeting. Minutes are maintained on our website for five years. The Board also publishes all disciplinary actions filed along with information regarding the disciplinary process, how to file a complaint and online complaint filing.

An online license verification system enables consumers, employers, insurance companies and licensees to verify license status of an acupuncturist 24-hours a day, 7 days a week.

Information and forms concerning examination, licensure and renewal are available on the Board's website for download. In addition, licensees can submit their change of address online.

Webcasting

Whenever possible, the Board does webcast its meetings. With the current economy, this has proven to be a valuable service to consumers, students and licensees. Board meeting dates are posted on our website at the beginning of each year.

Disclosure of Information

The Board's complaint disclosure policy is consistent with DCA's complaint disclosure and public disclosure policies. Information provided to the public regarding licensees includes date licensed, education, practice location, disciplinary actions.

Outreach and Education

The Board considers consumer outreach extremely important as a means to educate and protect the consumer. Methods used for this process include:

- Internet – Our website contains comprehensive information regarding the education,

licensure, practice and discipline of our licensees.

- Brochures – The Board has developed a brochure titled “A Consumer’s Guide to Acupuncture and Asian Medicine.” The brochure was recently translated and published in the Chinese and Korean language. This brochure is also available for download from our website in all three languages.
- Dissemination of Board Information – Staff disseminate printed Board materials when attending meetings, public functions, fairs, etc.
- Individual Responses – Individuals call, write, send electronic mail or meet in person with Board staff to ask questions and get responses to related particular issues.

Section 7 – Online Practice Issues

Online Practice

Acupuncturists are not allowed to practice online due to the methods of Traditional Chinese Medicine (TCM) examinations/diagnosis, along with other standards of practice that must be performed prior to providing treatment. The Board regulates online practice when a complaint is received and the allegations involve online practice or a review of the acupuncturist’s business website is necessary in the investigation of a complaint. We have addressed online practice in the past by issuing a citation and fine. The prevalence of online practice is low.

Section 8 – Workforce Development and Job Creation

Workforce Development

In 2008, the Board compiled a brief workforce profile, which is included as attachment # 6. This profile showed that California’s overall ratio of total acupuncturists to population was 21.4 per 100,000 residents (up from an estimated 17 per 100,000 in 2003). The lowest ratio of acupuncturists to residents is seen in Central California with only 9.2 acupuncturists per 100,000 residents and Northern California with only 12.5 acupuncturists per 100,000 residents. The other three regions are fairly consistent with Southern California having the high ratio of 26.1 acupuncturists per 100,000 residents. This could be due to the high number of acupuncture schools in Southern California (approximately 13).

Up until now, there has been little or no federal recognition of acupuncture as a profession. In

2012, “acupuncture” will be listed as a distinct profession in the U.S. Department of Labor’s Bureau of Labor Statistics. Among other things, this should open doors for greater reimbursement from insurance companies and it will raise consumer awareness nationwide.

One major negative impact on California for job creation is the hardship caused on those individuals who have already completed an accredited program and have relocated to California. In order for these individuals to become licensed to practice in California, they would have to go back to school and complete a California approved program at great expense. In order to remove this barrier and promote relocation of practitioners to California, the Board sponsored legislation which would have allowed individuals who completed a program at an accredited institution to attempt to qualify for the examination. This legislation was opposed by one of the acupuncture associations which resulted in the bill being amended to remove all reference to acupuncture issues.

The Board has frequent communication with local law enforcement and city code enforcement regarding laws and regulations, and enforcement efforts of acupuncture/massage businesses.

Section 9 – Current Issues

The Uniform Standards for Substance Abusing Licensees have been incorporated in the Board’s disciplinary guidelines. A regulation package has been initiated and is going through the process. This package also includes regulations related to the Consumer Protection Enforcement Initiative. The proposed regulatory language is included as attachment # 7.

The Board has been involved in the BreEze effort (formerly iLicensing) since the beginning. We have met with the BreEze team and gone over our specifications for licensing, examination, and enforcement modules of the new system and have signed off on the final draft. Our Board is scheduled to go live in Spring 2013.

The Board avails itself to all government entities in data collection efforts.

The Board has issued citation and fines for unlicensed activity. In addition, a few of our recent unlicensed cases have been submitted for criminal prosecution. One of our cases in recent past received some media attention which helped to bring forth numerous witnesses and expand public awareness.

The Board now sends No Longer Interested notifications on an ongoing basis. This is done by the use of a form. There is a backlog of notifications that are necessary for all cancelled licenses. We currently have a temporary employee who will be focusing on this task.

PRIOR SUNSET REVIEW

Below are the Board's responses to the issues raised during the last Sunset Review. For a complete history of the background of these issues, see Background Paper for Hearing January 4, 2005, which is included as attachment # 8.

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

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

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

Board Response: Scope of practice has continued to be an issue for the Board. The Board has formed a "Blue Ribbon Panel" to look into primary care definition, scope of practice and related educational requirements. The panel is scheduled to hold it's first meeting in November 2011.

ISSUE #3: Is the Board failing in its duty to protect the public?

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

ISSUE #4: The use of unlicensed acupuncture assistants.

Board Response: In 2005, legislation was introduced to define the term "acupuncture assistant", which was administrative in nature and prohibited the assistants from performing acupuncture. This bill was vetoed by the Governor stating the bill was unnecessary. The Board has found over the last three years that the use of unlicensed acupuncture assistants is not a current issue. We have had one enforcement issue involving an unlicensed acupuncture

assistant in the last three years. The majority of our unlicensed cases involve individuals whose licenses are delinquent.

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

Board Response: Physicians and surgeons, podiatrists and dentists are specifically exempt from the licensure requirements of an acupuncturist as long as they are licensed under Division 2. The Board is not aware of any complaints against these professions for practicing acupuncture. However, any complaints regarding their practice would have been directed to their regulatory body.

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

Board Response: With the reconstitution of the Board and the elimination of the faculty member appointee, this is no longer an issue.

ISSUE #7: The law provides that a majority of the appointed members of the Board shall constitute a quorum. Vacancies continue to be a problem for the Board.

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

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

Board Response: The Board has been randomly auditing 10 licensees a month. The results have shown that 93% of our licensees are in compliance with the continuing education requirements. It has been our desire to increase those audits. Unfortunately with furloughs and vacancies we have not been able to add that additional workload.

ISSUE #9: Whether ACAOM's approval process for schools used in 39 other states is superior and less costly than the Board's.

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

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

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

**Section 11 –
New Issues**

The Board recommends that the Senate Committee author legislation to implement the following:

Sunset Review – The Board recommends amending B&P Code sections 4928 and 4934 to provide for the Board's continued regulations of acupuncturists and to protect the public's health, safety and welfare.

Qualifications for Licensure - The Board recommends amending B&P Code section 4938 to allow individuals who completed a program at an accredited institution of acupuncture and Asian medicine to attempt to qualify for the examination.

Section 12 – Attachments

- # 1 - Board's Administrative Manual
- # 2 - Board Member Attendance Records
- # 3 - Year-end organization charts for last four fiscal years.
- # 4 - Board's Record Retention Schedule.
- # 5 - Quarterly and Annual Performance Measures
- # 6 - Workforce Profile
- # 7 - Proposed Uniform Standards Regulations
- # 8 - January 4, 2005 Background Paper for Sunset Hearing