STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

NOTICE OF ACUPUNCTURE BOARD MEETING

FEBRUARY 24, 2017
9:30 AM – Conclusion of Business

LOCATION:
1747 NORTH MARKET BOULEVARD
HQ2 HEARING ROOM
SACRAMENTO, CA 95834

The Board plans to webcast this meeting at **https://thedcapage.wordpress.com/webcasts/**
Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location.

California Acupuncture Board Members
Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, MTOM, L.Ac, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Amy Matecki, MD, L.Ac, Licensed Member

AGENDA — FULL BOARD MEETING

OPEN SESSION

1. **Call to Order, Roll Call and Establishment of a Quorum (Aguinaldo)**
2. **Opening Remarks (Aguinaldo)**
3. **Public Comment for items not on Agenda (Aguinaldo)**
   The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a))
4. **President's Report (Aguinaldo)**
5. **Election of Officers**
   a. President
   b. Vice-President
6. **Staff Reports**
   a. Executive Officer's Report (Bodea)
      1. Staff Update
      2. Budget Update
   b. Enforcement Report (Brothers)
      1. Q2 16-17 Enforcement Report
      2. CPEI - BPC 138 Notice Issued to Licensees
   c. Education Report (Herdt)
      1. Status of Curriculum Reviews

2. **Update on the Collaboration with the Bureau for Private Postsecondary Education (BPPE) and Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM)**

d. Regulatory Update (Johnson)

1. **Title 16, California Code of Regulations (CCR), Sections 1399.407, 1399.407.1, 1399.407.2, 1399.407.3 –Sponsored Free Health Care Events (AB 2699)**
2. **Title 16, CCR Sections 1399.433, 1399.434, 1399.436 and 1399.437 – Implementation of SB 1246**
3. **Title 16, CCR Section 1399.455 – Advertising Guidelines: Display of License Number in Advertising**
4. **Title 16, CCR Section 1399.469.4 – Prohibited Sexual Acts**
5. **Title 16, CCR Section 1399.482.2 – Continuing Education Ethics Requirement**
6. **Title 16, CCR Section 1399.451(a) – Hand Hygiene Requirements**
7. **Title 16, CCR Section 1399.469 – Uniform Standards Related to Substance Abuse**

e. Legislative Update (Johnson)

1. **AB 12 (Cooley) State government: administrative regulations: review**
2. **AB 77 (Fong) Regulations: effective dates and legislative review**
3. **SB 27 (Morrell) Professions and Vocations: licenses: military service**

7. Presentation on the Role of a Regulatory Board (Pruden)

8. Discussion of "Dry Needling" or Unlicensed Individuals Applying a Needle to the Human Body

9. Presentation Regarding How to Conduct a Meeting in Accordance with the Bagley-Keene Open Meeting Act (Pruden)

10. Presentation regarding the Board's Budget from the Department of Consumer Affairs' Budget Office

11. Presentation on an Overview of the Division of Investigation from the Department of Consumer Affairs and the Services Provided

CLOSED SESSION

12. Pursuant to Government Code Section 11126 (a) (1), the Board will Meet in Closed Session to conduct an Evaluation of the Executive Officer

13. Pursuant to Government Code Section 11126(c)(3), the Board will Meet in Closed Session to Deliberate on Disciplinary Matters Including Petitions, Proposed Decisions, Stipulated Settlements, Defaults, and Any Other Disciplinary Matters

RETURN TO OPEN SESSION

14. Consideration and possible action on proposed amendments to Title 16, CCR Section 1399.469 - Disciplinary Guidelines (Brothers and Johnson)

15. Review and Approval of December 14, 2016 Board Meeting Minutes (Johnson)

16. Scheduling of 2017 Board and Committee Meeting Dates (Aguinaldo)

17. Future Agenda Items (Aguinaldo)

18. Adjournment (Aguinaldo)

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the President. Times are approximate and subject to change. Action may be taken on any item listed on the

Agenda.

THE AGENDA, AS WELL AS BOARD MEETING MINUTES, CAN BE FOUND ON THE ACUPUNCTURE BOARD'S WEBSITE AT *www.acupuncture.ca.gov*

Please Note: Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA).A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Board Liaison, Tammy Graver at (916) 515-5204; FAX (916) 928-2204, or send a written request to the Board at:

1747 North Market Blvd,
Suite 180
Sacramento, CA 95834

Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

Agenda Item #6a2

Budget Update

CALIFORNIA ACUPUNCTURE BOARD - 0108
BUDGET REPORT
FY 2016-17 EXPENDITURE PROJECTION
FISCAL MONTH 6

OBJECT DESCRIPTION	FY 2015-16 ACTUAL EXPENDITURES (MONTH 13)	FY 2015-16 PRIOR YEAR EXPENDITURES 12/31/2015	FY 2016-17 BUDGET STONE 2016-17	FY 2016-17 CURRENT YEAR EXPENDITURES 12/31/2016	FY 2016-17 PERCENT SPENT	FY 2016-17 PROJECTIONS TO YEAR END	FY 2016-17 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	508,346	247,598	529,000	235,748	.45%	544,204	(15,204)
Statutory Exempt (EO)	72,205	44,004	80,000	18,085	23%	65,559	14,441
Temp Help Reg (Seasonals)	59,993	30,079	19,000	22,626	119%	45,128	(26,128)
BL 12-03 Blanket							
Temp Help (Exam Proctors)							
Board Member Per Diem	14,100	5,100	7,000	4,900	70%	14,000	(7,000)
Committee Members (DEC)							
Overtime	1,615	567	5,000			2,500	2,500
Staff Benefits	290,739	141,261	356,000	130,722	37%	269,048	86,952
TOTALS, PERSONNEL SVC	946,998	468,609	996,000	412,081	41%	940,439	55,561
OPERATING EXPENSE AND EQUIPMENT							
General Expense	44,611	35,185	57,000	72,398	127%	91,793	(34,793)
Fingerprint Reports	613	172	20,000	343	2%	1,000	19,000
Minor Equipment	85			2,100	n/a	2,100	(2,100)
Printing	15,391	11,951	17,000	6,225	37%	8,017	8,983
Communication	11,208	3,517	17,000	3,418	20%	10,893	6,107
Postage	25,802	10,449	27,000	8,382	31%	26,124	876
Insurance							
Travel In State	38,866	16,013	32,000	14,873	46%	33,573	(1,573)
Travel, Out-of-State	2,861						
Training			3,000			1,500	1,500
Facilities Operations	109,458	108,587	65,000	110,385	170%	111,270	(46,270)
Utilities							
C & P Services - Interdept.			9,000				9,000
C & P Services - External	3	3	4,000	3	0%	500	3,500
DEPARTMENTAL SERVICES:							
OIS Pro Rata	107,890	67,000	149,000	73,998	50%	149,000	0
Administation Pro Rata	133,859	65,000	185,000	89,502	48%	185,000	0
DOI - ISU Pro Rata	3,933	2,000	5,000	2,502	50%	5,000	0
Communications Division	161,000	2,000	82,000	40,500	49%	82,000	0
PPRD Pro Rata		76,500	2,000	1,002	50%	2,000	0
INTERAGENCY SERVICES:							
Interagency Services							
IA w/ OPES	305,652	191,190	334,000	277,690	83%	334,000	0
Consolidated Data Center	934	485	3,000	494	16%	1,460	1,540
DP Maintenance & Supply	449	449	5,000	1,957	39%	2,400	2,600
Central Admin Svc-ProRata	138,730	69,365					
EXAM EXPENSES:							
Exam Supplies							
Exam Freight							
Exam Site Rental							
C/P Svcs-External Expert Administrative	279,186	305,491	287,000	305,491	106%	305,491	(18,491)
C/P Svcs-External Expert Examiners	51,286		84,000			43,000	41,000
C/P Svcs-External Subject Matter		26,158		16,225		32,450	(32,450)
ENFORCEMENT:							
Attorney General	307,042	205,248	386,000	81,278	21%	203,715	182,285
Office Admin. Hearings	77,938	40,038	107,000	15,757	15%	65,000	42,000
Court Reporters	3,210	1,660		397	n/a	2,200	(2,200)
Evidence/Witness Fees	69,285	36,639	11,000	1,392	13%	35,000	(24,000)
DOI - Investigations	500,566	247,000	824,000	382,500	46%	824,000	0
MISC:							
Major Equipment							
Special Items of Expense							
Other (Vehicle Operations)			3,000				3,000
TOTALS, OE&E	2,389,858	1,522,100	2,718,000	1,508,812	56%	2,558,486	159,514
TOTAL EXPENSE	3,336,856	1,990,709	3,714,000	1,920,893	97%	3,498,925	215,075
Sched. Reimb. - External/Private	(1,410)		(1,000)			(1,000)	0
Sched. Reimb. - Fingerprints	(441)		(22,000)			(22,000)	0
Sched. Reimb. - Other							
Sched Interdepartmental							
Unsched. Reimb. - Other	(130,413)						
NET APPROPRIATION	3,204,592	1,990,709	3,691,000	1,920,893	52%	3,475,925	215,075
						SURPLUS/(DEFICIT):	5.8%

0108 - Acupuncture
Analysis of Fund Condition

Prepared 1/5/2017

(Dollars in Thousands)

2017-18 Governor's Budget		ACTUALS 2015-16	Budget Act CY 2016-17	BY 2017-18
BEGINNING BALANCE		$ 1,921	$ 1,339	$ 4,268
Prior Year Adjustment		$ 15	$ -	$ -
Adjusted Beginning Balance		$ 1,936	$ 1,339	$ 4,268
REVENUES AND TRANSFERS				
Revenues:				
125600	Other regulatory fees	$ 49	$ 48	$ 50
125700	Other regulatory licenses and permits	$ 750	$ 817	$ 862
125800	Renewal fees	$ 1,788	$ 1,907	$ 1,823
125900	Delinquent fees	$ 13	$ 14	$ 14
141200	Sales of documents	$ -	$ -	$ -
142500	Miscellaneous services to the public	$ 4	$ 4	$ 4
150300	Income from surplus money investments	$ 8	$ 13	$ 9
150500	Interest Income From Interfund Loans	$ -	$ -	$ -
160400	Sale of fixed assets	$ -	$ -	$ -
161000	Escheat of unclaimed checks and warrants	$ 1	$ 1	$ 1
161400	Miscellaneous revenues	$ -	$ -	$ -
Totals, Revenues		$ 2,613	$ 2,804	$ 2,763
Transfers from Other Funds				
F00683	Teale Data Center (CS 15.00, Bud Act 2005)	$ -	$ -	$ -
	GF loan repayment	$ -	$ -	$ -
Proposed GF 11-12 Loan Repayment, 1110-011-0108 Budget Act		$ -	$ 4,000	$ -
Totals, Revenues and Transfers		$ 2,613	$ 6,804	$ 2,763
Totals, Resources		$ 4,549	$ 8,143	$ 7,031
EXPENDITURES				
Disbursements:				
1110 - Program Expenditures (State Operations)		$ 3,205	$ -	$ -
1111 - Department of Conusmer Affairs (State Operations)		$ -	$ 3,691	$ 3,238
8880 - Financial Information System for California		$ 5	$ 4	$ 6
9900 - Statewide General Administrative Expenditures (ProRata)		$ -	$ 180	$ 238
Total Disbursements		$ 3,210	$ 3,875	$ 3,482
FUND BALANCE				
Reserve for economic uncertainties		$ 1,339	$ 4,268	$ 3,549
Months in Reserve		4.1	14.7	12.0

NOTES: A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING BY+1.
C. ASSUMES INTEREST RATE AT 0.3%

2/8/2017 11:47 AM

Agenda Item #6a2

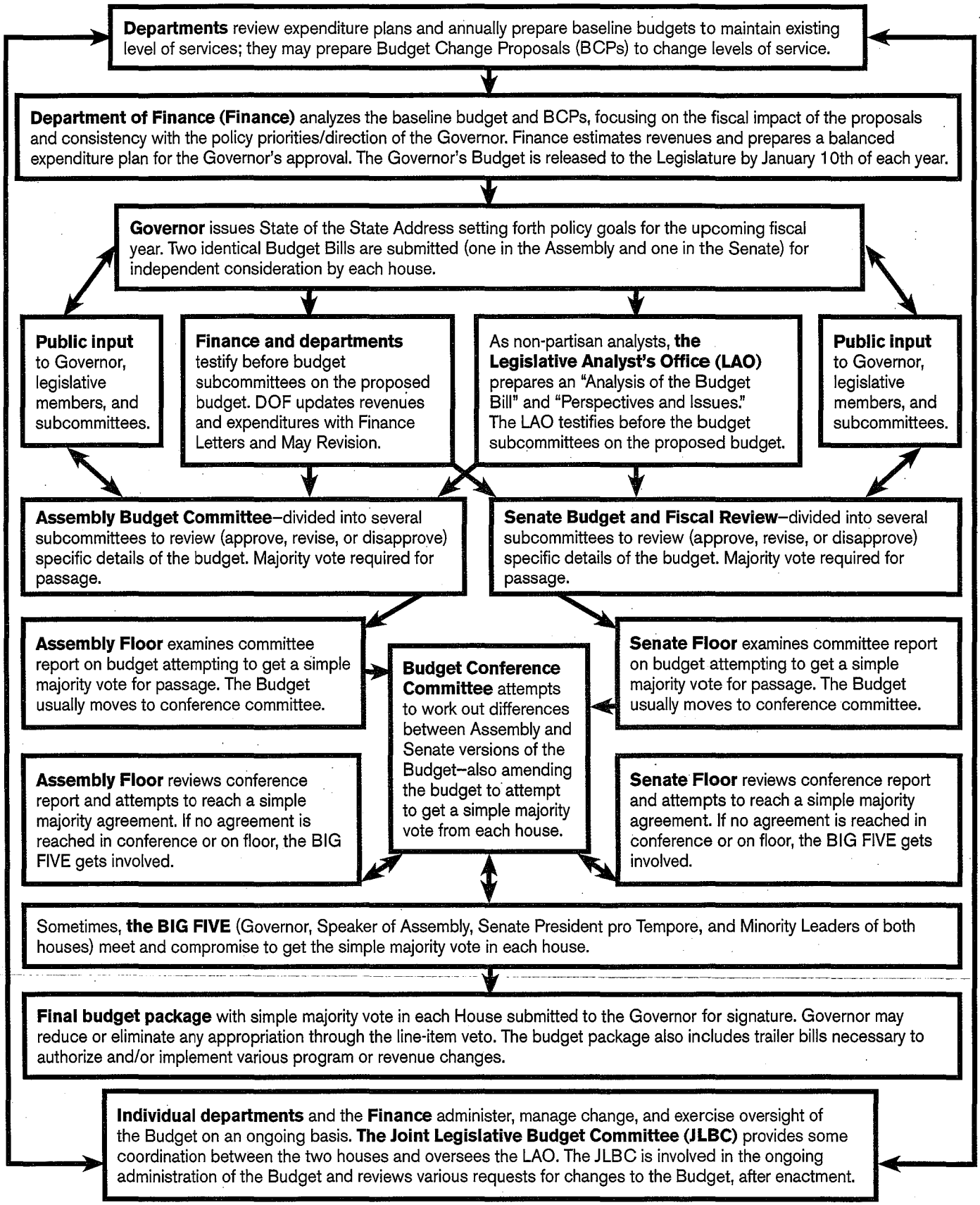
Governor's Budget Process Overview

BUDGET PROCESS OVERVIEW

The Governor's Budget is the result of a process that begins more than one year before the Budget becomes law. When presented to the Legislature on January 10 of each year, the Governor's Budget incorporates revenue and expenditure estimates based upon the most current information available through mid December. In the event that the Governor wants to change the Budget presented to the Legislature, including adjustments resulting from changes in population, caseload, or enrollment estimates, the Department of Finance (Finance) proposes adjustments to the Legislature during budget hearings through Finance Letters. During late spring, usually in May, Finance submits revised revenue and expenditure estimates for both the current and budget years to the Legislature. This update process is referred to as the May Revision. Finance also prepares monthly economic and cash revenue updates during the fiscal year. Listed below are the key documents used in the budget process.

TITLE	PURPOSE	PREPARED/ISSUED BY	WHEN
Budget Letters and Management Memos	Convey the Administration's guidelines for budget preparation to agencies and departments.	Governor/Finance	January – December
Budget Change Proposals	Documents that propose to modify or change the existing level of service, propose new programs, or delete existing programs.	Agencies and departments submit to Finance analysts	July – September
Governor's Budget	Governor's proposed budget for the upcoming fiscal year.	Governor/Finance	January 10
Governor's Budget Summary	A summary of the Governor's Budget.	Governor/Finance	January 10
Budget Bill	Requests spending authorization to carry out the Governor's expenditure plan (legislative budget decision document).	Finance/ Legislature	January 10
Analysis of the Budget	Analysis of the Budget, including recommendations for changes to the Governor's Budget.	Legislative Analyst	February
May Revision	Update of General Fund revenues, expenditures, and reserve estimates based on the latest economic forecast and changes in population, caseload, or enrollment estimates.	Finance	Mid-May
Budget Act	The primary annual expenditure authorization as approved by the Governor and Legislature, including a listing of the Governor's vetoes.	Legislature/ Governor	Late June or enactment of the Budget
Final Budget Summary	Update of the individual Budget Act items with changes by the Governor's vetoes, including certain budget summary schedules.	Finance	Late July – August or 1-2 months after Budget enactment
Final Change Book	Update of changes to the detailed fiscal information in the Governor's Budget.	Finance	Late July – August or 1-2 months after Budget enactment

ANNUAL BUDGET PROCESS



Agenda Item #6b1

Q2 16-17 Enforcement Report

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

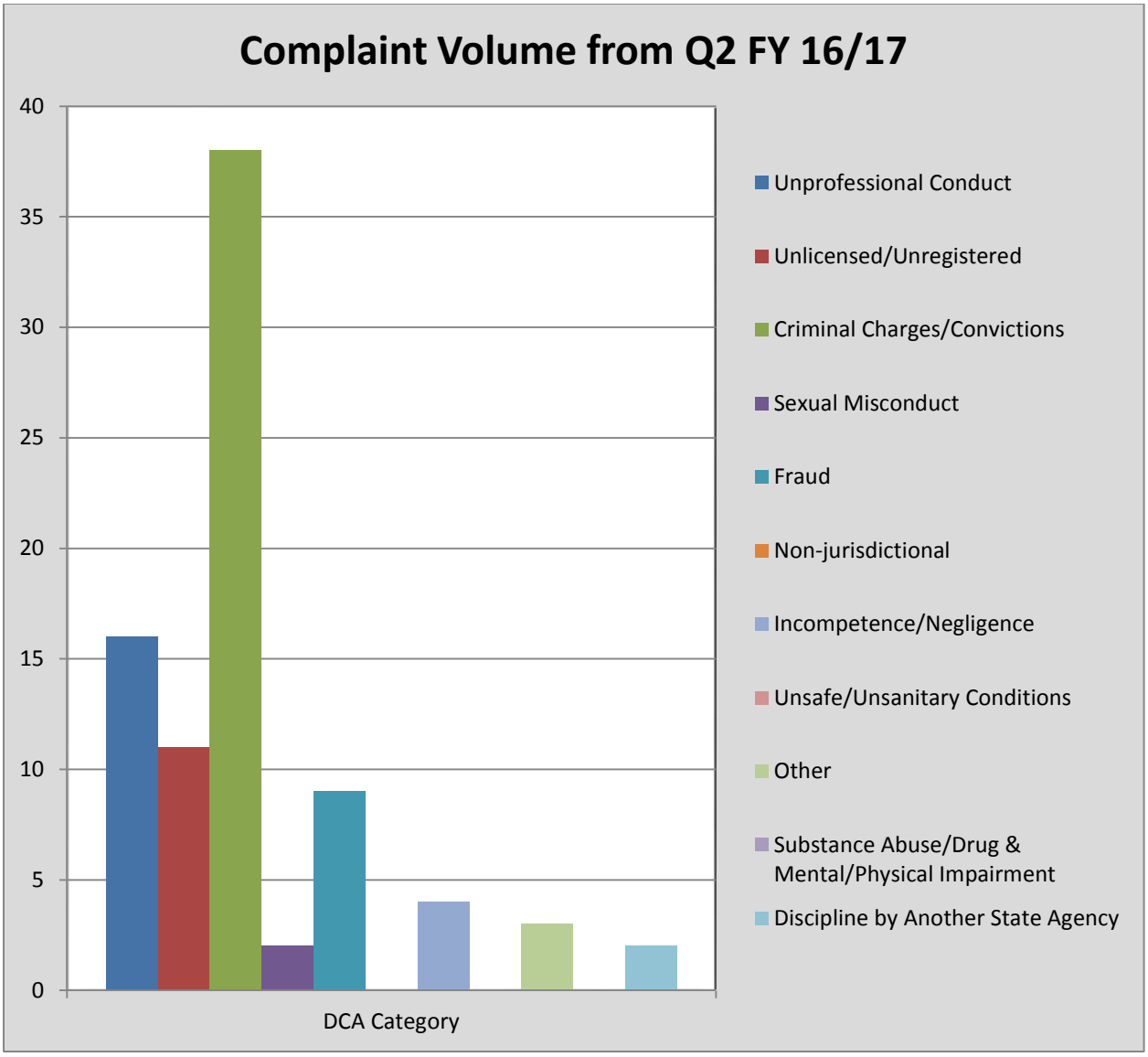
ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

DATE	February 24, 2017
TO	All Board Members
FROM	Kristine Brothers Enforcement Coordinator
SUBJECT	**Enforcement Update for Quarter (Q2) FY 2016/2017: October 1, 2016 to December 31, 2016**

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category	Received	Closed/Referred to Investigation
Unprofessional Conduct	16	14
Unlicensed/Unregistered	11	10
Criminal Charges/Convictions*	38	37
Sexual Misconduct	2	2
Fraud	9	2
Non-jurisdictional	0	0
Incompetence/Negligence	4	4
Unsafe/Unsanitary Conditions	0	0
Other	3	3
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	2	1
Total	**85**	**73**
Average Intake Time: 3 days		

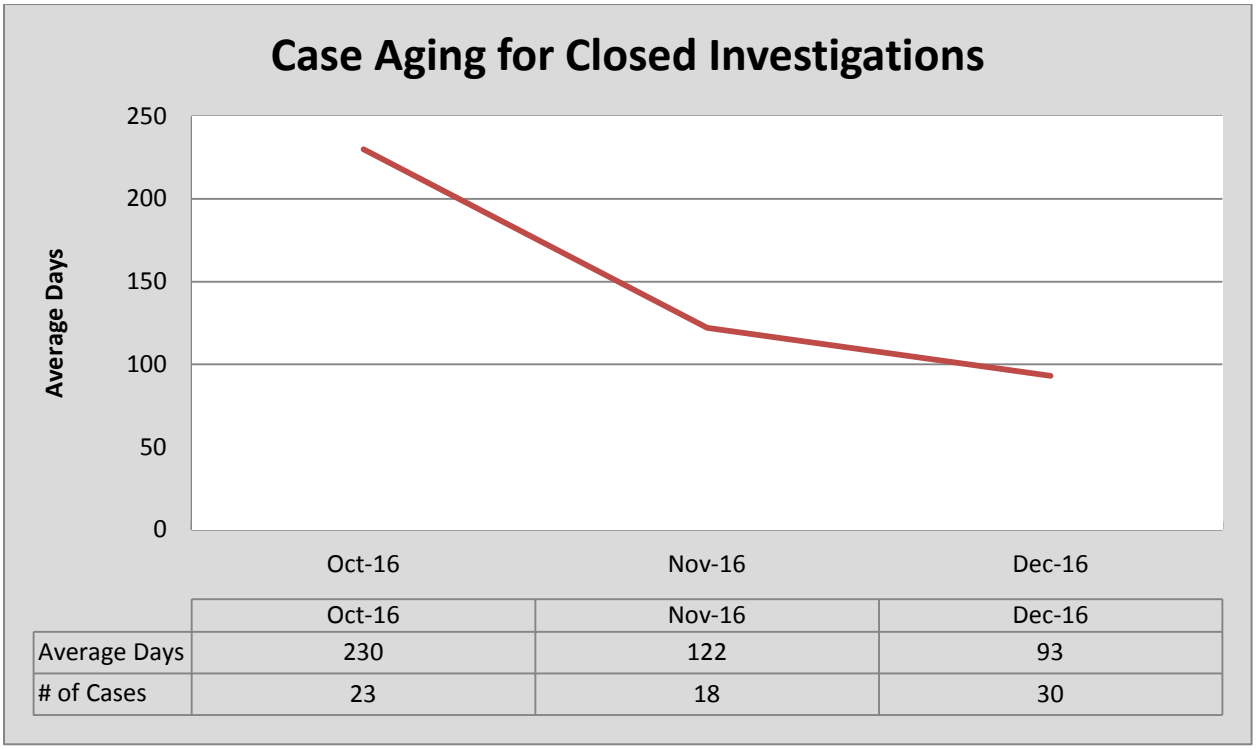
*Of the 38 Criminal Charges/Convictions, 31 were received on Applicants and 7 were received on Licensees.



The bar graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

INVESTIGATIONS - Includes formal investigations conducted by DOI and desk investigations conducted by staff

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	14	20	20
Unlicensed/Unregistered	10	22	6
Criminal Charges/Convictions (includes pre-licensure)	37	31	31
Sexual Misconduct	2	6	1
Fraud	2	11	5
Non-jurisdictional	0	0	0
Incompetence/Negligence	4	26	4
Unsafe/Unsanitary Conditions	0	5	2
Other	3	2	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0	1
Discipline by Another State Agency	1	1	0
Total	**73**	**124**	**71**
Average days			**145**



	Oct-16	Nov-16	Dec-16
Average Days	230	122	93
# of Cases	23	18	30

The graph above shows the number of investigations closed out each month of this quarter. The line illustrates the average number of days the case was open from receipt of complaint to the date the investigative phase was closed. After the investigation is closed the case is either referred for disciplinary action, issued a citation, or closed due to insufficient evidence or no violation. The time it takes during the discipline phase is not captured in these averages. The overall average process time for cases that resulted in disciplinary action this quarter is shown below.

DISCIPLINARY ACTIONS

Requested	**2**
Pending	**15**
Accusation/SOI Filed	**1**
Decisions	**6**
• Revoked	0
• Voluntary Surrender	2
• Probation	3
• License Denied	0
• Public Reprimand	1
Avg. Overall Process Time	**695 days***
Citations Issued	**15**
Open Probation Cases	**36**

*Only applies to cases that result in formal discipline through a Decision and Order, not all case closures.

QUARTER 2 FY 16/17 TREND ANALYSIS

Complaint Trends

This quarter's data is better understood when we use last year's FY 15/16 quarter 2 (Q2) data as a point of reference.

This quarter saw a slight decrease in complaints compared to this time last year from 93 to 85. This represents only a 9 % decrease in volume. The most notable changes in the types of complaints received were found in unprofessional conduct complaints, which decreased from 37 to 16. The other noteworthy change in complaint volume between last year and this year are for unlicensed complaints. Last year only three (3) were received whereas this year's Q2 received 11, which is a 26% increase. There was a drop in the average intake time for complaints received compared to last year, from six (6) days in FY 15/16 to three (3) days this year. This shows an improvement with the time it takes staff to review and assign incoming complaints. Consistently, the Board has been under its target of ten (10) days for this performance measure.

Investigation Trends

In comparing last year's investigation statistics to this year, the primary trend shows a lot of productivity at this phase of the complaint cycle. Although there is a downturn in investigations initiated given the decrease in complaint volume, you can see that the investigations pending at the close of Q2 has gone down significantly. There were 192 investigations pending last year whereas this year at the close of Q2 there were 124 investigations pending, which is a 35% decrease. There has, however, been a 22% decrease in investigations closed, from 91 last year to 71 this year. Investigation closures have slowed some due to the higher volume of backlogged investigations that have already been addressed in Q1 FY 16/17 and the prior fiscal year. Similarly, we are seeing a slowing in new investigation assignments. The other noteworthy change is the average investigation time decreasing by 35% from 222 days last year to 145 days this year. Enforcement staff has been working efficiently as possible on reviewing investigation reports and working desk investigations. The Board is meeting its 200 day target for the performance measure on the average number of days to complete an investigation.

Formal Discipline Trends

This quarter continues to show that the majority of the backlog from prior years has been worked through or already referred for disciplinary action. Complaints referred to the Attorney General for discipline went from five (5) in Q2 last year to two (2) this year, resulting in a 60% decrease. Contrary to last year, which saw nine (9) Accusations and Statement of Issues filed, this year in Q2 there was only one Accusation filed. This is a pretty large drop at an 89% decrease. This shows that cases sent for discipline has slowed. Another telltale sign that backlogged cases have been worked through is the Board's pending cases with the Attorney General's Office. Last year in Q2 there were 27 cases pending whereas this year there were 15 cases pending at the close of Q2. This is a 44% decrease. The volume of decisions that became effective last year to this year are relatively similar; however, the average overall process time from complaint receipt to the close of discipline went down by 39%. Last year the average process time was 1,142 days and this fiscal year in Q2 was 695 days. The history of this statistic shows quite the erratic pattern due to a small population of disciplinary cases that close out quarter to quarter and outliers that skew the data. However, it appears that the Board could start seeing lower overall process times if a larger sample size were compared, i.e. annually, since the bulk of backlogged cases have already closed out. Time will tell if there will be any real reliable consistency with the average overall process time for cases disciplined.

Agenda Item #6b2

CPEI - BPC 138 letter to licensees - final version

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

February 2, 2017

NAME
LICENSE #
ADDRESS 1
ADDRESS 2
CITY STATE ZIP
COUNTRY

Re: New Acupuncture Board Regulations

Dear Licensee:

This letter is to inform you of new reporting and posting requirements required by newly implemented Acupuncture Board (Board) regulations. Copies of these regulations are enclosed for your convenience. Please take a moment to review the enclosed regulations to understand what changes are being implemented and to determine what action, if any, is required of you to comply.

The first new set of regulations are referred to as the Consumer Protection Enforcement Initiative (CPEI) regulations, which became effective on October 1, 2015 with the adoption of sections 1399.405, 1399.419(e), 1399.469.1 and 1399.469.2 of Title 16, Division 13.7 of the California Code of Regulations (CCR). Please take the time to read the new regulations in full.

One of the new requirements of these regulations is it imposes additional reporting requirements for California licensed acupuncturists. In addition, failure to provide the reports to the Board within the time required constitutes unprofessional conduct.

Section 1399.469.2 provides the following in pertinent part:
"In addition to the conduct described in Section 4955 of the Business and Professions Code, 'unprofessional conduct' also includes but is not limited to the following:

> ". . . (d) Failure to report to the board within 30 days any of the following:
>
> (1) The bringing of an indictment or information charging a felony against the licensee.
> (2) The arrest of the licensee.
> (3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
> (4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military..."

To facilitate these new reporting requirements, the Board has set up a special reporting email, Acu.Reporting@dca.ca.gov. Please use this email address to submit these reports.

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The second new regulation is Notice to Consumers of Licensure by the Acupuncture Board, which became effective on October 1, 2016 with the adoption of section 1399.469.3, of Title 16, Division 13.7 of the CCR. In summary, this regulation requires all licensees to post in a conspicuous location accessible to public view, in a 48-point or larger type font the following notice:

"NOTICE TO CONSUMERS
Acupuncturists are licensed and regulated
by the California Acupuncture Board
(916) 515-5200
http://www.acupuncture.ca.gov"

Please be advised that the Board has the authority to take disciplinary action or issue a citation and fine to any licensee who fails to comply with these regulations. Therefore, the Board encourages you to carefully read them in their entirety. You may also view and download a copy of all of the Board's laws and regulations at this link:

http://www.acupuncture.ca.gov/pubs_forms/laws_regs/laws_and_regs.pdf

If you have any questions about the reporting requirements required by CCR section 1399.469.2 (d), any of the CPEI regulations or the posting requirements required by CCR Section 1399.469.3, please contact the Board at: (916) 515-5200 or email at: acupuncture@dca.ca.gov.

Sincerely,

Benjamin Bodea
Executive Officer

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

Title 16 of Division 13.7 of the California Code of Regulations

1399.405. Delegation of Functions.

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act Section 11500, et seq. of the Government Code, the board delegates and confers upon the executive officer of the board, or in his or her absence, the designee of the executive officer, all functions necessary to the dispatch of business of the board in connection with investigative and administrative proceedings under the jurisdiction of the board, including, but not limited to, the ability to approve settlement agreements for the revocation, surrender or interim suspension of a license.

1399.419. Review and Processing of Exam Applications.

(a) Within forty-five (45) calendar days after receipt of an application for examination, the board shall inform the applicant whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

(b) Within forty-five (45) calendar days of receipt of a completed application, the applicant will be notified as to his/her eligibility for the written examination.

(c) Within thirty (30) calendar days from the date the written examination is administered, candidates will be notified of their results, and if passed, will be offered, upon payment of the specified fee, a license to practice acupuncture.

(d) The minimum, median and maximum processing times for examination results from the time of receipt of a complete application until the board makes a decision is set forth below.
Minimum -- 130 calendar days
Median -- 155 calendar days
Maximum -- 180 calendar days

These processing times apply to those candidates who take and pass the first available examination and who submit a complete application by the first available application deadline.

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to perform as an acupuncturist safely because the applicant's ability to perform may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.

The report of the evaluation shall be made available to the applicant.

1399.469.1 Required Actions Against Registered Sex Offenders.

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(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

1. Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
2. Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.
3. Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:
An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

1. An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code, provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.
2. Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

1399.469.2 Unprofessional Conduct.

In addition to the conduct described in Section 4955 of the Business and Professions Code, “unprofessional conduct” also includes but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:

1. A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
2. A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

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(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

1. The bringing of an indictment or information charging a felony against the licensee.
2. The arrest of the licensee.
3. The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.
4. Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

1399.469.3. Notice to Consumers of Licensure by the Acupuncture Board.

(a) A licensed acupuncturist engaged in the practice of acupuncture shall provide notice to each patient of the fact that the acupuncturist is licensed and regulated by the California Acupuncture Board. This notice must be posted at each of the practice locations the licensee provides services. The notice shall include the following statement and information:

"NOTICE TO CONSUMERS
Acupuncturists are licensed and regulated
by the California Acupuncture Board
(916) 515-5200
http://www.acupuncture.ca.gov/"

(b) The notice required by this section shall be provided by prominently posting the notice in a conspicuous location accessible to public view on the premises where the acupuncturist provides the licensed services, in which case the notice shall be at least 48-point type font.

Agenda Item #6d

Regulatory Update

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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CAB list of past and future regulations

Updated: February 9, 2017

Set out below are a list of past and future pending regulations. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action. Due date reflects the final due date when regulatory filing is required to be submitted for rulemaking to Office of Administrative Law (OAL).

Note: Authority for regulatory changes is provided under California Business and Professions (B&P) Code Chapter 12, Article 1, Code section 4933.

Pending regulations					
	Subject	**Title 16, California Code of Regulations (CCR) Section referred**	**Date original authorizing vote taken (vote)**	**Current Status**	**Due Dates / Anticipated Filing Date**
1	Uniform Standards Related to Substance Abusing Licensees (SB 1441)	Amend Section 1399.469	10/25/2013 (5-0)	Board adopted final text at 10/26/16 meeting. 15 Day modified text period closed on 11/19/16 with no comments received. Rulemaking file will be submitted to DCA by end of February. If approved by DCA, will be submitted to OAL after.	Required to OAL no later than 4/4/2017.
2	Standards for the Approval of Educational Training and Clinical Experience Received Outside the United States; Curriculum Standards for Board Approval of Curriculum; Requirements for Board Approval of Curriculum. (SB 1246)	Adopt Section 1399.433, Amend Section 1399.434, Repeal Section 1399.436, Amend Section 1399.437	11/17/2015 (7-0)	Technical changes to text issued for a 15-day modified text period closed on 12/30/16 with no comments received. Rulemaking file submitted to DCA on January 9, 2017. Upon approval from DCA, rulemaking will be submitted to OAL for final approval. Regulation would be in effect upon filing with Secretary of State's office.	Required to OAL no later than 4/12/2017.

3	Sponsored Free Health-Care Events (AB 2699)	Adopt Article 8 and Sections 1399.407, 1399.407.1, 1399.407.2, 1399.407.3	11/17/2011 (5-0)	Board approved changes to text at 12/14/16 public meeting. 15-day modified text period closed on 12/30/16 with no comments received. Rulemaking file submitted to DCA on February 3, 2017. Upon approval from DCA, rulemaking will be submitted to OAL for final approval.	Required to OAL no later than 2/16/2017.
4	Advertising Guidelines – Display of License Number in Advertising	Adopt Section 1399.455	2/19/2013 (5-0)	Staff revising text for Board review and possible approval at future Board meeting. If approved, a 15-day modified text notice will be issued.	Anticipated initial filing with OAL upon Board approval.
5	Prostitution Enforcement and Condition of Office	Amend Section 1399.469.4	2/14/2014 (6-0)	Board approved amended text at 12/14/16 public meeting. Rulemaking package under staff development.	Anticipated initial filing with OAL by Summer 2017.
6	Continuing Education Ethics Requirement	Adopt Section 1399.482.2	11/15/2012 (5-0)	Education committee approved proposed text at 12/14/16 public meeting on a 3-1 vote and made several changes. Staff revising text to bring back to Board at proposed June meeting.	Anticipated initial filing with OAL upon Board approval.
7	Hand Hygiene Requirements	Amend Section 1399.451(a)	2/14/2014 (5-0)	Rulemaking package under staff development.	Anticipated initial filing with OAL by Fall 2017.

Adopted Regulations			
	Subject	**Title 16, CCR Sections referred**	**Date approved by Office of Administrative Law; date in effect with link to text of regulation**
1	Educational Curriculum Requirements	Amend Section 1399.415	*Approved by OAL 10/5/04* http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art2.shtml#1399415
2	Cite and Fine Enforcement	Amend Section 1399.465	*Approved by OAL 4/17/06* http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art6.shtml#1399465
3	Continuing Education	Amends Sections 1399.480 – 1399.489.1	*Approved by OAL on 8/25/08* http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art8.shtml#1399480
4	Retroactive Fingerprinting Requirements	Adopts Sections 1399.419.1 and 1399.419.2	*Approved by OAL 9/23/10* http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art25.shtml#13994191
5	Consumer Protection Enforcement Initiative (CPEI)	Amends Sections 1399.405, 1399.419, 1399.469.1, 1399.468.2	*Approved by OAL 9/1/15; in effect 10/1/2015* *https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I45A8F9C0D48E11DEBC02831C6D6C108E&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)*
6	Display of Licensure by Acupuncture Board (BPC 138)	Adopt section 1399.463.3	*Approved by OAL 7/12/16; in effect 10/1/2016* *http://www.acupuncture.ca.gov/pubs_forms/laws_regs/bpc138_orderofadoption.pdf*

Agenda Item #6e

Legislative Update

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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Acupuncture Board – Legislative Bills of Interest

Updated: February 9, 2017

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1. Assembly Bill 12 (Cooley - D) – State government: administrative regulations: review.
Status: Introduced 12/5/16. Referred to Assembly Accountability & Administrative Review committee on 1/19/17. No hearing date set.

This bill would require each state agency to, on or before January 1, 2020, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2021.

2. Assembly Bill 77 (Fong - R) – Regulations: effective dates and legislative review.
Status: Introduced 1/14/17. Referred to Assembly Accountability & Administrative Review committee on 1/19/17. No hearing date set.

Would require the Office of Administrative Law to submit to each house of the Legislature for review a copy of each major regulation that it submits to the Secretary of State. The bill would eliminate the quarterly schedule pursuant to which regulations and orders of repeal become effective, as well as the provisions specifically addressing the effective dates of regulations adopted by the Fish and Game Commission. The bill would, instead, provide that a regulation or order of repeal required to be filed with the Secretary of State generally becomes effective the 90th day after the date of filing, subject to certain exceptions.

3. Senate Bill 27 (Morrell - R) – Professions and vocations: military service
Status: Introduced 12/5/16. Referred to Senate Business, Professions and Economic Development and Veterans Affairs committees on 1/12/17. No hearing dates set.

Would require every board within the Department of Consumer Affairs to grant a fee waiver for the application for and the issuance of an initial license to an applicant who supplies satisfactory evidence, as defined, to the board that the applicant has served as an active duty member of the California National Guard or the United States Armed Forces and was honorably discharged. The bill would require that a veteran be granted only one fee waiver, except as specified.

Agenda Item #14

Consideration and possible action on proposed Amendments to Title 16, CCR Section 1399.469 Disciplinary Guidelines

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

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DATE	February 24, 2017
TO	Board Members
FROM	Marc Johnson – Policy Coordinator Kristine Brothers – Enforcement Coordinator
SUBJECT	Updated Acupuncture Board Disciplinary Guidelines – Revised December 2016

Issue:

Update of the Acupuncture Board Disciplinary Guidelines (hereafter 'Guidelines'). The current Guidelines date to 1996 and need to be revised. Staff has prepared updated regulatory text and Guidelines (which are incorporated by reference into the regulatory text) for Board review and possible approval. This memo provides an overview of the proposed changes. Since many portions of the 1996 Guidelines will still be used in the updated 2016 version, the updates within the Guidelines themselves as set out in this memo are considered *amendments* to the 1996 guidelines.

Action Items For the Board:

1. Review and discussion on the updated Guidelines.

2. Review and vote on proposed regulatory text for California Code of Regulations (CCR) Section 1399.469.

3. Delegation to Executive Officer to continue the regulatory process and grant authority to make non-substantive changes to the proposed text and updated Guidelines.

Suggested Motion: "I move to approve the proposed regulatory text for CCR Section 1399.469 and the proposed 'Acupuncture Board Disciplinary Guidelines Revised December 2016' as incorporated by reference, and delegate the authority to the Executive Officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes."

Background and Discussion:

The Board's current Disciplinary Guidelines, which are used by attorneys, administrative law judges (ALJ's), licensees, others involved in the disciplinary process, and ultimately the Board itself, date to 1996. The current Guidelines are outdated as there have been multiple changes to the laws and regulations, as well as changes to discipline standards. The Guidelines are used to impose discipline, including conditions of

probation for licensees that address the violations charged and provide public protection.

Staff originally began revisions of the Guidelines in 2012 in order to accommodate DCA's Uniform Standards for Substance Abusing Licensees and also as a general update. Based upon advice from Legal Counsel, the Uniform Standards were separated in 2016 into a separate regulatory package – SB 1441 – which was approved by the Board and is now undergoing the rulemaking process. Staff and Legal Counsel began work on the new, separated Guidelines in October 2016.

The Board's Enforcement Committee (hereinafter 'Committee') reviewed the Guidelines at the December 14, 2016 public meeting and requested several changes and identified areas for staff to conduct research on alternative language. The Committee approved the proposed text and directed staff to address requested changes and comments to the Guidelines and bring back to the full Board. Staff addressed these comments and changes for presentation to the full Board on February 24, 2017. If approved, the modified text and Guidelines will be subject to a 45-day public comment period. If any public comments or changes are received during the 45-day notice period, the text and Guidelines will be brought back for review to the full Board at the next scheduled public Board meeting.

Proposed Changes:

Changes proposed are detailed below. Within the 2016 Guidelines, the proposed new text is underlined and text proposed to be removed is struck through.

Overall document: Reformatted, with consistent font and spacing for readability and clarity. Minor grammatical and punctuation changes were made. A number of optional and standard conditions have been re-numbered. The phrase 'or its designee' has been added throughout the document to provide staff delegated authority by the Board to handle decisions with respect to the conditions of probation orders on its behalf. Throughout the document wherever 'AC' (Acupuncture Committee) appears, it has been replaced with 'Board' since the Acupuncture Committee changed to a Board since the adoption of the 1996 Disciplinary Guidelines.

Cover Page: New cover page with DCA and Acupuncture Board logo, and new revision date of December 2016.

Table of Contents (Pg. 1): A new proposed section of the Guidelines that incorporates a table of contents of the document. This will assist readers in locating the parts of the document for quick reference.

Introduction (Pgs. 2-3): The existing section has been amended in several ways. The introduction has been expanded to explain the purpose of the Guidelines and identifies who the interested parties are to enhance clarity. New language has been added that

sets out the different categories of probation terms and conditions. In addition, the passage that addressed what should be done in rare cases when there are deviations from the Guidelines was deleted and written differently for clarity purposes.

General Considerations (Pg. 4): A new proposed section with a list of general considerations has been added to help users determine whether revocation, suspension or probation is to be imposed in a given case, with a list of factors to be considered. This assists ALJ's, attorneys, licensees, applicants, and the Board in determining what factors are taken into consideration when formulating the appropriate discipline.

Terms and Conditions (Pgs. 5-6): A table listing optional and standard terms and conditions has been added to help guide the reader. In addition, a third condition category was added to set out special conditions that require a specific penalty. Explaining this third category provides more instruction to the interested parties, specifically the ALJ, when writing the proposed decision.

Optional Terms and Conditions

#2 Psychological Evaluation (Pg. 7): This optional condition has been amended to further define the DSM reference to the Diagnostic and Statistical Manual of Mental Disorders (DSM) for clarity. The prior third edition has been struck through, and the current edition (5th) was added at the request of the Committee. Additionally, new language was added to provide authority that allows the Board to require respondent to comply with psychotherapy if deemed necessary by the evaluator. It was also added that such therapy be paid by respondent. Adding this provides the Board with the authority to impose psychotherapy if it is recommended by the psychological evaluation. This provides further public protection.

#3 Physical Examination (Pg. 8): This optional condition has been amended to add a requirement that the licensee shall be responsible for the costs associated with the physical evaluation and failure to pay them is a violation of probation. Such language was added to be more descriptive of what is required of the respondent.

#4 Practice/Billing Monitor (Pgs. 8-10): This optional condition has been amended in a number of ways. The word "Billing" is added to the condition to delineate that the monitoring can be on respondent's practice, billing or both. The condition mostly provides the same intent and authority but the language was changed around for clarity and ease of reading. Further, language was added to provide more detail on the role of the Board reviewing the monitor's monitoring plan to provide more instruction. Additionally, language regarding the monitor's qualifications was improved by stating the monitor must not be disciplined by the Board. Adding this language excludes licensed acupuncturists who have been previously disciplined as well. Language regarding a specific frequency of meetings with the monitor was removed so the Board or its designee can determine the appropriate frequency on a case by case basis. Additional language was added to the part of the condition that addresses when a

monitor resigns or is no longer available to provide more guidance on the mechanics of how that process would occur. Finally, language was added to provide the Board authority to inspect or copy records retained by respondent. This gives the Board a tool to ensure compliance and public protection.

#5 Psychotherapy (Pg. 10): This optional condition has been added to appear in decision and orders either concurrently with condition number two (2), Psychological Evaluation or on its own. The condition sets forth the requirements for when a respondent is ordered to undergo psychotherapy during his or her probation. It also details how the condition operates, the qualifications for the therapist conducting the therapy, how the therapist's evaluation is provided to the Board, and what the consequences are if respondent is deemed unsafe to practice. This proposed condition provides additional public protection by adding more in-depth rehabilitation and expert evaluation in cases where respondent's emotional, mental or judgment is called into question.

#6 Restrictions on Patient Population or Practice Setting (Pg. 11): This optional condition has been renamed and has been amended to provide actual language to be used in probation orders. The condition provides a strong public protection by prohibiting a respondent from practicing on a specific patient population or under certain practice settings. This condition allows the Board to protect those applicable groups of people who respondent's misconduct was directed to. It also allows the Board to impose a certain practice setting to ensure respondent does not commit the same or similar transgressions that the barred setting supports. The existing note was amended for clarity.

#7 Restrictions on Practice Techniques and Modalities (Pg. 11): This new optional condition allows the Board to place restrictions on types of practice and requires the licensee to submit to the Board a plan to implement this restriction. A note is also added to clarify that restrictions shall be appropriate to the violation and specifies when the condition should be used. This condition allows the Board to protect the public by prohibiting respondent from providing a certain technique or modality that he or she lacks skill in or deviates from the standard of practice.

#8 Examination(s) (Pgs. 11-12): This renumbered optional condition has been amended to remove the reference to a clinical exam as the Board no longer requires this as part of the California Acupuncture Licensing Exam (CALE). It also requires a probationer to take and pass the exam before practicing Acupuncture. Additional language has been added requiring the exam be taken in the first twelve months of probation. The existing note was updated for clarity. By specifying that the exam must be passed within the first twelve months of probation this condition provides more public protection to eliminate those who do not demonstrate competency to practice safely.

#9 Restitution (Pg. 12): This optional condition has been re-numbered to #9.

#10 Alcohol and Drug Abuse Treatment Program (Pg. 12): This renumbered optional condition has been amended in several ways. The word 'Program' was added to the title for clarity. Also, a note which allows the Board to consider previous court ordered treatment programs within the last three years has been added. This allows the Board to evaluate and accept treatment programs that were done as a condition of the respondent's criminal probation. The length was taken down from six months to three months minimum because this is typically the length that criminal courts impose for treatment programs. This change brings the Board in line with the criminal justice system for first time offenders for Driving Under the Influence (DUI). Additionally, a requirement of submission of program completion to be submitted within 15 days has been added. A change to the note which references the Conditions that must accompany this one has been updated. Language from existing condition that addressed twelve step meetings and group therapy was removed because a more clear and updated condition is being proposed to put in its place.

(Removed Condition) Reimbursement for Probation Service Monitoring (Pg. 13): This optional condition has been deleted as its provisions have been incorporated into a new standard condition, #25.

#11 Attend Chemical Dependency Support and Recovery Groups (Pg. 13): This optional condition has been added in order to allow the Board to require a licensee to attend support and recovery groups as a condition of probation. This adds additional public protection by promoting rehabilitation efforts for respondent.

#12 Abstain from Drugs and Alcohol and Submit to Tests and Samples (Pgs. 13-14): This renumbered optional condition has been re-written for better clarity. Reference to Business and Professions Code Section 4211 was updated to its new section, 4022. An exception was added allowing respondent the use of prescription drugs if lawfully prescribed by a licensed practitioner. Language was also added specifying that certain documentation is required to be submitted to the Board as proof. Adding such a clause protects the consumer while allowing respondent to maintain medically necessary prescription drugs. Additionally, a reference to the Board's 'Uniform Standards Related to Substance-Abusing Licensees' document has been added in case the licensee has been determined as such. This has been added to direct ALJ's and attorneys to use the Uniform Standards that are statutorily required in cases where evidence establishes that he or she is a substance-abusing licensee.

#13 Coursework (Pg. 14): This renumbered optional condition has been amended in several ways and existing probationary language has been completely struck through. The proposed condition removes the requirement that coursework be at the graduate level, and the coursework area and number of units are no longer specified. Instead, it is stated that the coursework be substantially related to the violation(s) and that the course content and hours are set by the Board or its designee who notify the respondent. By not specifying the course areas and hours, the Board or its designee has more flexibility to adequately address respondent's violations as a result of a lack of

knowledge or education. Coursework can be tailored more appropriately on a case by case basis. Instead of requiring the coursework be completed within the first three years of probation, respondent is now required to complete the required coursework within the first year of probation. Making this change accommodates probation terms shorter than three years so there is no incongruence. The condition also now requires a licensee to submit original certificates of completion to the Board within 30 days of completion. Overall, these changes will further public protection and promote more accessible education to address deficiencies.

#14 Community Service (Pgs. 14-15): This renumbered optional condition has been amended to detail how the Board may require a licensee to complete community service as a condition of probation and how the Board may consider various forms of service. It also requires the licensee to submit to the Board details about the program within 60 days and submit documentation of the service hours on a quarterly basis. Finally, the licensee is required to complete the service six months prior to the end of his or her probation. The changes enhance clarity since there wasn't actual language to include in probation orders previously.

#15 Supervised Practice (Pgs. 15-16): This new optional condition allows the Board to impose supervised practice on licensees under the direction of a supervisor who is another licensed acupuncturist approved by the Board. The qualifications for the supervisor match up with the qualifications required in the Practice/Billing Monitor condition. It does provide that if a licensed acupuncturist cannot be secured, then another supervisor in another field of practice may be submitted for approval. The condition sets out requirements for the supervisor and imposes various reporting requirements. The purpose of this new condition is to provide more public protection if respondent's violation demonstrates that he or she needs supervision. This condition would be used in cases of sexual misconduct, incompetency and any other violation which would suggest respondent and the public would benefit from it.

Standard Conditions

#16 Obey All Laws (Pg. 17): This standard condition has been renumbered to 16. The level of laws have been deleted to provide more clarity and be all encompassing of every law that exists.

#17 Quarterly Reports (Pg. 17): This renumbered standard condition has been amended with language to allow the Board to extend probation if the final report is not submitted on time. This allows the Board continuing jurisdiction if not all matters of probation have been met.

#18 Surveillance Program (Pg. 17): This renumbered standard condition has been amended by removing 'district office' and 'probation surveillance monitor' to reflect current practice of the use of the term "probation monitor" within Enforcement. A reference to subject matter experts has been updated to reflect current terminology.

#19 Interview with the Board or Its Designee (Pg. 17): This standard condition has been renumbered to 19.

#20 Changes of Employment (Pg. 17): This renumbered standard condition has been amended to provide clarity and update terminology to the standard use of "probation monitor."

#21 Tolling for Out-of-State Practice or Residence (Pgs. 17-18): This renumbered standard condition has been amended to require a licensee to report to the Board when vacationing out of state longer than 30 days. This further defines how long a respondent would have to be residing out of state for it to qualify for his or her probation to be tolled. Language was also added to specify that ordered suspension or non-practice in compliance with another condition of probation shall not be tolled. This provides more clarity.

#22 Employment and Supervision of Trainees (Pg. 18): This renumbered standard condition has been amended with a prohibition on a licensee teaching at any Board approved training program. This language identifies that any respondents who violated the Acupuncture Licensure Act are not qualified to teach acupuncture trainees in any capacity until his or her probation term is completed, which ensures more public protection.

#23 Cost Recovery (Pg. 18): This renumbered standard condition has been amended to allow for a licensee to submit a payment plan to the Board. It also allows the Board to extend probationary time in order to fulfill the probationary order at respondent's request. Further, it states that cost recovery can no longer be tolled and the filing of bankruptcy does not relieve respondent from his or her responsibility to pay the ordered costs. These changes allow the Board more authority to collect the owed costs, even past the probation period. It also provides more flexibility to respondent to make payments towards costs that fit his or her fiscal capabilities which promotes compliance.

#24 Violation of Probation (Pg. 18): This renumbered standard condition has been amended to allow the Board to continue monitoring a licensee's probation if any terms or conditions have not been met or probation terms are violated. This promotes flexibility for the Board and provides continuing authority over respondent when there are conditions not met.

#25 Probation Monitoring Costs (Pg. 19): This new standard condition requires that a licensee shall pay any costs associated with probation monitoring as designated by the Board or its designee, which may be adjusted by the Board on an annual basis. These changes have now created standard language to be used in probation orders. It adds clarity and ensures the Board is getting back what it expends in ensuring compliance during the probation term.

#26 License Surrender (Pg. 19): This new standard condition allows that a licensee may surrender his or her license to the Board if certain criteria are met, and the Board may evaluate and take action on the request. It also states that the licensee will not be subject to probation once a surrender is made, but that the licensee's disciplinary history will reflect the surrender. This provides more flexibility to the Board and the licensees on probation. If a licensee can no longer comply with a probationary condition or chooses to resign, he or she has an option within the probation order to allow for a process to surrender his or her license without violating the probation order.

#27 Severability Clause (Pg. 19): This new standard condition specifies that each condition of probation is a separate and distinct condition, and that if one condition becomes unenforceable the rest still apply. This provides more authority to the Board and promotes public protection.

#28 Notification of Name, Address, Telephone Number or Email Address Changes (Pg. 19): This new standard condition requires that a licensee submit any changes to their name, address, phone number or email address to the Board within 10 days. This will enhance public protection by making sure all licensees on probation have correct and accurate information on file with the Board's probation/enforcement unit.

#29 Maintenance of Valid License (Pgs. 19-20): This new standard condition requires that a respondent maintain an active and current license with the Board during the time he or she is on probation. It also requires that a respondent granted an initial license complete the licensure process within two years from the effective decision date. The condition also states that if respondent's license does expire, all probationary conditions shall be complied with that were not previously satisfied. Adding this condition provides more authority to the Board. It also prevents licensees inactivating his or her license or letting it expire for the sole purpose of getting out of complying with certain probationary conditions.

#30 Completion of Probation (Pg. 20): This standard condition has been renumbered from 22 to 30.

Additional Changes

Penalty Guidelines (Pg. 21): This section has been amended in several ways. A note that referred to the Guidelines only providing examples of violations for illustrative purposes has been removed since the new Guidelines have the penalty guidelines structured by section number now. In addition, a reference specific to providing information regarding offenses under the Acupuncture Licensure Act has been removed since general provisions of the Business and Professions Code (BPC) are now being added. Therefore, the range of offenses are not just specific to the Act. A more descriptive introduction to the forthcoming penalty guidelines was added for clarity.

Recommended Action by Violation of General California Business and Professions Code Provisions (Pg. 22): This new section provides a list of commonly used or violated Business and Professions Code Sections (outside of the Acupuncture Licensure Act) which a licensee may violate and includes the recommended minimum and maximum penalties. These new sections include:

1. BPC Section 651, Advertising
2. BPC Section 726, Commission Of Act Of Sexual Abuse Or Misconduct With Patient

Recommended Action by Violation of Acupuncture Licensure Act (Pgs. 23-29): This section has been amended and reformatted. The previous system of listing violations with the corresponding penalty (i.e. "resulting in substantial harm to patients" or "convictions of a crime of violence…") has been deleted. Staff found that formatting the penalties by the use of violation examples was more limiting and confusing. Instead, the violations have been grouped and titled by their specific Acupuncture Licensure Act statute (i.e. Unprofessional Conduct, Fraud, etc) with each specific violation listed. The minimum and maximum penalties for each violation available to the Board are listed below the statute. This gives interested parties of the Guidelines greater flexibility in determining the appropriate course of action for each violation. By reformatting the penalty guidelines section, it provides an ease of understanding and use of the document.

The reorganized sections include the following changes:

The Guidelines are proposing a minimum probation term of three (3) years instead of the previous five (5) years probation minimum penalty. This change is based upon standards within Enforcement among the Department and a precedence set by decisions being adopted currently by the Board. There are only two exceptions within the Act that propose a lower minimum penalty of two (2) years: 4955 (c), False or Misleading Advertising and 4955.1 (e), Failing to Maintain Adequate and Accurate Records. A lower penalty is being recommended for these two less egregious statute violations.

1. Unprofessional Conduct – added the following violations which were not previously addressed in the 1996 Guidelines:

- Failing to Follow Infection Control Guidelines
- The Use of Threats or Harassment Against a Licensee/Patient
- Disciplinary Action Taken by Any Public Agency
- Action or Conduct that Warrants a Denial of License
- Violation of Any Law or Local Ordinance on Business Premises

Existing violations which have been changed; added/updated standard terms and conditions and applicable optional terms and conditions to each:

- Using or Possessing Any Controlled Substance – added reference to Board's 'Uniform Standards for Substance-Abusing Licensees' document.
- Conviction of Crime – this violation has been renamed, a reference to BPC Section 4956 has been added, and a note about the only applicable penalty standard for cases involving registered sex offenders has also been added.
- False or Misleading Advertising – this violation has been renamed.
- Aiding or Abetting or Violating Terms of this Chapter or Any Board Regulation – this violation has been renamed and no longer strictly ties the section to only aiding and abetting unlicensed practice.

2. Fraud – added the following violations:
- Failing to Maintain Adequate and Accurate Records (repeated acts).

Existing violations which have been changed; added standard terms and conditions and applicable optional terms and conditions to each:
- Securing a License by Fraud or Deceit
- Any Act involving Fraud, Dishonesty or Corruption as an Acupuncturists – this violation has been renamed.

3. Negligence – existing violations which have been changed; added standard terms and conditions and applicable optional terms and conditions to each:
- Gross Negligence – this violation has been renamed.
- Repeated Negligent Acts
- Incompetence

Accusations (Pg. 30): This section has been amended with the correct statutory authority within the Acupuncture Licensure Act to recover costs.

Language for Probation Orders (Pg. 31): This new section adds recommended language for interested parties in writing probation orders for licensees, applicants and those who are granted reinstatements. The language used is commonly found in the Board's past probation orders and is provided to assure clarity and uniformity when completing these orders.

Recommended Language for Cost Recovery for Surrenders (Pg. 32): This new section adds recommended language for cost recovery when ordered in Decisions that result in license surrenders. This language used is commonly found in the Board's past cost recovery orders and is provided to assure clarity and uniformity.

Demonstrations of Rehabilitation (Pgs. 33-34): This new section sets out different criteria which the Board may consider when determining a denial of license, suspension or revocation is more appropriate. This gives the Board examples of evidence and factors to consider when a respondent is trying to demonstrate rehabilitation. This provides greater clarity and greater purpose to the document.

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Evidence of Mitigation (Pg. 35): This new section has been added to provide guidance for licensees as to how they may present evidence to demonstrate rehabilitation and recovery. This provides more consistency in making decisions among similar cases. It also provides more direction to interested parties.

Evidence of Aggravation (Pg. 36): This new section has been added to assist Administrative Law Judges with examples of aggravating circumstances which may be considered in their proposed decisions. This provides more consistency in making decisions among similar cases. It also provides more direction to interested parties.

Proposed Decisions (Pg. 37): This section has been amended with new numbering used from the terms and conditions.

Reinstatement / Penalty Relief Hearings (Pgs. 38-39): This section has been amended with minor changes to the language for clarity.

Index of Violations (Pgs. 40): This new section adds an index to refer readers to specific violations listed within the disciplinary guidelines.

Agenda Item #14b

Disciplinary Guidelines 1399.469 text approved by the Enforcement Committee

California Acupuncture Board
Update to Disciplinary Guidelines

Changes to the existing language are shown in ~~strikeout~~ for deleted text and underline for new text.

Amend Section 1399.469 of Article 6 of Chapter 13.7 of Title 16 of the California Code of Regulations to read as follows:

1399.469. Disciplinary Guidelines.
In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled "~~Department of Consumer Affairs,~~ Acupuncture Board ~~'~~Disciplinary Guidelines~~'~~ ~~1996~~ Revised December 2016" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the Acupuncture Board in its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Agenda Item #14c

Disciplinary Guidelines

Draft for Board approval

~~*Department of Consumer Affairs*~~
~~*Medical Board of California*~~

~~*ACUPUNCTURE COMMITTEE*~~

~~*DISCIPLINARY GUIDELINES*~~

~~*1996*~~

Acupuncture Board

Disciplinary Guidelines

Revised December 2016

PROPOSED NEW 2016 LANGUAGE IS UNDERLINED. LANGUAGE PROPOSED FOR REMOVAL IS STRIKETHROUGH.

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.acupuncture.ca.gov.

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Introduction

The Acupuncture ~~Committee (AC)~~ Board (Board) is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the ~~AC~~ Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Acupuncture Licensure Act.

~~The AC recognizes that a rare individual case may necessitate a departure from these guidelines for disciplinary order. However, in such a rare case, the mitigating circumstances must be detailed in the "Findings of Fact" which is in every Proposed Decision or Stipulation.~~

This document, designed for use by attorneys, administrative law judges, acupuncturists, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

The terms and conditions of probation are divided into three general categories:

1. Optional Conditions are those conditions of probation which may be used to address the sustained violations and any significant mitigating or aggravating circumstances of a particular case, and

2. Standard Conditions are those conditions of probation which should be used in all cases.

3. Special Conditions and specific penalty guidelines shall be adhered to in the following cases:

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards Related to Substance-Abusing Licensees (September 2016)”, shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations Section 1399.469.1, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall do the following: 1.) Deny an application by the individual for

licensure; 2.) Revoke the license; or 3.) Deny any petition to reinstate or reissue the individual's license.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the Board always requests that the Administrative Law Judge hearing the case will include some explanation of this in the proposed decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision for final action. As the Board's highest priority in exercising its disciplinary function is public protection, additional terms and conditions of probation which would provide greater public protection may be imposed.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the ~~AC~~ Board expects outright revocation of the license. This is particularly true in cases of patient sexual abuse or bodily harm. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be expected.

General Considerations

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Terms and Conditions

Terms and conditions of probation are divided into ~~two~~ three categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions** which must appear in all proposed decisions and proposed stipulated settlements. The third category consists of **special conditions** that call for specific penalty guidelines in the following cases:

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations Section 1399.469.1, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall do the following: 1.) Deny an application by the individual for licensure; 2.) Revoke the license; or 3.) Deny any petition to reinstate or reissue the individual's license.

To enhance the clarity of a proposed decision or stipulation, the ~~AC~~ Board requests that all optional conditions that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions.

Optional Terms and Conditions

1 Actual Suspension

2 Psychological Evaluation

3 Physical Examination

4 Practice/Billing Monitor

5 Psychotherapy

6 Restrictions on Patient Population or Practice Setting

7 Restrictions on Practice Techniques and Modalities

8 Examination(s)

9 Restitution

10 Alcohol and Drug Abuse Treatment Program

11 Attend Chemical Dependency Support and Recovery Groups

12 Abstain from Drugs and Alcohol and Submit to Tests and Samples

13 Coursework

14 Community Service

15 Supervised Practice

Standard Terms and Conditions

16 Obey All Laws

17 Quarterly Reports

18 Surveillance Program

19 Interview with the Board or Its Designee

20 Changes of Employment

21 Tolling for Out-of-State Practice or Residence

22 Employment and Supervision of Trainees

23 Cost Recovery

24 Violation of Probation

25 Probation Monitoring Costs

26 License Surrender

27 Severability Clause

28 Notification of Name, Address, Telephone Number or E-mail Address Changes

29 Maintenance of Valid License

30 Completion of Probation

Optional Terms and Conditions

Listed below are optional conditions of probation which the ~~AC~~ Board would expect to be included in any proposed decision as appropriate. The terms are not mutually exclusive, but can and should be combined with each other, as appropriate to a particular case. Other terms and conditions may be specified in stipulations for inclusion at the request of the ~~AC~~ Board depending on the unique aspects of an individual case.

1. Actual Suspension

As part of the probation, respondent is suspended from the practice of acupuncture for ____ days beginning with the effective date of this decision.

2. Psychological Evaluation

Within 90 days of the effective date of this decision and on a periodic basis thereafter as may be required by the ~~AC~~ Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a~~n~~ ~~AC~~ Board appointed California licensed psychologist. The ~~AC~~ Board or its designee shall receive a current Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) ~~III-R~~ diagnosis and a written report regarding the respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the ~~AC~~ Board or its designee deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the ~~AC~~ Board. The completed evaluation is the sole property of the ~~AC~~ Board.

If the ~~AC~~ Board or its designee concludes from the results of the evaluation that respondent is unable to practice independently and safely, he/she shall immediately cease practice and shall not resume practice until notified by the ~~AC~~ Board or its designee. If the ~~AC~~ Board or its designee concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy, respondent shall comply with the ~~AC's~~ Board's directives in that regard. If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the respondent's practice will be supervised.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

NOTE: *Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, respondent shall be barred from rendering acupuncture services under the terms of probation until he or she has undergone an evaluation, the evaluator has*

recommended resumption of practice, and the ~~AC~~ Board has accepted and approved the evaluation.

3. Physical Examination

Within 90 days of the effective date of this decision, respondent shall undergo a physical examination by a licensed physician and surgeon approved by the ~~AC~~ Board or its designee. Respondent shall bear all costs of such an examination. Failure to pay costs will be considered a violation of the probation order. The ~~AC~~ Board shall receive the physician's report which shall provide an assessment of respondent's physical condition and capability to safely provide acupuncture services. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the ~~AC~~ Board or its designee on a quarterly basis or as otherwise determined by the ~~AC~~ Board or its designee.

It shall be the respondent's responsibility to assure that the required progress reports are filed in a timely manner.

***NOTE**: This condition permits the ~~AC~~ Board to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect safe practice of acupuncture. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.*

4. Practice/Billing Monitor

~~Within 90 days of the effective date of this decision, respondent shall submit to the AC for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice monitor. Once approved, the monitor shall submit to the AC a plan by which respondent's practice shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the respondent. The monitor shall submit written reports to the AC on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance. It shall be respondent's responsibility to assure that the required reports are filed in a timely fashion. The respondent shall provide access to the monitor of respondent's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with respondent. Respondent shall execute a release authorizing the monitor to divulge any information that the AC may request.~~

~~If the monitor quits or is otherwise no longer available, respondent shall not practice until a new monitor has been approved by the AC. All costs of monitoring shall be borne by the respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.~~

Within 90 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a _____ (i.e., practice, billing, or practice and billing) monitor(s), the name and qualifications of one or more licensed acupuncturists whose license is valid, in good standing and not disciplined by the Board. Prior to the Board's approval, respondent shall provide a copy of the Board's Accusation and Decision to the monitor(s). A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board or its designee, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

Upon approval of the monitor(s), the Board or its designee shall provide a monitoring plan. Within 15 calendar days of receipt of the monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of acupuncture or billing, or both, and whether respondent is practicing acupuncture safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits written reports to the Board or its designee quarterly.

If the monitor resigns or is no longer available, respondent shall, within five calendar days of such resignation or unavailability notify the Board. Within 30 days, respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor. Upon approval, the monitor shall assume immediate responsibility. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, after notification by the Board, respondent shall be suspended from the practice of acupuncture until a replacement monitor is approved and prepared to assume immediate monitoring responsibility.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

***NOTE**: Monitoring shall be utilized when respondent's ability to function independently is in doubt, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment.*

5. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board or its designee. Within 15 days of the effective date of this decision, respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of respondent's choice. Such therapist shall possess a valid California license to practice and shall have had no prior business, professional, or personal relationship with respondent. Counseling shall be at least once a week unless otherwise determined by the Board or its designee. Respondent shall continue in such therapy at the Board's or its designee's discretion. Cost of such therapy is to be borne by respondent.

Respondent shall provide the therapist with a copy of the Board's decision no later than the first counseling session. Upon approval by the Board, respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist submits quarterly written reports to the Board or its designee concerning respondent's fitness to practice, progress in treatment, and to provide such other information as may be required by the Board or its designee. Respondent shall execute a Release of Information authorizing the therapist to divulge information to the Board or its designee.

If the treating psychotherapist finds that respondent cannot practice safely or independently, the psychotherapist shall notify the Board within three working days. Upon notification by the Board or its designee, respondent shall immediately cease practice and shall not resume practice until notified by the Board or its designee that respondent may do so. Respondent shall not thereafter engage in any practice for which a license issued by the Board is required until the Board or its designee has notified respondent that he/she may resume practice. Respondent shall document compliance with this condition in the manner required by the Board or its designee.

Note: The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation).

6.~~5.~~ Restrict~~ion~~s ~~of~~ on Patient Population or Practice Setting

Respondent's practice shall be restricted to [specify patient population and/or setting] for the first _____ years of probation. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

***NOTE**: The restrictions shall be appropriate to the violation. This condition shall be included ~~I~~in cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the respondent. The condition shall also be used in cases where public protection is achieved by respondent having a specified practice setting (e.g. no solo practice, etc).~~, language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.~~*

7. Restrictions on Practice Techniques and Modalities

Respondent's practice shall be limited to _____. Within 30 days from the effective date of the decision, respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

***NOTE**: The restrictions shall be appropriate to the violation. The condition shall be used in cases where public protection is achieved by respondent abstaining from a specific acupuncture service (herbs, moxibustion, an alternative treatment not in the Acupuncture Licensure Act, etc.)*

8.~~6.~~ Examination(s)

Respondent shall take and pass the ~~written and/or clinical licensing examination(s) prior to the termination of probation.~~ licensure exam(s) currently required of new applicants for the license possessed by respondent. Respondent shall not practice until such time as respondent has taken and passed these examinations. ~~The examinations shall be taken on regularly scheduled exam dates.~~ Respondent shall pay the established examination fees.

If respondent ~~fails the~~ has not taken and passed the examination ~~three times, his/her license to practice acupuncture is suspended until the examination is successfully passed.~~within 12 months from the effective date of this decision, respondent shall be considered to be in violation of probation.

***NOTE**: In cases involving evidence of severe deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to take and pass ~~both the written and clinical~~ the examination(s) ~~during the course~~ within the first 12 months of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).*

9.~~7.~~ Restitution

Within 90 days of the effective date of this Decision, respondent shall provide proof to the ~~AC~~ Board or its designee of restitution in the amount of $_____ paid to _____.

***NOTE**: In offenses involving breach of contract, restitution is an appropriate term of probation. The amount of restitution shall be the amount of actual damages sustained as a result of breach of contract. Evidence relating to the amount of restitution would have to be introduced at the Administrative hearing.*

10.~~8~~ Alcohol and Drug Abuse Treatment Program

Effective 30 days from the date of this Decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program (a minimum of ~~six (6)~~ three months duration) or an equivalent program as approved by the ~~AC~~ Board or its designee. The Board may consider a recovery program taken under court order within the last three years prior to the effective date of the decision. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent. ~~Subsequent to the program, r~~Respondent shall submit proof of completion of the recovery program to the Board or its designee within 15 days of its conclusion. ~~participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the AC at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the AC. Respondent shall pay all costs of treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the equivalent as approved by the AC. The psychologist shall confirm that respondent has complied with the requirements of this Decision and shall notify the AC immediately if he or she believes the respondent cannot safely render acupuncture services. Respondent shall execute a release authorizing the psychologist to divulge the aforementioned information to the AC.~~

***NOTE**: Alcohol and other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by respondent has impaired respondent's ability to safely provide acupuncture services to patients. This condition must be accompanied by conditions # ~~9~~11 and 12*

~~**10. Reimbursement for Probation Surveillance Monitoring**~~

~~Respondent shall reimburse the AC for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.~~

~~***NOTE**: This condition can only be included in a proposed stipulation, since there is no legal authority to include it in proposed decisions.*~~

11. Attend Chemical Dependency Support and Recovery Groups

Within 30 days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g.,Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Frequency and duration shall be determined by the Board or its designee.

12.~~9.~~ Abstain from Drugs and Alcohol and Submit to Tests and Samples

Respondent shall ~~abstain~~ completely abstain from the ~~personal use or~~ possession or use of alcohol, ~~and~~ controlled substances, as defined in the California Uniform Controlled Substances Act (Division 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined in Section ~~4211~~ 4022 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. ~~Respondent shall abstain completely from the use of alcoholic beverages.~~ Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, shall be considered a violation of probation.

Respondent shall undergo random biological fluid testing as determined by the ~~AC~~ Board or its designee. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the ~~AC~~ Board or its designee. Any confirmed positive finding will be considered a violation of probation.

***NOTE**: This condition provides documentation that the probationer is substance or chemical free. It also provides the ~~AC~~ Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or*

appears to be under the influence of mood altering substances. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.

13.~~11.~~ Coursework

~~Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following area(s) _____. All coursework shall be taken at the graduate level at a school approved by the AC. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first 3 years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.~~

~~Within 90 days of the effective date of this decision, respondent shall submit a plan for the AC's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the respondent.~~

Respondent, at his/her own expense, shall enroll and successfully complete coursework substantially related to the violation(s) no later than the end of the first year of probation.

The coursework shall be in addition to that required for license renewal. The Board or its designee shall notify Respondent of the course content and number of hours required. Within 30 days of the Board's written notification of assigned coursework, Respondent shall submit a written plan to comply with this requirement to the Board or its designee. The Board or its designee shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the coursework, Respondent shall submit "original" completion certificates to the Board within 30 days of course completion.

14.~~12.~~ Community Service

Within 60 days of the effective date of this decision, respondent shall submit to the Board or its designee, for its prior approval, a community service program in which respondent shall provide volunteer services on a regular basis to a community or charitable facility or agency for at least _____ hours per month for the first ____ months of probation. Such community service does not necessarily

include acupuncture service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a quarterly basis. Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.

Respondent shall complete all community service hours no later than six months prior to the completion of probation.

***NOTE**: In addition to other terms of probation, community service work may be required for relatively minor offenses which do not involve deficiencies in knowledge, skills or judgment. Community service may be appropriately combined with restitution or other conditions as a term of probation. ~~Specific language applicable to the case shall include the requirement that services rendered shall be professional in nature and under the auspices of a governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code.~~*

15. Supervised Practice

During the period of probation, when respondent conducts evaluations and treatments on _____(specific population of patients), such evaluations and treatments shall be performed only under the supervision and direct observation of a licensed acupuncturist whose license is valid, in good standing and not disciplined by the Board. Upon and after the effective date of this decision, respondent shall not practice acupuncture and his or her license shall be automatically suspended until a supervisor is approved by the board or its designee. The supervision shall be direct observation of all treatments provided to all _____(specific population of patients).

The supervisor shall be a current California licensed acupuncturist, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of respondent's performance. The supervisor shall be independent, with no prior business, professional or personal relationship with respondent. If respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of licensed acupuncturists in the area, then the Board or its designee may consider permitting respondent to secure a supervisor not in the respondent's field of practice. The Board or its designee may require that respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision or to locate another licensed acupuncturist.

Within 30 days of the effective date of this decision, respondent shall have his or her supervisor submit notification to the board or its designee in writing stating that the supervisor has read the decision in case number _____ and is familiar with the required level of supervision as determined by the board or its designee. It shall be the respondent's responsibility to ensure that his or her supervisor submit timely acknowledgement(s) to the board or its designee. Failure to cause the direct supervisor to submit timely acknowledgements to the board or its designee shall be considered a violation of probation. If respondent changes employment, it shall be the respondent's

responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board or its designee. Respondent shall have his or her new supervisor, within 15 days after employment commences, submit notification to the board in writing stating the direct supervisor have read the decision in case number _____ and is familiar with the level of supervision as determined by the board or its designee. Respondent shall not practice acupuncture and his or her license shall be automatically suspended until the board or its designee approves a new supervisor. Failure to cause the direct supervisor to submit timely acknowledgements to the board or its designee shall be considered a violation of probation. Within 10 days of leaving employment, respondent shall notify the board or its designee in writing.

Standard Terms and Conditions
(To be included in all Decisions)

16. ~~13~~ Obey All Laws

Respondent shall obey all ~~federal, state and local~~ laws ~~and all regulations governing the practice of acupuncture in California~~. A full and detailed account of any and all violations of law shall be reported by the respondent to the ~~AC~~ Board or its designee in writing within ~~seventy-two (~~72~~)~~ hours of occurrence.

17. ~~14~~ Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the ~~AC~~ Board or its designee, stating whether there has been compliance with all the conditions of probation. If the final probation report is not submitted as directed, probation shall be extended automatically until such time as the final report is submitted and accepted by the board or its designee.

18.~~15~~ Surveillance Program

Respondent shall comply with the ~~AC's~~ Board's probation surveillance program and shall, upon reasonable notice, report to the assigned probation monitor ~~investigative district office~~. Respondent shall contact ~~the~~ assigned probation monitor ~~surveillance monitor~~ regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the ~~AC~~ Board as subject matter experts ~~examiners~~.

19.~~16~~ Interview with the ~~AC~~ Board or Its Designee

Respondent shall appear in person for interviews with the ~~AC~~ Board or its designee upon request at various intervals and with reasonable notice.

20.~~17~~ Changes of Employment

Respondent shall notify the ~~AC~~ Board in writing, through the assigned probation monitor ~~surveillance compliance officer~~ of any and all changes of employment, location and employment address within 30 days of such change.

21.~~18~~ Tolling for Out-of-State Practice or Residence

In the event respondent should leave California to reside, to vacation exceeding 30 days, or to practice outside the State, respondent must notify the ~~AC~~ Board or its designee in writing of the dates of departure and return. Periods of residency

or practice outside California will not apply to the reduction of this probationary period.

For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be tolled.

22.~~19~~ Employment and Supervision of Trainees

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation. Respondent shall not teach at any Board approved training program during the course of this probation.

23.~~20~~ Cost Recovery

Respondent shall pay to the ~~AC~~ Board its costs of investigation and enforcement in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, with payments to be completed no later than three months prior to the end of the probation term. Cost recovery will not be tolled.

At respondent's request, if respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board or its designee, in its discretion, may grant an extension of respondent's probation period up to two years without further hearing in order to comply with this condition. During the two years extension, all original conditions of probation will apply. The filing of bankruptcy by respondent shall not relieve respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs.

24.~~21~~ Violation of Probation

If respondent violates probation in any respect, the ~~AC~~ Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against respondent during probation, the ~~AC~~ Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against respondent. If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose

the penalty which was stayed.

25. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board or its designee, which may be adjusted on an annual basis. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

26. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of his or her license or registration. The Board or its designee reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within 15 calendar days, deliver respondent's pocket and/or wall certificate to the Board or its designee and respondent shall no longer practice acupuncture. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of respondent’s license shall be considered to be disciplinary action and shall become a part of respondent’s license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. If respondent reapplies for an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked or surrendered license.

27. Severability Clause

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

28. Notification of Name, Address, Telephone Number or E-mail Address Changes

Respondent shall notify the assigned probation monitor, in writing within 10 days, of any and all name, address, telephone and/or e-mail address changes.

29. Maintenance of Valid License

Respondent shall, at all times, maintain an active current license with the Board,

including any period of suspension or tolled probation.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two years from the effective date of the Board's Decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

***NOTE**: If Respondent violates this term and a petition to revoke probation is filed that results in a default revocation, any outstanding cost recovery shall be ordered to be paid by the effective decision date.*

30. ~~22~~ Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

Penalty Guidelines

The following is an attempt to provide information regarding the range of offenses ~~under the Acupuncture Licensure Act~~ and the appropriate penalty for each offense. ~~Examples are given for illustrative purposes, but no attempt is made to catalog all possible offenses.~~ The ~~AC~~ Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations, which take into account each case's unique circumstances.

If there are deviations or omissions from the guidelines in formulating a Proposed Decision, the ~~AC~~ Board always appreciates it if the Administrative Law Judge hearing the case will include some explanation of this in the Proposed Decision so that the circumstances can be better understood by the ~~AC~~ Board during its review and consideration of the Proposed Decision for final action.

~~All references are to the specified subsections of section 4955 of the Business and Professions Code.~~

The Acupuncture Licensure Act (Business and Professions Code, Division 2, Chapter 12) and general provision sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

Note: Under conditions of probation you will find the applicable numbered conditions to include in a decision and order.

Recommended Action by Violation of General California Business and Professions Code Provisions

Section 651 Advertising

- Maximum Penalty: *Revocation stayed, 2 years probation*
- Minimum Penalty: *Revocation stayed, 1 year probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#13)*

Section 726 Commission of Act of Sexual Abuse or Misconduct with Patient

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed, 60 days suspension, with 5 years probation*

3. *Standard Terms and Conditions (#16 – #30)*
4. *Optional Conditions (#1, #2, #5, #6, #13, #15)*

Recommended Action by Violation of Acupuncture Licensure Act

A. SECURING A CERTIFICATE BY FRAUD OR DECEIT

Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

B. COMMITTING A FRAUDULENT OR DISHONEST ACT AS AN ACUNCTURIST RESULTING IN INJURY TO ANOTHER

MAXIMUM: Dishonest or fraudulent act resulting in substantial harm to patient(s)
Penalty: Revocation; denial of license.

MINIMUM: Dishonest or fraudulent t resulting in minimal harm to patient(s)
Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation and ongoing therapy if appropriate [2], full restitution [7], written and clinical examination [6], coursework in ethics [11], community service [12], and standard terms and conditions [13 - 22].

C. USING ANY CONTROLLED SUBSTANCE, OR DANGEROUS DRUG, OR ALCOHOLIC BEVERAGE TO AN EXTENT OR IN A MANNER DANGEROUS TO HIMSELF OR HERSELF, OR TO ANY OTHER PERSON, OR THE PUBLIC, AND TO AN EXTENT THAT SUCH USE IMPAIRS HIS OR HER ABILITY TO ENGAGE IN THE PRACCE OF ACUPUNCTURE WITH SAFETY TO THE PUBLIC

MAXIMUM: Abuse of alcohol or a controlled substance resulting in substantial harm to patient(s).
Penalty: Revocation; denial of license.

MINIMUM: Abuse of alcohol or controlled substance to the extent that ability to safely perform acupuncture services is impaired.
Penalty: 5 years probation, actual suspension [1], participation in an alcohol/drug abuse treatment program and continuing therapy with a psychologist trained in substance abuse treatment [8], biological fluid testing [9], practice monitor [4], physical examination (if appropriate) [3], and standard terms and conditions [13 - 22].

D. CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE FUNCTIONS OF AN ACUPUNCTURIST, THE RECORD OF CONVICTION BEING CONCLUSIVE EVIDENCE THEREOF

MAXIMUM: Convictions of a crime of violence against person or property or economic crime resulting in substantial harm to patient(s).
Penalty: Revocation; denial of license.

MINIMUM: Conviction of other crime resulting in little or no harm to patient(s).
Penalty: 5 years probation, minimum 30 day suspension [1], ethics course [11], restitution (if appropriate) [7], community service [12], and standard terms and conditions [13 - 22].

~~E. IMPROPER ADVERTISING~~

~~Repeated infraction of statute regarding advertising.~~
~~Penalty: 5 years probation, written and clinical examination [6], coursework in ethics [11], community service [12], and standard terms and conditions [13 – 22].~~

~~F. VIOLATING OR CONSPIRING TO VIOLATE THE TERMS OF THIS CHAPTER~~

~~No guidelines drafted.~~
~~Refer to underlying statute or regulation.~~

~~G. GROSS NEGLIGENCE IN THE PRACTICE OF ACUPUNCTURE~~

~~*MAXIMUM*: Gross negligence resulting in substantial harm to patient(s).~~
~~Penalty: Revocation; denial of license.~~

~~*MINIMUM*: Gross negligence resulting in minimal harm to patient(s).~~
~~Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13 – 22].~~

~~H. REPEATED NEGLIGENT ACTS~~

~~*MAXIMUM*: Repeated negligent acts resulting in substantial harm to patient(s).~~
~~Penalty: Revocation; denial of license.~~

~~*MINIMUM*: Repeated negligent acts resulting in minimal harm to patient(s).~~
~~Penalty: 5 years probation, minimum 90 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13 – 22].~~

~~I. INCOMPETENCE~~

~~*MAXIMUM*: Incompetence resulting in harm to patient(s).~~
~~Penalty: Revocation; denial of license.~~

~~*MINIMUM*: Incompetence resulting in minimal harm to patient(s).~~
~~Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13 – 22].~~

~~The following makes reference to **4935** and are in conjunction with **4955(f)** of the Business and Profession Code.~~

~~**J. IMPERSONATING ANOTHER PERSON HOLDING AN ACUPUNCTURE LICENSE OR ALLOWING ANOTHER PERSON TO USE HIS OR HER LICENSE**~~

~~*MAXIMUM*: Impersonation or use resulting in substantial harm to patient(s).~~
~~Penalty: Revocation; denial of license, or written and clinical examination application.~~

~~*MINIMUM*: Impersonation or use resulting in little or no harm to patient(s).~~
~~Penalty: 5 years probation / actual suspension [1], coursework in ethics [11], community service [12], and standard terms and conditions [13 - 22].~~

~~**K. AIDING OR ABETTING UNLICENSED PRACTICE**~~

~~*MAXIMUM*: Aiding or abetting unlicensed practice which results in harm to patient(s).~~
~~Penalty: Revocation; denial of license.~~

~~*MINIMUM*: Aiding or abetting unlicensed practice which results in minimal harm to patient(s).~~
~~Penalty: 5 years probation / actual suspension [1], oral examination [6], coursework [11], and standard terms and conditions [13 - 22].~~

Violation: Unprofessional Conduct

Section 4955(a) Using or possessing any controlled substance, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that such use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 30 days suspension, with* 3 years probation

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #10, #11, #12, #13)*
3. *Special Condition: If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016)", shall be used in any probationary order of the Board affecting that licensee.*

Section 4955 (b) Conviction of a Crime Substantially Related to the Practice of Acupuncture

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 30 days suspension with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #9, #13, #14)*

NOTE: If an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the only penalty mandated by law is revocation or denial of license. Section 4955 (b) is in conjunction with Section 4956.

Section 4955 (c) False or Misleading Advertising

Repeated infraction of statute regarding advertising.

- Minimum Penalty: *Revocation stayed with 2* years *probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#13, #14)*

Section 4955 (d) Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation with the following conditions*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Condition (#13)*

Section 4955 (e) Failing to Follow Infection Control Guidelines

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation, depending on nature and severity of violation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#4, #13)*

Section 4955 (f) The Use of Threats or Harassment Against a Licensee/Patient

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years*

- *probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Condition (#13)*

Section 4955 (h) Disciplinary Action Taken by Any Public Agency

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*

Section 4955 (i) Action or Conduct that Warrants a Denial of License

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Condition (#13)*

Section 4955 (j) Violation of Any Law or Local Ordinance on Business Premises

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#13, #14)*

Violation: Fraud

Section 4955.1 (a) Securing a License by Fraud or Deceit

Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#8, #13)*

Section 4955.1 (b), (c), (d) Any Act involving Fraud, Dishonesty, or Corruption as an Acupuncturist

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 60 days suspension with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #2, #4, #9, #13, #14)*

Section 4955.1 (e) Failing to Maintain Adequate and Accurate Records (repeated acts)

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed with 2 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#4, #13)*

Violation: Negligence

Section 4955.2 (a) Gross Negligence

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 60 days suspension with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #4, #6, #7, #13)*

Section 4955.2 (b) Repeated Negligent Acts

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 90 days suspension with 3 years probation*

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #4, #6, #7, #13)*

Section 4955.2 (c) Incompetence

- Maximum Penalty: *Revocation or denial of license*
- Minimum Penalty: *Revocation stayed, 90 days suspension*

with 3 years probation

1. *Standard Terms and Conditions (#16 – #30)*
2. *Optional Conditions (#1, #4, #6, #7, #8, #13)*

Accusations

The Board has the authority, pursuant to Section ~~125.3~~ 4959 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The ~~AC~~ Board requests that this fact be included in the pleading and made part of the accusation.

Statements of Issues

The ~~AC~~ Board will file a Statement of Issues to deny an application of a candidate for the commission of an act which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The ~~AC~~ Board will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary decisions. The respondent should be informed that in order to stipulate to a settlement with the ~~AC~~ Board, he/she must admit to the violations set forth in the accusation. All proposed decisions must be accompanied by a memo from the Deputy Attorney General addressed to ~~AC~~ Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

Language for Probation Orders

When a stipulated settlement or proposed decision orders probationary terms and conditions, the Board recommends the following language be included:

- Licensees: It is hereby ordered, Acupuncture license no. AC-_____, issued to respondent _____, is hereby revoked; however, the revocation is stayed and respondent's license is placed on probation for _____ years on the following terms and conditions.

- Applicants: It is hereby ordered, the application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions.

- Reinstatements with conditions of probation: It is hereby ordered, the petition of _____ for reinstatement of his or her acupuncture license is hereby GRANTED, as follows.

  Acupuncture license number AC-_____ is reinstated. The license will then be immediately revoked; however, the revocation is stayed and petitioner is placed on probation for _____ years on the following terms and conditions:

  In cases in which petitioners for reinstatement have not practiced acupuncture in the state of California for an extended amount of time, they must retake the licensing exam before reinstatement. This information must be provided to the Administrative Law Judge so that he or she can include: "Upon successful completion of the licensure examination, license no. AC-_____ shall be reinstated to respondent."

  NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

Recommended Language for Cost Recovery for Surrenders

When the Decision and Order results in surrender of the license, cost recovery should be included as follows:

If Respondent should ever apply or reapply for a new license, or petition for reinstatement of a license, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 4959 in the amount of $_____ prior to issuance of a new or reinstated license. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

Respondent shall relinquish his/her wall and pocket certificate of licensure to the Board or its designee once this Decision becomes effective and upon request.

Demonstrations of Rehabilitation

When the Board receives information that an applicant or licensee has a criminal conviction, there is a set of criteria the Board considers when determining a denial of license or revocation, or suspension of license is appropriate.

- In evaluating the rehabilitation of an applicant/licensee and to determine if action is necessary, the Board considers the following:

    1. The nature and severity of the crime(s) under consideration.

    2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license.

    3. The time that has elapsed since the commission of the crime(s).

    4. The extent to which the applicant/licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant/licensee.

    5. Evidence, if any, of rehabilitation by the applicant/licensee.

- The petitioner should provide details regarding rehabilitation that include:

    1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.

    2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.

    3. Letters of reference from professors or colleagues within the field of acupuncture.

    4. Letters of reference from past and/or current employers.

    5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.

    6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of an acupuncture profession for the applicant.

7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.

8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.

9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Evidence of Mitigation

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and competency in acupuncture:

1. Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, or ongoing therapy, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.

2. Recent letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, etc., where appropriate, and sobriety date.

3. Recent, dated laboratory analyses or drug screen reports, where appropriate.

4. Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.

5. Certificates or transcripts of courses related to acupuncture which respondent may have completed since the date of the violation.

Evidence of Aggravation

The following are examples of aggravating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

1. Patient's trust, health, safety or well-being was jeopardized.

2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).

3. History of prior discipline.

4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).

5. Perjury on official Board forms.

6. Violent nature of crime or act.

7. Violation of Board Probation.

8. Failure to provide a specimen for testing in violation of terms and conditions of probation.

9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

Proposed Decisions

The ~~AC~~ Board requests that proposed decisions include the following:

1. Names and addresses of all parties to the action.
2. Specific code section violated with the definition of the code in the Determination of Issues.
3. Clear description of the acts or omissions which caused the violation.
4. Respondent's explanation of the violation if he/she is present at the hearing in the findings of fact.
5. Explanation of deviation from ~~AC's~~ Board's Disciplinary Guidelines.

When a probation order is imposed, the ~~AC~~ Board requests that the order first list any combination of the Optional Terms and Conditions as they may pertain to the case followed by all of the Standard Terms and Conditions [~~13 – 22~~ 16-30].

If the respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default decision to revoke licensure or deny application.

Reinstatement/Penalty Relief Hearings

The primary concerns of the ~~AC~~ Board at reinstatement or penalty relief hearings are that the evidence presented by the petitioner of his/her rehabilitation. The ~~AC~~ Board is not interested in retrying the original revocation or probation case.

The ~~AC~~ Board will consider the following criteria of rehabilitation:

1. Nature and severity of the act(s) or offense(s).
2. Total criminal record.
3. The time that has elapsed since commission of the act(s) or offense(s).
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
6. Evidence, if any, of rehabilitation submitted by the licensee ~~or registration holder~~.

~~In the Petition Decision,~~ The ~~AC~~ Board requests that ~~would appreciate~~ a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license be included in the Petition Decision.

The ~~AC~~ Board requests that comprehensive information be elicited from the petitioner regarding his/her rehabilitation. The petitioner should provide details which include:

1. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
2. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
3. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
4. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
5. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

6. A culpability or excludability statement.

If the ~~AC~~ Board should deny a request for reinstatement of licensure or penalty relief, the ~~AC~~ Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such action shall result in a default decision to deny reinstatement of the license or reduction of penalty.

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Agenda Item #15

Review and Approval of December 14, 2016 Board Meeting Minutes

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

CALIFORNIA ACUPUNCTURE BOARD
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834
(916) 515-5200 FAX (916) 928-2204 www.acupuncture.ca.gov

California Acupuncture Board
Public Board Meeting
DRAFT Meeting Minutes
Wednesday, December 14, 2016

LOCATION:
ELIHU M. HARRIS STATE OFFICE BUILDING
MEETING ROOM #2
1515 CLAY STREET
OAKLAND, CA 94612

Board Members Present
Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Amy Matecki, M.D., L.Ac, Licensed Member

Board Member Absent
Dr. Michael Corradino, DAOM, Licensed Member

Legal Counsel Present
Kelsey Pruden

Staff Present
Ben Bodea, Executive Officer
Kristine Brothers, Enforcement Coordinator
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator

Acupuncture Board Members

Hildegarde Aguinaldo, President, Public Member
Jamie Zamora, Vice President, Public Member
Kitman Chan, Public Member
Dr. Michael Corradino, DAOM, Licensed Member
Francisco Hsieh, Public Member
Jeannie Kang, L.Ac, Licensed Member
Dr. Amy Matecki, M.D., L.Ac, Licensed Member

FULL BOARD MEETING – 1:28 PM

Agenda Item #1 – Call to Order, Roll Call and Establishment of a Quorum

Hildegarde Aguinaldo (Aguinaldo), Board President, called the meeting to order at 1:28pm. Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: Six - Aguinaldo, Zamora, Chan, Hsieh, Kang, Matecki
Members Absent: One - Corradino

6-1 Quorum established.

Agenda Item #2 – Opening Remarks and Announcement of Executive Officer (Aguinaldo)

President Aguinaldo welcomed everyone to the meeting. She announced that on October 12, 2016, Benjamin Bodea was appointed as Executive Officer of the Acupuncture Board. She also introduced Dr. Amy Matecki, M.D. as the newest Board member.

Agenda Item #3 – Public Comment for items not on Agenda (Aguinaldo)

President Aguinaldo announced that public comments on each agenda item were limited to two minutes per speaker.

Several commenters had concerns about the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) exam fees, and the Board's vote in June 2016 to recommend to the California Legislature a move to the NCCAOM exam beginning in 2019.

A commenter asked the Board for direction on how to submit complaints on unlicensed activity. A comment was made asking the Board for further definition of the Acupuncture scope of practice, and a third commenter wanted the Board to examine the issue of dry needling by other health care practitioners.

Several comments were made in support of keeping the existing California Acupuncture Licensing Exam (CALE) in place.

Agenda Item #4 – President's Report (Aguinaldo)

President Aguinaldo had nothing to report.

Agenda Item #5 – Staff Reports

a. Executive Officer's Report (Bodea)

Executive Officer Benjamin Bodea (EO Bodea) reported the following:

1. Staff Update – The seasonal clerk position has been filled, and the Education Analyst and Exam Analyst positions have been posted and are undergoing the hiring process.

2. Budget Update – The Board's current fiscal year finances are solid, and noting that he would be meeting with Department of Consumer Affairs (DCA) Budget staff in the

coming months to review the budget more closely. Vice President Jamie Zamora (Zamora) asked about the repayment of the four million dollar loan to the State's General Fund from the Acupuncture fund; EO Bodea stated it was scheduled to be repaid back to the Acupuncture Fund in 2017. Board Member Kitman Chan (Chan) commented on the budget, stating that the Board needed more revenue, and the budget appears to be reporting allocations and expenditures from the budget reserve and was confusing. He was concerned that the Board may run short of money, and felt the Board should cut expenses by 15-20%. EO Bodea replied that staff was looking at fee increases, which would require Legislative action. Board Member Jeannie Kang (Kang) mentioned looking at CE Provider Fees and exam fees. President Aguinaldo stated the Board's Executive Committee would be meeting next year to address the budget concerns.

3. Exam Update – EO Bodea reviewed pass rates for the August 2016 CALE. Member Chan asked about the possibility of regulations limiting the amount of times people can re-take the exam. He noted in four years there has not been improvement in re-taker pass rates, and would like the exam committee to address the issue. EO Bodea did note staff has begun work on language for this issue and would be bringing it to the exam committee. President Aguinaldo agreed and asked this issue be placed on a future Exam committee agenda. Member Kang also asked the issue of low pass rates for schools be placed on the agenda; EO Bodea agreed.

4. Human Trafficking Report – EO Bodea reported on his presentation given to the Legislature on June 8th on the issue. He indicated staff has reviewed all cases for any issues related to Human Trafficking but has not found any, and noted the Board has worked diligently to address prostitution related complaints.

5. Strategic Plan Update – EO Bodea updated the Board on Strategic Plan items:

- Licensing – all goals have been met, with cashiering delays being reduced to two days;
- Enforcement – four main goals are in process, including inspection authority and strengthening the license re-application process.
- Education – several items are no longer applicable and are being shifted to the Bureau of Private Postsecondary Education (BPPVE). Other items are due to be taken up as agenda items by the Education Committee such as TOEFL requirements.
- Professional Qualifications – Continuing Education (CE) provider requirements and CE compliance are being looked at by staff.
- Outreach – several of these items are in process. EO Bodea reported staff was working with Acupuncture associations to improve communications, and working on a series of FAQs for the Board website.

- Administration – several items have been completed including an ongoing regulatory report. EO Bodea reported the Board has started the process of hiring for the vacant positions and staff was looking to update the Board Administrative manual.

Vice President Zamora asked about Budget training; he felt it was a good idea. EO Bodea replied he would ask Budget staff to present at the next Board meeting. President Aguinaldo further asked that Board Committees be assigned the remaining strategic plan issues in the coming year in order to complete the items.

b. Enforcement Reports (Brothers)

Enforcement Coordinator Kristine Brothers (Brothers) provided the enforcement report. She first set out the Q4 2015-2016 report, which was not taken up at the previous public Board meeting. The second report given was the Q1 2016-2017 report. The reports summarized Board enforcement activity in the last six months. Member Chan felt there should be more effort made on continuing education enforcement; Brothers agreed.

c. Education Report (Herdt)

Education Coordinator Jay Herdt (Herdt) gave the Education report, noting that the Board has completed twenty one in-state and nine out-of-state training program compliance visits in Fiscal Year 15-16. He further indicated that thirteen training programs are in full compliance with Board regulations, three had completed clinical corrective actions, and twenty programs have submitted correction plans which are pending review by the Board.

Herdt updated the Board on the ongoing collaboration between the (Bureau for Private Postsecondary Education (BPPE) and the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) to facilitate the implementation of Senate Bill 1246. He noted there has been close collaboration between all parties as the statutory implementation date of January 1, 2017 nears.

For continuing education operations, Herdt noted the unit continues to process a high volume of applications for CE course, an average of 280 per month, and felt the processing times were improving with additional staff. He also updated the Board on the Tutorial Program with 49 active tutorials currently in progress.

Member Kang commented on the high number of CE providers. Herdt replied that there were many major CE providers offering multiple courses, and the ongoing review of the high number was timely. She felt the high number of CE providers, as well as CE courses offered were too high and calls for a clean-up. Vice President Zamora noted the

Education committee would be examining the issue. Both he and Member Kang want to see what other Boards are doing with the issue.

d. Regulatory Update
Johnson presented the status of current regulatory packages approved by the Board.

Public Comment was taken on these agenda items. One commenter urged the Board to allow only Acupuncture Schools to be CE providers, another disagreed and felt associations can be good CE providers. Another commenter asked if the Occupational Analysis be offered in multiple languages. Several commenters urged the Board to adopt guidelines about CE providers and to review the high number of providers.

Agenda Item #6 – Update, Discussion and Possible Action on Committee Reports and Recommendations (Aguinaldo)

Committee chairs offered their updates on Board Committee meetings. Member Kang, reporting on the Research Committee, noted the agenda item on Dry Needling was tabled and that EO Bodea provided a report on needle sales. Vice President Zamora, chair of the Education Committee, reported that the committee dealt with the proposed CE Ethics requirement and would be bringing proposed regulatory language back in the future. President Aguinaldo, as chair of the Enforcement Committee, reported the Committee reviewed the Board's proposed Disciplinary Guidelines, which would be then brought before the full Board at a future meeting.

She also noted the Committee dealt with the proposed Prostitution Prevention and Condition of Office regulatory package, which was approved by the Committee and is now before the full Board for a vote. Johnson reviewed the regulation and read aloud the proposed text. He noted the Committee voted to move the regulation to CCR Section 1399.469.4 and to keep the existing text of 1399.450(a), which was strikethrough in the proposed text. Counsel Pruden indicated the Committee's motion which was adopted 4-0, was valid for the full Board.

No public comment was offered on these items.

MOTION: (carried over from Enforcement Committee): Vice President Zamora made a motion to approve the proposed regulatory action to Sections 1399.469.4 as presented and to direct staff to notice the language for public comment without setting a hearing and delegate to staff the authority to make any technical changes. President Aguinaldo seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – ABSENT; Hsieh – YES; Kang – YES; Matecki – YES. ***6-0-1 MOTION PASSES.***

Agenda Item #7 – Consideration and possible action on proposed amendments to Title 16, CCR Sections 1399.407, 1399.407.1, 1399.407.2, and 1399.407.3 – Sponsored Free Health Care Events - AB 2699 (Johnson)

Johnson reviewed the proposed AB 2699 (Sponsored Free Health Care Events) regulatory package, which was disapproved by the Office of Administrative Law. The changes proposed are in response to the disapproval. He reviewed the various proposed changes to the text:

- Renumbering of the CCR Sections;
- Relocation of the "in good standing" meaning to the definitions section of 1399.407;
- Updated references to current forms incorporated by reference;
- Various spelling and grammatical corrections.

Johnson then reviewed the changes to both Forms 901-A and 901-B:

- Updated contact information and phone numbers for DCA on Form 901-A;
- New revision dates on both;
- New description on Form 901-B of how applicants can complete a Live Scan or fingerprints in order to complete a background check;
- Addition on a disclaimer on Form 901-B regarding personal information;
- Additional questions on Form 901-B regarding investigations or convictions;
- A note stating authorization for temporary license would not be issued until clearances from FBI/DOJ have been received.

Vice President Zamora requested adding "California" to the title of Form 901-B for clarity. The corresponding change in the regulatory text was also made.

No public comment was offered on this item.

MOTION: Vice President Zamora made a motion to amend the proposed language as staff has recommended, to approve the modified text for a 15-day comment period and delegate to the Executive Officer, if there are no comments received during the public comment period, the authority to make technical, non-substantive changes as necessary in completing the rulemaking file. Member Kang seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – ABSENT; Hsieh – YES; Kang – YES; Matecki – YES. ***6-0-1 MOTION PASSES.***

Agenda Item #8 – Approval of October 26, 2016 Board Meeting Minutes (Johnson)

Johnson presented the October 26th meeting minutes. There were no changes made. Counsel Pruden advised Member Matecki to abstain on this vote, as she was not a member of the Board in October 2016.

MOTION: Vice President Zamora made a motion to approve the October 26, 2016 Board meeting minutes. Member Kang seconded the motion. Vote: Aguinaldo – YES; Zamora – YES; Chan – YES; Corradino – ABSENT; Hsieh – YES; Kang – YES; Matecki – ABSTAIN. ***5-0-1-1 MOTION PASSES.***

Agenda Item #9 – Scheduling of 2017 Board Meeting Dates (Aguinaldo)

Discussion commenced on scheduling public meetings for 2017. Vice President Zamora proposed setting meetings in conjunction with the Legislative Calendar; this would give the Board flexibility in responding to legislation. He felt additional committee meetings were also necessary to address strategic plan items.

President Aguinaldo tentatively set public meetings for February, May, July and October, subject to committee calendars and Board member availability.

A public comment was made reminding the Board that Acupuncture Schools have ACAOM meetings in May.

Agenda Item #10 – Future Agenda Items (Aguinaldo)

A public comment was made asking the Board to review the number of Herbal Formulas on the exam. He also thanked the Board for their hard work. Another commenter wanted further discussion of the NCCAOM exam and the Board to look at a Congressional Bill regarding Acupuncture. Several comments were further made asking the Board to look at the issue of dry needling, and a comment was made wondering what the Board could do in conjunction with the Physical Therapy Board.

President Aguinaldo asked that staff include a presentation as to what the role of a regulatory Board at a future meeting.

ADJOURNMENT AT 3:57 PM