1399.469. Uniform Standard Related to Substance Abuse and 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~~ comply with the "Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation" [December 2010], 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. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

ACUPUNCTURE BOARD
444 North 3rd Street, Suite 260, Sacramento, CA 95811
Phone: (916) 445-3021 Fax: (916) 445-3015 www.acupuncture.ca.gov

MEMORANDUM

DATE	August 5, 2010
TO	All Board Members
FROM	Kristine Brothers Enforcement Coordinator
SUBJECT	**Proposed Amendments to Disciplinary Guidelines**

Please refer to the following pages of the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" that have been changed to match the minimum penalties of select violations proposed by Paul Weisman. These changes are underlined.

Pages

- 8
- 9
- 11
- 12
- 15
- 16

LAW OFFICES OF
PAUL H. WEISMAN
15821 Ventura Blvd., Suite 275
Encino, CA 91436
(818) 986-9525

Janelle Wedge July 6, 2010
Executive Officer State Acupuncture Board-State of California
444 North 3rd Street
Sacramento, CA 95814

Dear Janelle:

Thank you for sending me the agenda including the changes to the Disciplinary Guidelines. I am sorry my letter was not more clear regarding the ethics requirement. I wanted the three hours ethics course to be in addition to any other ethics requirement. Therefore the ethics course (23) should remain plus an additional three hours of ethics. I did not want less ethics to be required than already imposed. I think the additional three hours should address the Business and Professions Code provisions set forth in the Uniform Standards Related to Abuse and Disciplinary Guidelines as well as other matters, you, your staff, legal counsel and the Board determine should be covered by the disciplined acupuncturist. I do not know if a graduate course at a school would address this subject area.

I wanted to make clear I still wanted the same standard conditions and additional probation conditions previously set forth to be imposed. I did not want less conditions than previously provided.

Finally, I wanted to discuss the minimum penalty for subversion of the test at the meeting. I requested the minimum penalty be revocation if an intentional subversion was determined to have occurred and suspension for 60 days plus probation for five years if it was from a negligent subversion. I would like Spencer's input on this. Is it possible to add this letter as a supplement to the agenda on the website since you included my prior letter. I am sorry my letter was not more clear since I wanted stronger penalties for the conduct specified. Thank you for your assistance.

Yours truly,

Paul H. Weisman

LAW OFFICES OF
PAUL H. WEISMAN
15821 Ventura Blvd., Suite 275
Encino, CA 91436
(818) 986-9525

Acupuncture Board
RECEIVED
MAY 13 2010

Janelle Wedge May 10, 2010
Executive OfficerState Acupuncture Board-State of California
444 North 3rd Street
Sacramento, CA 95814

Dear Janelle:

This letter is written to set forth my changes in the minimum disciplinary guidelines plus minimum guidelines. The maximum penalty will be revocation in each case.

Topic	Minimum Guideline
Deceit, Misrepresentation and Fraud in procurement of license	Revocation
Subverting the Exam	
1. Intentional subversion	Revocation
2. Negligent subversion	Revocation stayed with suspension imposed for 60 days and 5 years probation plus 3 hour ethics course
Insurance Fraud/Other Fraud/ False Medical Record	Revocation stayed with suspension for 180 days and 5years probation plus 3 hour ethics course
Conviction of crime related to functions as acupuncturist/threats to patient	Revocation stayed with suspension for 180 days and 5 years probation/ 3hours-ethics
Impersonating another or letting someone use your license	Revocation

All of the above have the standard conditions/terms imposed.

Yours truly,
Paul H. Weisman

STATE OF CALIFORNIA

dca

DEPARTMENT OF CONSUMER AFFAIRS

California Acupuncture Board

Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(Revised 08/05/2010)

Table of Contents

	Page No.
Introduction and Uniform Standards Related to Substance Abuse	1
Considerations	6
Situations in which Revocation is the Recommended Penalty	7
Recommended Action by Violation	8
Probationary Terms and Conditions	17
Language for Probation Orders	18
List of Probation Conditions	19
Standard Probation Conditions	20
Additional Probation Conditions	24
Accusations and Decisions	33
Recommended Language for Cost Recovery for Revocations and Surrenders	34
Denial of Licensure	35
Demonstrations of Rehabilitation	36
Evidence of Mitigation	37
Petition for Penalty Relief and Reinstatements	38
Index of Violations	40

Introduction

The Acupuncture 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 Board has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Acupuncture Licensure Act.

The Board carefully considers all facts and circumstances associated with each case in its efforts to protect the consumer. Subsequently, the Board requests that the Administrative Law Judge detail the basis of his or her decision in the "Findings of Fact" when there is a deviation from the recommended guidelines. Justification for the deviation should be clearly outlined in the decision to enable the Board to understand the reasons to evaluate the suitability of the decision.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the 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 is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the acupuncturist is suspended in order to correct deficiencies in skills, education or rehabilitation.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with accepted professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

Work Site Monitor Requirements:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have any current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this

requirement may be waived by the Board. However, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:
a) Have face-to-face contact with the licensee at least once per week in the work environment or more frequently if required by the Board.
b) Interview other staff in the office regarding the licensee's behavior, if applicable.
c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

If a licensee tests positive for a banned substance, the Board shall immediately order the licensee to cease practice, immediately contact the licensee and inform him or her that their license has been suspended and he or she may not work until the suspension is lifted. The Board shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice.

Major and Minor Violations

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board shall immediately order the licensee to cease practice and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Drug Testing Standards:

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

2. Drug testing may be required on any day, including weekends and holidays.

3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact to determine if drug testing is required.

4. Licensees shall be required to make daily contact to determine if drug testing is required.

5. Licensees shall be drug tested on the date of notification as directed by the board.

6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

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.

Situations in which Revocation is the Recommended Penalty

In addition to violation of the Acupuncture Licensure Act, there are other circumstances that necessitate revocation as the recommended penalty.

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the conditions of a respondent's probation order.
3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.
4. Patient neglect by failure to provide standard of care as an acupuncturist.
5. Second offenses, unless the respondent can demonstrate that he or she has been rehabilitated.

Recommended Action by Violation

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.

Acupuncture Licensure Act

Unprofessional Conduct

Section 4955 (a) **Using or Possessing Any Controlled Substance**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3- 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Alcohol and Drug Abuse Treatment (21)*
3. *Abstain from Drugs and Alcohol and Submit to Tests and Samples (22)*
4. *Clinical Diagnostic Evaluation (29)*
5. *Worksite Monitor (30)*
6. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 4955 (b) **Conviction of a Crime**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3-~~ 5 yrs probation ~~depending on nature and severity of violation~~*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Ethics Course (23) plus an additional 3 hours of Ethics*

** In conjunction with Section 4956*

Section 4955 (c) **False or Misleading Advertising**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*

Section 4955 (d) **Aiding or Abetting, or Violating Terms of this Chapter or Any Board Regulation**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *When section is used for citing the violation of aiding and abetting an unlicensed person, revocation is the minimum penalty. Otherwise, minimum penalty is revocation stayed with 3 yrs probation with the following conditions:*

1. *Standard Conditions 1-13*

Section 4955 (e) **Failing to Follow Infection Control Guidelines**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*
3. *Practice Monitoring (17)*
4. *Ethics Course (23)*
5. *Coursework (26)*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3-~~ 5 yrs probation ~~depending on nature and severity of violation~~*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 4955 (g) **Discharging an Employee for Complying with this Chapter**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Any additional conditions warranted by nature and severity of action or conduct.*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

Section 4955 (k) **Abandonment of Patient without Written Notice**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

Section 4955 (l) **Failure to Notify Board of False/Assumed/Fictitious Name**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*

Fraud

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3~~ 5 yrs probation*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Practice Monitoring (17)*
4. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 4955.1 (b) **Committing a Fraudulent or Dishonest Act as an Acupuncturist**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3~~ – 5 yrs probation*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 4955.1 (c) **Any Act Involving Dishonesty or Corruption**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3~~ – 5 yrs probation ~~depending on nature and severity of violation~~*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 4955.1 (d) **Altering/Modifying a Medical Record or Creating a False Medical Record**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with ~~3~~ – 5 yrs probation*

~~*depending on nature and severity of violation*~~

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Ethics Course (23) plus an additional 3 hours of Ethics*
5. *Coursework (26)*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Monitoring – Practice/Billing (17)*
3. *Ethics Course (23)*
4. *Coursework (26)*

Negligence

Section 4955.2 (a) **Gross Negligence**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Coursework (26)*
5. *Prohibited Practice (27)*
6. *Clinical Training Program at Approved School (28)*

Section 4955.2 (b) **Repeated Negligent Acts**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Coursework (26)*
5. *Prohibited Practice (27)*
6. *Clinical Training Program at Approved School (28)*

Section 4955.2 (c) **Incompetence**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*
3. *Monitoring – Practice/Billing (17)*
4. *Examination (20)*
5. *Coursework (26)*
6. *Prohibited Practice (27)*
7. *Clinical Training Program at Approved School (28)*

Section 4961 (a) **Failure to Register Place of Practice**

- *Refer to Section 4955 (d)*

Unprofessional Conduct

Section 4976 **Violating the Terms of this Chapter, Regulations, or Moscone-Knox Professional Corporation Act**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*

General Business and Professions Code Provisions

Section 125 **Misdemeanor Offenses by Licensees**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*

Section 125.6 **Refusal to Treat Patient**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

Section 125.9 **Failure to Comply with Citation**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Compliance with citation, if applicable*

Section 480 **Denial of a License**

- Maximum Penalty: *Denial of license*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*

Section 492 **Effect of Completion of Drug Diversion Program on Disciplinary Action or Denial of License**

Section 493 **Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee's Qualifications, Functions, and Duties**

Section 496 **Subversion of Licensing Examinations**

- Maximum Penalty: *Denial of license or Suspension*
- Minimum Penalty: *Revocation if subversion was intentional and revocation stayed with ~~3—~~5 yrs probation if subversion was due to negligence with standards and conditions listed below: ~~depending on nature and severity of violation~~*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 60 days (14)*
3. *Ethics Course (23) plus an additional 3 hours of Ethics*

Section 498 **Securing License by Fraud, Deceit, or Misrepresentation**

- Maximum Penalty: *Denial of license, Suspension, or Revocation*
- Minimum Penalty: *Revocation ~~stayed with 3 – 5 yrs probation depending on nature and severity of violation~~*

~~1. Standard Conditions 1-13~~

Section 650 **Accepting or Receiving Rebates**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

Section 651 **False, Misleading or Deceptive Public Communications**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*

Section 654.2 **Prohibits Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 yrs probation*

1. *Standard Conditions 1-13*
2. *Ethics Course (23)*

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

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation*

Section 810 **Insurance Fraud**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 5 yrs probation*

1. *Standard Conditions 1-13*
2. *Actual Suspension for 180 days (14)*
3. *Billing Monitor (17)*
4. *Ethics Course (23) plus an additional 3 hours of Ethics*
5. *Coursework (26)*

Section 822 **Psychological or Physical Illness**

- Maximum Penalty: *Revocation or Suspension*
- Minimum Penalty: *Revocation stayed with 3 – 5 yrs probation depending on nature and severity of violation*

1. *Standard Conditions 1-13*
2. *Actual Suspension (14)*
3. *Psychological Evaluation (15)*
4. *Physical Examination (16)*
5. *Practice Monitor (17)*
6. *No Solo Practice (19)*

Probationary Terms and Conditions

As part of the Board's mission to protect the consumer, any disciplinary order in which probation is imposed should include conditions that ensure the rehabilitation of a probationer. The following conditions the Board has established function as a method to monitor the progress of a probationer's rehabilitation.

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

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Acupuncture Board.

Probationary Term

The Board generally recommends a minimum probation term of three (3) years. The term may be increased depending upon the severity of the violation(s) and time in which rehabilitation can be achieved. In some instances five years may be appropriate depending on nature and severity of violation.

Probationary Conditions

Conditions of probation are divided into two categories:

1. ***Standard*** conditions that are included in all probation orders; and
2. ***Additional*** conditions that are applicable to the nature of the violation(s) which will allow the probationer to rehabilitate.

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: 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: The application of respondent _____ for licensure is hereby granted, however the license shall be immediately revoked, the order of revocation stayed, and respondent's license placed on probation for a period of _____ years on the following conditions:

- Reinstatements: 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 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, a license shall be issued 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.

List of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

1) Severability Clause
2) Obey all Laws
3) Quarterly Reports
4) Surveillance Program
5) Interview with the Board or its Designee
6) Notification to Employer and Changes of Employment
7) Status of Residency, Practice, or Licensure Outside of State
8) Employment and Supervision of Trainees
9) Cost Recovery (Does not apply to Applicants)
10) Probation Monitoring Costs
11) Violation of Probation
12) License Surrender
13) Completion of Probation

ADDITIONAL PROBATION CONDITIONS

In addition to the standard conditions (1-13), conditions 14-30 are required if the offense involves one of the following: sexual misconduct, alcohol/drug abuse, mental/physical disabilities, fraudulent conduct, or lack of knowledge or skills. Any of these additional conditions may be included if relevant to the violation.

14) Actual Suspension
15) Psychological Evaluation
16) Physical Examination
17) Monitoring – Practice/Billing
18) Restriction of Patient Population
19) No Solo Practice
20) Examination
21) Alcohol and Drug Abuse Treatment
22) Abstain from Drugs and Alcohol and Submit to Tests and Samples
23) Ethics Course
24) Professional Boundaries Program
25) Third Party Chaperone
26) Coursework
27) Prohibited Practice
28) Clinical Training Program at Approved School
29) Clinical Diagnostic Evaluation
30) Worksite Monitor

Standard Probation Conditions

1. 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.

Rationale: *The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.*

2. 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 Board in writing within seventy-two (72) hours of occurrence.

Rationale: *If there has been a violation of any law or regulation that is substantially related to the qualifications, functions, or duties of an acupuncturist, this would constitute a violation of respondent's probation and allow the Board to carry out the disciplinary order.*

3. Quarterly Reports

Respondent shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.

Rationale: *By the respondent making declarations under penalty of perjury, this assures the Board that the respondent is making true statements to the Board. Receiving these reports quarterly allows the Board to track the respondent's compliance, and offers a process for review in determining whether or not his or her license should be restored at the completion of his or her probation.*

4. Surveillance Program

Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the Board's staff. Respondent shall contact enforcement staff regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with victims or complainants associated with the case or

persons serving the Board as expert consultants.

> ***Rationale:*** *It is in the best interest for all parties involved to allow for the respondent to contact the Board's staff in case he or she has a question regarding his or her probation order.*

5. Interview with the Board or its Designee

Respondent shall appear in person or be available by telephone for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

> ***Rationale:*** *This condition allows the Board to schedule in-person interviews or inspections of respondent's place of practice to monitor his or her compliance with the probation order to ensure rehabilitation.*

6. Notification to Employer and Changes of Employment

If Respondent is currently employed, in the process of applying for employment, or contracted to provide services as an acupuncturist, he or she shall provide a copy of the Board's Decision to his or her employer, supervisor or contractor no later than the effective date of the Board's Decision. The respondent shall notify any future employers, supervisors or contractors of his or her probationary status with the Board prior to accepting such employment. The respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor.

Respondent shall cause each employer and supervisor or contractor to submit quarterly written declarations to the Board. These declarations shall include a performance evaluation.

Respondent shall notify the Board, in writing, of any change in his or her employment status, within ten (10) days of such change.

> ***Rationale:*** *Respondent's license being placed on probation shows the Board that his or her conduct is in need of rehabilitation, subsequently, respondent's deficiencies should be noted to the employer as to protect the health and welfare of the public. This condition allows the Board to be informed of respondent's current employment information, including his or her business address, phone number, and employer (if applicable) in the event the Board needs to locate the respondent or communicate with his or her employer..*

7. Status of Residency, Practice, or Licensure Outside of State

In the event respondent should leave California to reside or practice outside the state, respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases

practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as an acupuncturist or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Board if he or she applies for or obtains a license outside of California during the term of probation

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

Rationale: *Ensures that respondents may not complete probation without being fully monitored for his or her period of probation in California. This further ensures that the Board is aware of all licensure outside of California as an acupuncturist or in any health care related capacity.*

8. 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.

Rationale: *Respondent's license being placed on probation shows the Board that his or her conduct is in need of rehabilitation, subsequently, respondent's deficiencies do not demonstrate a professional with mentoring capabilities at the time of probation.*

9. Cost Recovery

Respondent shall pay to the 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, with payments to be completed no later than three months prior to the end of the probation term.

Rationale: *The Board incurs costs associated with the investigation and disciplinary process; this condition requires the respondent to reimburse the Board for those expenditures.*

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Acupuncture Board and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

Rationale: *Periodically, the Board incurs expenditures associated with the necessary travel to meet with*

respondent to monitor his or her probation compliance; this condition requires the respondent to reimburse the Board for those costs.

11. Violation of Probation

If respondent violates probation in any respect, the 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 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.

Rationale: *This condition allows the Board to carry out the disciplinary order stated in the decision when a respondent fails to comply with any of his or her probation conditions. If a term or condition has not been complied with, this condition allows the Board to extend the probation period to obtain compliance.*

12. License Surrender

During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender his or her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. An acupuncturist whose license has been surrendered may petition the Board for reinstatement no sooner than three years.

Rationale: *If respondent feels he or she cannot follow any one of the conditions of the probation order due to a discontinuance of practice, this condition gives him or her the option to voluntarily forfeit his or her license.*

13. Completion of Probation

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

Rationale: *When the respondent has completed his or her term of probation by successfully fulfilling all of the conditions, he or she has demonstrated his or her ability to practice unrestricted.*

Additional Probation Conditions

14. 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.

Rationale: *Restricting respondent's practice of acupuncture for a limited amount of time offers an additional penalty and an opportunity for respondent to satisfy other conditions that are primary.*

15. Psychological Evaluation

Within 90 days of the effective date of this decision and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board appointed California licensed psychologist. The Board shall receive a current DSM 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 Board deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the Board. The completed evaluation is the sole property of the Board.

If the Board 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 Board. If the Board concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy, respondent shall comply with the Board's directives in that regard.

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

Rationale: *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 Board has accepted and approved the evaluation.*

16. 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 Board. Respondent shall bear all costs of such an examination. The 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 Board on a quarterly basis or as otherwise determined by the Board.

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

Rationale: *This condition permits the 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.*

17. Monitoring – Practice/Billing

Within 30 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 and in good standing. 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, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed 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.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's _____ (i.e., practice, billing, or practice and billing) shall be monitored by the approved monitor. 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.

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 with in 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 the quarterly written reports to the Board quarterly.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of

such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of acupuncture until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of acupuncture within 3 calendar days after being so notified by the Board of designee.

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.

Rationale: *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.*

18. Restriction of Patient Population

During probation respondent is prohibited from practicing acupuncture and any other modality cited in Business and Professions Code Section 4937 on (a specific population group).

Rationale: *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, this condition should be utilized. Additional language can be added for clarification.*

19. No Solo Practice

Respondent is prohibited from engaging in the solo practice of acupuncture. If respondent is currently in solo practice, he or she must hire another acupuncturist as an employee or form a joint practice with another licensee permitted pursuant to Business and Professions Code Section 4935 (b). Respondent must cease his or her practice until the employer/employee or joint practice has commenced. Once the additional licensee has been obtained, respondent must submit the name(s) and qualifications to the Board within 15 calendar days of his or her start date.

Rationale: *In cases where 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, this condition should be included.*

20. Examination

Respondent shall take and pass the California Acupuncture Licensing Exam (CALE) prior to the termination of probation. The examinations shall be taken on regularly scheduled exam dates. Respondent shall pay the established examination fee.

If respondent fails the examination three times, his/her license to practice acupuncture is suspended until the examination is successfully passed.

> ***Rationale:*** *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 CALE during the course of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).*

21. Alcohol and Drug Abuse Treatment

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) months duration) or an equivalent program as approved by the Board.

Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent. Subsequent to the program, respondent shall 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 Board at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the Board. 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 Board. The psychologist shall confirm that respondent has complied with the requirements of this Decision and shall notify the Board 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 Board.

> ***Rationale:*** *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 condition #22.*

22. Abstain from Drugs and Alcohol and Submit to Tests and Samples

Respondent shall completely abstain from the personal use or possession of alcohol and controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

Respondent shall immediately submit to random and directed biological fluid testing paid for by Respondent, at the request of the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation and at minimum of fifty (50) random tests per year thereafter for the duration of the probationary term. If Respondent tests positive for a banned substance, Respondent shall immediately cease practicing. Respondent shall make daily contact as directed by the Board to determine if he or she

must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Rationale: *This condition provides documentation that the probationer is substance or chemical free. It also provides the 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.*

23. Ethics Course

Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units equivalent to 300 hours of coursework in Ethics. The course shall be taken at the graduate level at a school approved by the Board. Classroom attendance is specifically required. The course must be completed within the first year of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 60 days of the effective date of this decision, respondent shall submit a plan for the Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the respondent.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course.

Rationale: *In cases of fraudulent behavior, improper record keeping, or a deficiency of knowledge or skills, this condition should be included.*

24. Professional Boundaries Program

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program at the University of California, San Diego School of Medicine. Any equivalent should be taken in a classroom setting. Respondent, at the Program's discretion, shall undergo and complete the Program's assessment of respondent's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s) and any other information that the Board or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the Board or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations

from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice acupuncture safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

Rationale: *In cases of sexual misconduct or boundary issues, this condition will aid the respondent's rehabilitation through a means of education and therapy program.*

25. Third Party Chaperone

During probation, respondent shall have a third party chaperone present while consulting, examining or treating female patients. Respondent shall, within 30 calendar days of the effective date of the Decision, submit to the Board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

Respondent shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain: patient's name, address and telephone number and date of service(s). Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party chaperone, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

Respondent shall provide written notification to his or her female patients that a third party chaperone shall be present during all consultations, examinations, or treatment. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation.

Rationale: *In cases of sexual misconduct or boundary issues this condition should be included so respondent's appointments with female patients can be chaperoned and monitored.*

26. Coursework

Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units equivalent to 300 hours of coursework in the following area(s) _____. All coursework shall be taken at the graduate level at a school approved by the Board. 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 Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the respondent.

Rationale: *In cases of a deficiency of knowledge or skills, this condition should be included.*

27. Prohibited Practice

Respondent is prohibited from _____ (e.g., practicing, performing, or prescribing) _____ (e.g., a specific modality or treatment method) for a period of no less than 12 months from the effective date of this Decision. After the effective date of this Decision, the first time that a patient seeking the prohibited services makes an appointment, orally notify the patient that respondent does not _____ (e.g., practicing, performing, or prescribing) _____ (e.g., a specific modality or treatment method). Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain: 1) patient's name, address and phone number; 2) the full name of the person or staff member making the notification; the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

Respondent must complete a minimum of _____ (number of) hours of a Board approved continuing education course during the 12 months in which the content covers _____ (e.g., a specific modality or treatment method). The course cannot be completed by distance learning. Respondent must submit a certificate of completion within 15 calendar days following the end of the course.

Rationale: *In cases of negligence involving a specific modality or treatment method, this condition bars the respondent from utilizing this method. By requiring a course to be completed on the subject matter, respondent can learn proper technique and risks associated with the modality or method.*

28. Clinical Training Program

Within 60 days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program offered at an approved school with the Board's prior approval. The program shall consist of a comprehensive assessment comprised of a two-day assessment of respondent's basis clinical and communication skills common to all acupuncturists; and acupuncture knowledge, skill and judgment pertaining to practice standards, and at a minimum, a 40 hour program of clinical education in the area of practice for which respondent was alleged to be deficient and that takes into account data obtained from the assessment, administrative decisions and accusations, and any other information that the Board deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the program will advise the Board of its recommendations for the scope and length of any additional education or clinical training or anything else affecting respondent's practice of acupuncture.

At the completion of any additional education or training, respondent shall submit to and pass an examination. The program's determination whether or not respondent passed the examination or successfully completed the program shall be binding.

Respondent shall complete the program no later than six months after respondent's initial enrollment, unless the Board agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program as outlined above is a violation of probation.

Option #1: Condition Precedent

Respondent shall not practice acupuncture until he or she has successfully completed the program and has been so notified by the Board in writing, except that respondent may practice in a clinical training program approved by the Board. Respondent's practice of acupuncture shall be restricted to that which is required by the program.

Option #2: Condition Subsequent

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of acupuncture within 72 hours after being notified by the Board that respondent failed to successfully complete the program.

Rationale: *In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempting treatment beyond the scope of training or experience, the Board will impose a clinical training program. This program shall specify the areas and hours of clinical training required, and may also dictate the institution(s) where the education will be received. A clinical training program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill this requirement. This program is for acupuncturists who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.*

requirement. This program is for acupuncturists who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.

29. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall immediately cease practice for minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent shall continue to cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Rationale: *Respondent must undergo a clinical diagnostic evaluation to determine his or her fitness for practice.*

30. Worksite Monitor

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Rationale: *Requiring a worksite monitor allows the Board to be informed of respondent's behavior and performance while on the job.*

Accusations and Decisions

To provide a foundation for consistency and clarity in each disciplinary action, the Board asks that the below guidelines be followed.

ACCUSATIONS

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

STIPULATED SETTLEMENTS & PROPOSED DECISIONS

The Board will consider agreeing to stipulated settlements to promote consumer protection and to expedite disciplinary decisions. All stipulations must be accompanied by a memo from the Deputy Attorney General addressed to Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

Proposed Decisions should include, at a minimum, 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 Board's Disciplinary Guidelines.

Respondents should be informed that the Board will only accept stipulations containing admissions.

Recommended Language for Cost Recovery for Revocations and Surrenders

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

"If and when respondent's license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.

Denial of Licensure

Pursuant to Business and Professions Code 480, the Acupuncture Board has authority to protect the public in denying licensure to any applicant whose misconduct or criminal history is substantially related to the qualifications, functions, or duties of an acupuncturist.

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of acupuncture.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application

Any person whose application for a license has been denied by the Board, may reapply to the Board for a license only after a period of three years has elapsed from the date of the denial.

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 following is a list of items the Board will consider in determining whether or not the applicant or licensee has been rehabilitated.

  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 the registered nursing 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, 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.

Petition for Penalty Relief and Reinstatements

Pursuant to Business and Professions Code Section 4960.5 (a), an individual whose license has been revoked, suspended, or surrendered, or whose license has been placed on probation must wait a specified minimum amount of time before petitioning the Board for penalty relief or reinstatement.

- A person with a revoked or surrendered license must wait at least three years from the effective date of his or her decision to petition for reinstatement.
- A person with a term of probation of three years or more must wait at least two years from the effective date of his or her decision to petition for early termination.
- A person with whose license is placed on probation must wait at least two years from the effective date of his or her decision to petition for modification of a condition.
- A person with a term of probation of less than three years must wait at least one year from the effective date of his or her decision to petition for early termination.

PETITION HEARINGS

The primary concerns of the Board at reinstatement or penalty relief hearings are that the evidence presented by the petitioner of his/her rehabilitation.

The 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 Board would appreciate a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license.

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

A. Continuing education pertaining to the offense and its effect on the practice of acupuncture.

B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.

C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.

D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.

E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

F. A culpability or non-culpability statement.

If the Board should deny a request for reinstatement of licensure or penalty relief, the 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 or 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.

Index of Violations

Business and Professions Code	**Page No.**
Section **4955 (a)** – Using or Possessing Any Controlled Substance	8
Section **4955 (b)** – Conviction of a Crime	8
Section **4955 (c)** – False or Misleading Advertising	9
Section **4955 (d)** – Aiding or Abetting, or Violating Terms of this Chapter of Any Board Regulation	9
Section **4955 (e)** – Failing to Follow Infection Control Guidelines	9
Section **4955 (f)** – The Use of Threats or Harassment Against a Licensee/Patient	9
Section **4955 (g)** – Discharging an Employee for Complying with this Chapter	10
Section **4955 (h)** – Disciplinary Action Taken by Any Public Agency	10
Section **4955 (i)** – Action or Conduct that Warrants a Denial of License	10
Section **4955 (j)** – Violation of Any Law or Local Ordinance on Business Premises	10
Section **4955 (k)** – Abandonment of Patient without Written Notice	10
Section **4955 (l)** – Failure to Notify Board of False/Assumed/Fictitious Name	11
Section **4955.1 (a)** – Securing a License by Fraud or Deceit	11
Section **4955.1 (b)** – Committing a Fraudulent or Dishonest Act as an Acupuncturist	11
Section **4955.1 (c)** – Any Act Involving Dishonesty or Corruption	11
Section **4955.1 (d)** – Altering/Modifying a Medical Record or Creating a False Medical Record	11
Section **4955.1 (e)** – Failing to Maintain Adequate and Accurate Records	12
Section **4955.2 (a)** – Gross Negligence	12

Section **4955.2 (b)** – Repeated Negligent Acts 12

Section **4955.2 (c)** – Incompetence 13

Section **4961 (a)** – Failure to Register Place of Practice 13

Section **4976** – Violating the Terms of this Chapter, Regulations, or Moscone- Knox Professional Corporation Act 13

Section **125** – Misdemeanor Offenses by Licensees 14

Section **125 .6** – Refusal to Treat Patient 14

Section **125 .9** – Failure to Comply with Citation 14

Section **480** – Denial of a License 14

Section **492** – Effect of Completion of Drug Diversion Program on Disciplinary Action or Denial of License 14

Section **493** – Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee's Qualifications, Functions, and Duties 14

Section **496** – Subversion of Licensing Examinations 15

Section **498** – Securing License by Fraud, Deceit, or Misrepresentation 15

Section **650** – Accepting or Receiving Rebates 15

Section **651** – False, Misleading or Deceptive Public Communications 15

Section **654.2** – Prohibits Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest 15

Section **726** – Commission of Act of Sexual Abuse or Misconduct with Patient 16

Section **810** – Insurance Fraud 16

Section **822** – Psychological or Physical Illness 16