

# State of California

## California Acupuncture Board Board Member Administrative Manual

Adopted March 22, 2024



Department of Consumer Affairs, State of California

## **Members of the Board**

Dr. Amy Matecki, MD, L.Ac, President, Licensed Member  
Kitman Chan, Vice President, Public Member  
Dr. Yon Ping Chen, L.Ac., Ph.D., Licensed Member  
John Harabedian, Public Member  
Hyun Francisco Kim, Licensed Member  
Dr. Shu Dong Li, Ph.D., Public Member  
Ruben Osorio, Public Member

## **Executive Officer**

Benjamin Bodea, Executive Officer

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

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

# TABLE OF CONTENTS

<b>CHAPTER 1. Introduction</b>	<b>Page</b>
Mission Statement .....	5
Brief History .....	5
Function of the Board.....	6
State of California Acronyms .....	6
General Rules of Conduct .....	7
 <b>CHAPTER 2. Board Members and Meeting Procedures</b>	
Membership .....	8
Board Meetings .....	8
Quorum .....	8
Board Member Attendance at Board Meetings .....	8
Public Attendance at Board Meetings.....	9
Agenda Items .....	9
Notice of Meetings .....	9
Notice of Meetings Posted on the Internet.....	9
Mail Ballots.....	9
Holding Disciplinary Cases for Board Meetings.....	10
Record of Meetings .....	10
Audio Recording .....	10
Meeting Rules.....	11
Public Comment.....	11
 <b>CHAPTER 3. Travel &amp; Salary Policies &amp; Procedures</b>	
Travel Approval .....	12
Travel Arrangements.....	12
Out-of-State Travel.....	12
Travel Claims .....	12
Salary Per Diem .....	12
 <b>CHAPTER 4. Selection of Officers and Committees</b>	
Officers of the Board .....	14
Election of Officers.....	14
Officer Vacancies.....	14
Board Member Addresses .....	14
Board Member Written Correspondence and Mailings .....	14
Communications: Other Organizations/Individuals/Media .....	14
Committee Appointments.....	14
Committee Meetings.....	15
Attendance at Committee Meetings .....	15

**CHAPTER 5. Board Administration and Staff**

Executive Officer ..... 16

Board Administration ..... 16

Executive Officer Evaluation ..... 16

Board Staff ..... 16

Board Budget ..... 16

Communication with Organizations & Individuals ..... 17

Business Cards ..... 17

**CHAPTER 6. Other Policies & Procedures**

Board Member Disciplinary Actions ..... 18

Terms and Removal of Board Members ..... 18

Resignation of Board Members..... 18

Conflict of Interest ..... 19

Contact with Licensees and Applicants ..... 19

Contact with Respondents..... 19

Service of Legal Documents ..... 19

Serving as an Expert Witness..... 19

Gifts from Licensees and Applicants ..... 20

*Ex Parte* Communications..... 20

The Honoraria Prohibition ..... 21

Required Training ..... 21

## **CHAPTER 1. Introduction**

### **Mission Statement**

To protect the people of California by upholding acupuncture practice standards through the oversight and enforcement of the Acupuncture Licensure Act.

### **Brief History**

The Board of Medical Examiners (now called the Medical Board of California) began regulating acupuncture in 1972 under provisions that authorized the practice of acupuncture under the supervision of a licensed physician as part of acupuncture research in medical schools.

In 1975, Senate Bill 86 (Chapter 267, Statutes of 1975) created the Acupuncture Advisory Committee (committee) under the Board of Medical Examiners and allowed the practice of acupuncture but only upon prior diagnosis or referral by a licensed physician, chiropractor or dentist. In 1976 California became the eighth state to license acupuncturists. Subsequent legislation in 1978 established acupuncture as a "primary health care profession" by eliminating the requirement for prior diagnosis or referral by a licensed physician, chiropractor or dentist; and AB 2424 (Chapter 1398, Statutes of 1978) authorized MediCal payments for acupuncture treatment.

In 1980 the law was amended to abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority and expanded the acupuncturists' scope of practice and provided that fees be deposited in the Acupuncture Examining Committee Fund instead of the Medical Board's fund. Most of these statutory changes became effective on January 1, 1982.

In 1982, the Legislature designated the Acupuncture Examining Committee as an autonomous body, and effective January 1, 1990, through AB 2367 (Chapter 1249, Statutes of 1989) the name was changed to the Acupuncture Committee to better identify it as a state licensing entity for acupuncturists. On January 1, 1999, the committee's name was changed to the Acupuncture Board (SB 1980, Chapter 991, Statutes of 1998) and removed the Committee from within the jurisdiction of the Medical Board of California (SB 1981, Chapter 736, Statutes of 1998).

In 2002, AB 1943 (Chapter 781, Statutes of 2002) was signed into law that raised the acupuncture training program curriculum standards requirement to 3,000 hours, which included 2,050 hours of didactic training and 950 hours of clinical training.

In 2006, SB 248 (Chapter 659, Statutes of 2005) repealed the nine-member Board and reconstituted it as a seven-member board with four public members and three licensed acupuncture members. The quorum requirements were changed

to four members including at least one licensed member constituted a quorum. In 2014, SB 1246 (Chapter 397, Statutes of 2014), was signed into law. This bill extended the Board's sunset date to January 1, 2017. On September 26, 2016, AB 2190 (Chapter 667, Statutes of 2016) was signed into law. This bill extended the Board's sunset date to January 1, 2019. On October 10, 2023, AB 1264 (Chapter 682, Statutes of 2023) was signed into law, which extended the Board's sunset date until January 1, 2028.

### **Function of the Board**

The Acupuncture Board's (Board) legal mandate is to protect the public through regulating the practice of acupuncture and Asian medicine in the State of California. The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. The Acupuncture Licensure Act commences with Business and Professions Code, Section 4925, *et seq.* The Board's regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR).

The Board protects California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board promotes safe practice through its licensing standards, the maintenance and improvement of educational training standards, continuing education, enforcement of the Business and Professions Code, and public outreach.

### **State of California Acronyms**

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

### **General Rules of Conduct**

All Board Members shall act in accordance with their oath of office, and shall

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

- ❖ Board Members shall comply with all provisions of the Bagley-Keene Open Meeting Act.
- ❖ Board Members shall not speak or act for the Board without proper authorization.
- ❖ Board Members shall not privately or publicly lobby for or publicly endorse, or otherwise engage in any personal efforts that would tend to promote their own personal or political views or goals, when those are in direct opposition to an official position adopted by the Board.
- ❖ Board Members shall not discuss personnel or enforcement matters outside of their official capacity in properly noticed and agendized meetings or with members of the public or the profession.
- ❖ Board Members shall never accept gifts from applicants, licensees, or members of the profession while serving on the Board.
- ❖ Board Members shall maintain the confidentiality of confidential proceedings, procedures, documents, and other information related to Board business.
- ❖ Board Members shall commit appropriate time to prepare for Board responsibilities including the reviewing of board meeting notes, administrative cases to be reviewed and discussed, and the review of any other materials provided to the Board Members by staff, which is related to official Board business.
- ❖ Board Members shall recognize the equal role and responsibilities of all Board Members.
- ❖ Board Members shall act fairly, be nonpartisan, impartial, and unbiased in their roles of protecting the public and enforcing the Acupuncture Licensure Act.
- ❖ Board Members shall treat all consumers, applicants, licensees, and stakeholders in a fair, professional, courteous, and impartial manner.
- ❖ Board Members' actions shall serve to uphold the principle that the Board's primary mission is to protect the public.
- ❖ Board Members shall not use their positions on the Board for personal, familial, or financial gain. Any employment subsequent to employment as a board member shall be consistent with Executive Order 66-2.

## **CHAPTER 2. Board Members & Meeting Procedures**

### **Membership**

*(Business and Professions Code, Sections 130, 131, 4928, 4929, 4930)*

The Board consists of seven members. Three members are licensed acupuncturists with at least five years of experience and four are public members who do not hold a license or certificate as a physician, surgeon, or acupuncturist. The Governor appoints the three licensed members and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member. All members appointed by the Governor are subject to Senate confirmation. The members serve a four-year term for a maximum of two terms. The licensed members should represent a cross section of the cultural backgrounds of the acupuncturist profession.

### **Board Meetings**

*(Business and Professions, Section 101.7; Government Code Section 11120, et seq.)*

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

The Board shall comply with the provisions of the Bagley-Keene Open Meeting Act. The Board shall conduct meetings in accordance with Robert's Rules of Order, as long as that does not conflict with any superseding laws or regulations.

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

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

### **Quorum**

*(Business and Professions, Section 4933)*

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

### **Board Member Attendance at Board Meetings**

*(Board Policy)*

Being a member of the Board is a serious and important commitment to the people of the State of California. Board Members shall strive to attend all scheduled board meetings and shall attend a minimum of 75% of meetings. If a member is unable to attend, they must contact the Board President or the Executive Officer and provide a written explanation of their absence.



## **Bagley-Keene and Board Meetings**

*(Government Code, Section 11120, et seq.)*

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

Board Members should not discuss items within the Board's jurisdiction with other Board Members outside a scheduled board meeting.

## **Agenda Items**

*(Board Policy)*

Each meeting's agenda is developed by the Board President in consultation with the Executive Officer and legal counsel. The Board President will strive to ensure that the agenda addresses items raised by Board Members and stakeholders while taking into consideration the Board's mission and resources.

Board Members may submit agenda items for a future Board meeting during the "Future Agenda Items" section of a Board meeting or directly to the Board President up to two weeks after a Board meeting. To the extent possible, the Board President will calendar each Board Member's request on a future Board meeting.

In the event the Board President cannot include all requested agenda items at a future meeting, the Board President shall make the final decision on what items are included on the agenda. The Board President will work with the Executive Officer to finalize the agenda.

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

## **Notice of Meetings**

*(Government Code Section 11125)*

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

## **Mail Ballots**

*(Frankel v. Board of Dental Examiners (1996) 46 Cal.App.4th 534, Government Code, Section 11526; See also Government Code, Section 11500, et seq.)*

The Board must approve any proposed decision or stipulation before the formal

discipline becomes final and the penalty can take effect.

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

### **Holding Disciplinary Cases for Board Meetings**

*(Government Code, Sections 11517 and 11526; Board Policy)*

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

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

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

### **Record of Meetings**

*(Board Policy; See also Government Code, Section 11120, et seq.)*

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

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

### **Audio or Video Recording**

*(Government Code, Section 11124.1)*

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

The Board may place the recorded public board meetings on its web site at: [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

## **Public Comment**

(Government Code, Sections 11123(a) and 11125.7; 75 Ops.Cal.Atty.Gen. 89 (1992); Board Policy)

Public comment is always encouraged and allowed. Depending on the time allocated to the meeting, the number and complexity of each agenda item, and the number of persons wishing to comment, the Board President may adopt reasonable procedures to limit the time allocated to each topic and each speaker. When the Board limits time for public comment, it will allow twice the allotted time to non-English speakers who address the Board through a translator.

## **Public Comment on Investigations and Proceedings**

*(Board Policy)*

Due to the need for the Board to maintain fairness and neutrality when performing its adjudicative function, the Board shall not receive any information from a member of the public regarding matters that are currently under or subject to investigation or involve a pending or criminal administrative action.

1. If, during a Board meeting, a person attempts to provide the Board with any information regarding matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the person shall be advised that the Board cannot properly consider or hear such substantive information and the person must be instructed to refrain from making such comments.
2. If, during a Board meeting, a person wishes to address the Board concerning alleged errors of procedure or protocol or staff misconduct involving matters that are currently under or subject to investigation or involve a pending administrative or criminal action, the Board will address the matter as follows:
  - a. Where the allegation involves errors of procedure or protocol, the Board may designate its Executive Officer to review whether the proper procedure or protocol was followed and to report back to the Board.
  - b. Where the allegation involves significant staff misconduct, the Board may designate one of its members to review the allegation and to report back to the Board.
3. The Board may deny a person the right to address the Board and have the person removed if such person becomes disruptive at the Board meeting. The Board accepts the conditions established in the Bagley-Keene Open Meeting Act and appreciates that at times the public may disapprove, reprimand, or otherwise present an emotional presentation to the Board, and it is the Board's duty and obligation to allow that public comment, as provided by law.

## **CHAPTER 3. Travel & Salary Policies & Procedures**

### **Travel Approval**

*(Board Policy)*

Board Members shall receive Executive Officer approval for all travel and salary or per diem reimbursement. The Executive Officer shall approve all reasonable expenses incurred by Board Members for regularly scheduled Board, committee, and conference meetings to which a Board Member is assigned.

### **Out-of-State Travel**

*(State Administrative Manual Section 700, et seq.)*

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

### **Travel Claims**

*(State Administrative Manual, Section 700, et seq.)*

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

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

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

### **Salary Per Diem**

*(Business and Professions Code, Sections 103 and 4931)*

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

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

## **Salary Per Diem**

*(Board Policy)*

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

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

In order to receive a salary per diem or reimbursement for attendance at gatherings, events, hearings, conferences or meetings (other than official Board or committee meetings) in which a substantial official service is performed, the Board Member shall notify the Executive Officer and obtain approval from the Board President prior to the Board Member's attendance.

2. The term "day actually spent in the discharge of official duties" shall mean (a) such time as is expended from the commencement of a Board or committee meeting until that meeting is adjourned, or (b) attendance at gatherings, events, hearings, conferences, or meetings (other than official Board or committee meetings) in which a substantial official service is performed, as determined, and authorized by the Board President.

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

3. For Board-specified work, Board Members will be compensated for time actually spent in performing work authorized by the Board President. This may also include, but is not limited to, authorized attendance at other events, meetings, hearings, or conferences. Work also includes preparation time for Board or committee meetings and reading and deliberating mail ballots for disciplinary actions. However, Board Members will not receive more than \$100 for preparation time per meeting without the approval of the Executive Officer and Board President. Board Members will not receive more than \$100 for reading and deliberating on mail ballots for disciplinary actions for each group of ballots shard by the Board's staff.
4. Reimbursable work does not include miscellaneous reading and information gathering unrelated to board business and not related to any meeting, preparation time for a presentation and participation at meetings not related to official participation of the members duties with the Board.
5. Board Members may participate on their own (i.e., as a citizen or professional) at an event or meeting but not as an official Board representative unless approved in writing by the President. Requests must be submitted in writing to the President for approval and a copy provided to the Executive Officer. However, Board Members should recognize that even when representing themselves as "individuals," their positions might be misconstrued as that of the Board.

## **CHAPTER 4. Selection of Officers & Committees**

### **Officers of the Board**

The Board shall elect a President and Vice President.

### **Election of Officers**

Elections of the officers shall occur annually at the second meeting of each calendar year, or the first meeting after a Sunset Hearing if during a Sunset Hearing year.

### **Officer Vacancies**

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

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

### **Board Member Addresses**

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

### **Board Member Written Correspondence and Mailings**

All correspondence, press releases, articles, memoranda, or any other communications or publications written by any Board Member in their official capacity must be provided to the Executive Officer. The Executive Officer will retain a copy in a chronological file.

### **Communications: Other Organizations/Individuals/Media**

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

### **Committee Appointments**

The President shall establish committees as they deem necessary.

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

## **Committee Meetings**

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

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

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

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

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

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

## **Attendance at Committee Meetings**

If a Board Member wishes to attend a meeting of a committee of which they are not a member, the Board Member must obtain permission from the Board President to attend and must notify the committee chair and staff.

Board Members who are not members of the committee that is meeting cannot vote during the committee meeting. Board Members who are not members of the committee must sit in the audience and cannot participate in committee deliberations.

The Board's legal counsel works with the Executive Officer to assure the committee meetings comply with the Bagley-Keene Open Meeting Act.

## **CHAPTER 5. Board Administration & Staff**

### **Executive Officer**

*(Business and Professions Code, Section 4934)*

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

### **Board Administration**

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

### **Executive Officer Evaluation**

On an annual basis, the Executive Officer is evaluated by the Board President during a closed session conducted in accordance with the Bagley-Keene Open Meeting Act. Board members provide information to the President on the Executive Officer's performance in advance of this meeting.

### **Board Staff**

*(Business and Professions Code, Section 4934)*

Employees of the Board, with the exception of the Executive Officer, are civil service employees. Their employment, pay, benefits, discipline, termination, and conditions of employment are governed by a myriad of civil service laws and regulations and often by collective bargaining labor agreements. Due to this complexity, the Board delegates the authority and responsibility for management of the civil service staff to the Executive Officer as an instrument of the Board.

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

### **Board Budget**

*(Government Code, Section 13324; Budget Act)*

The Board and the Executive Officer have a responsibility to ensure proper fiscal management and administration of the Board's fund. The Board and the Executive Officer shall work with staff and DCA to review the Board's expenditures and ensure sound fiscal policy.

The Board will not vote for or authorize the spending of money in excess of the amounts authorized by law, or for unauthorized purposes. The Board and the Executive Officer will take steps to correct any budgetary deficit.

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



## **Communication with Other Organizations & Individuals**

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

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

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

The Board and its staff shall coordinate with its legal counsel and other advisors to appropriately respond to communications.

## **Business Cards**

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

## **CHAPTER 6. Other Policies & Procedures**

### **Board Member Disciplinary Actions**

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

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

### **Terms and Removal of Board Members**

*(Business and Professions Code, Sections 130, 131, 4928, 4929 and 4930)*

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

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

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

### **Resignation of Board Members**

*(Government Code, Section 1750(b))*

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

## **Conflict of Interest**

*(Government Code, Section 87100)*

No Board Member may make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.

Any Board Member who has a financial interest shall disqualify themselves from making or attempting to use their official position to influence the decision.

Board Members should not participate in any decision in which they have a personal conflict of interest.

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

## **Contact with Licensees and Applicants**

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

## **Contact with Respondents**

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

## **Service of Legal Documents**

If a Board Member is personally served as a party in any legal proceeding related to their capacity as Board Member, they must contact the Executive Officer immediately.

## **Serving as an Expert Witness**

*(Executive Order 66.2)*

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

1. Using the prestige or influence of a State office for the appointee's private gain or advantage.
2. Using state time, facilities, equipment, or supplies for the appointee's private gain or advantage, or the private gain or advantage of another.
3. Using confidential information acquired by virtue of State involvement for the appointee's private gain or advantage, or the private gain or advantage of another.
4. Receiving or accepting money or any other consideration from anyone other than the State for the performance of an act which the appointee would be

required or expected to render in the regular course of hours of their State employment or as a part of the appointee's duties as a State officer.

### **Gifts from Licensees and Applicants**

*(Government Code, Section 81000, et seq.; FPPC Regulations, Title 2, Division 6)*

Board Members shall comply with all restrictions on gifts imposed by the Political Reform Act, accompanying regulations of the Fair Political Practices Commission, and other relevant law and guidance.

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

If Board Members have specific questions, they should reach out to the Board's legal counsel.

### **Ex Parte Communications**

*(Government Code, Section 11430.10, et seq.)*

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

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

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

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

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

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

If a Board Member believes that they have received an unlawful ex parte communication, they should contact the Executive Officer and the Board's legal counsel.

## **The Honoraria Prohibition**

*(Government Code, Sections 89501 and 89502; FPPC Regulations, Title 2, Division 6)*

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

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

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

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

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

## **Required Training**

California law and Board policy require all appointees to take the following training:

- **Board Member Orientation** *(Business and Professions Code, Section 453)*

The Board Member orientation is a full day session that shall be given to new and reappointed Board Members within one year of assuming office.

- **Ethics** *(Government Code, Section 11146.3)*

An ethics orientation within the first six months of appointment and to repeat this ethics orientation every two years throughout their term.

- **Sexual Harassment Prevention Training** *(Government Code Section 12950.1)*

Board Members are required to complete sexual harassment prevention training and education upon appointment and every odd year.

- **Defensive Driver Training** *(State Administrative Manual, Sections 0751 and 0752)*

Upon appointment and completed once every four years.