

Acupuncture Board – Addendum to Responses to the Background Paper

This addendum is provided to the Committees to further address the questions that Senator Pan and Assemblymember Gipson asked during the Board's Sunset Hearing regarding the Board's Enforcement Performance Measures, including, the violations the Board receives separated by type as well as how the Board addresses public safety for more egregious violations.

Cases Closed without Disciplinary Referral

In looking at the Board's Enforcement statistics over the last four fiscal years for cases closed without referral for discipline, the overall trend shows a decrease in the intake and investigation time for every violation type. However, please note that if there were no cases closed for a violation type during a fiscal year, then no data exists for comparative purposes. Graph I also illustrates this downward trend from 2013/14 to 2016/17 with all lines depicting a sloped high to low linear pattern. The Board's overall average performance measure target for cases closed without referral for discipline is 200 days. The Board's overall average for this performance measure was 376 days in 2013/14 and decreased to 149 days in 2016/17.

When the statistics are broken down further by violation type, the following changes are observed after comparing 2013/14 and 2016/17:

- | | |
|---|---|
| 1. Sub. Abuse, mental/physical impair: | Decrease by 39% |
| 2. Drug related offenses: | No change |
| 3. Unsafe/unsanitary conditions: | Decrease by 47% |
| 4. Fraud: | Decrease by 35% |
| 5. Non-jurisdictional: | Decrease by 95% |
| 6. Incompetence/negligence: | Decrease by 46% |
| 7. Other category | Increase because no cases closed in 13/14 |
| 8. Unprofessional conduct: | Decrease by 77% |
| 9. Sexual misconduct: | Decrease by 76% |
| 10. Discipline by another state/agency: | Decrease by 31% |
| 11. Unlicensed/unregistered: | Decrease by 46% |
| 12. Criminal charges/convictions: | Decrease by 59% |
| 13. Petitions for reinstatements: | Increase because no cases closed in 13/14 |

The tables in Exhibit A show the actual number of days to process complaints from receipt of complaint to the closure of the complaint. In looking at the violation types with the highest number of days to process across all fiscal years, the more complex cases can be pinpointed. The two violation types that consistently have higher days to process in all four fiscal years are Fraud and Incompetence/Negligence cases. These two violation types typically require formal investigations conducted by Division of Investigation (DOI) and will often require a secondary review by Subject Matter Experts contracted out by the Board. Another complexity involved with these types of cases is

the gathering of patient records, usually obtained from several different practitioners or insurance companies. Additionally, since Fraud is also a criminal offense that carries a higher burden of proof, investigations can be lengthened to obtain the necessary evidence. Evidence gathered for these types of cases to go on for criminal and administrative prosecution not only must meet a clear and convincing burden of proof, but also the violation must be proven beyond a reasonable doubt. Since these cases were not referred for discipline, these burdens were not met. Even though the same investigative intent and plan are followed, sometimes a departure from the standard and a violation of the laws and regulations is not substantiated.

Further, a certain percentage of cases categorized as Incompetence/Negligence originate as malpractice settlements or judgments reported to the Board. Given the terms of malpractice settlements, it is sometimes problematic to gain the cooperation of patients to obtain the necessary medical records for a complete investigation. These hurdles also lengthen the timeline.

Cases Closed with Disciplinary Referral

The Board's Enforcement statistics over the last four fiscal years for cases closed with referral for discipline show overall decreases in the intake and investigation time for the violation types with data. Given the small volume of cases that result in formal discipline each fiscal year, no data exists in six of the violation types, and one violation type does not have any previous fiscal year data for comparative purposes. The data that does exist, which is illustrated in graph II, does not depict the same true linear decline. However, when one looks at the change in days from prior fiscal years to 2016/17 broken out in more detail, there is a decrease in each violation type.

- | | |
|----------------------------------|-------------------|
| 1. Fraud: | Decrease by 17% |
| 2. Incompetence/negligence: | *Decrease by 24% |
| 3. Unprofessional conduct: | *Decrease by 0.8% |
| 4. Sexual misconduct: | *Decrease by 24% |
| 5. Criminal charges/convictions: | Decrease by 39% |

*Data from 2014/15 compared to 2016/17 because there was no data in 2013/14.

The Board's overall average performance measure target for cases closed with referral for discipline is 540 days. The Board's overall average for this performance measure was 1,004 days in 2013/14 and decreased to 774 days in 2016/17.

Exhibit B shows Unprofessional Conduct as the highest number of days to process in three of the four fiscal years. Since Unprofessional Conduct is such a broad violation category, the complexities vary. In addition, the cases that go on for discipline typically have more than one violation type charged. For example, by the time a complaint is investigated and reviewed by a Subject Matter Expert, there can be findings that support general unprofessional conduct, negligence, and fraud. When a complaint

comes into intake and is assigned a violation type, there is only one category that can be selected in the database. Further, when a complaint comes in alleging several different violations, unprofessional conduct is typically assigned because when any violation of the Acupuncture Licensure Act occurs, it is considered unprofessional conduct in addition to any other violations that may exist. Due to complaints alleging numerous violations, the investigations and review of these different claims can be lengthier and more complex.

Although the Board is faced with complexities in investigating cases that can lengthen the timeline, there are authorities in place that allow the Board to obtain public protection at a more rapid pace. Penal Code section 23 authorizes the Board to appear during a criminal proceeding and request license suspension or recommend that the court impose a condition of bail or probationary terms to protect the interests of the public. Knowing the Board has such an authority, arrests and criminal charges are reviewed and a determination is made on whether the incident poses any immediate harm to the public. If there is concern, the Board can refer the case to the Office of the Attorney General to represent the Board and appear at the criminal proceeding on a Penal Code section 23 request. These are typically done in cases involving violence or sexual assault to a patient, but can also be pursued on cases such as egregious fraud charges.

Additionally, when the Board receives a consumer complaint with allegations that pose an immediate danger to the public health, safety or welfare, these cases are assigned an urgent priority. The Board also requests that DOI expedite the investigation of these cases. Once the investigations and reviews are complete and a decision to refer for discipline has been made, a request for an Interim Suspension Order can be pursued. An Interim Suspension Order is used to suspend a licensee from the practice of acupuncture during the pendency of an administrative disciplinary process. The Administrative Law Judge is tasked with granting or denying the Interim Suspension Order. Once an Interim Suspension Order is granted, the disciplinary process is fast-tracked to achieve long-term public protection at a quicker rate.

Current Fiscal Year 2017/18

The current fiscal year shows large strides in the reduction of days to process cases in the first two quarters, especially focusing on cases referred for discipline. In quarter one, the overall average number of days to process discipline was 482 days and in quarter two it was 479 days. This is a great improvement that shows the Board has met the target of 540 days over a six-month period. This single measure is a great indicator of how the Board's Enforcement program is improving with each fiscal year.

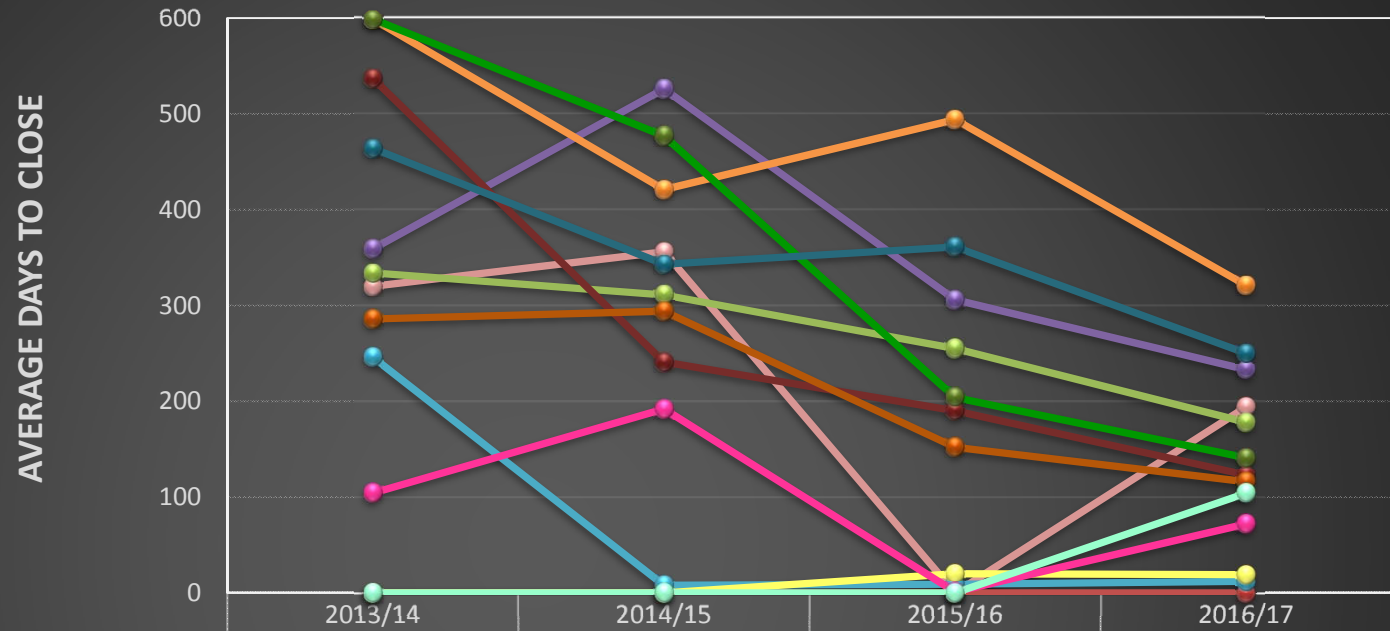
Data from Exhibit A

VIOLATION TYPE	2013/14	2014/15	2015/16	2016/17	Notes
SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	320	356	0	194	down 39%
DRUG RELATED OFFENSES	0	0	0	0	no change
UNSAFE/UNSANITARY CONDITIONS	334	311	255	178	down 47%
FRAUD	359	526	306	233	down 35%; temp. increase to 47% in 14/15
NON-JURISDICTIONAL	246	8	9	12	down 95%
INCOMPETENCE/NEGLIGENCE	599	421	494	321	down 46%
OTHER CATEGORY	0	0	20	19	up 1900%
UNPROFESSIONAL CONDUCT	537	241	190	123	down 77%
SEXUAL MISCONDUCT	599	477	204	141	down 76%
DISCIPLINE BY ANOTHER STATE/AGENCY	104	192	1	72	down 31%
UNLICENSED/UNREGISTERED	464	343	361	250	down 46%
CRIMINAL CHARGES/CONVICTIONS	286	294	152	116	down 59%
PETITIONS FOR REINSTATEMENTS	0	0	0	104	

Data from Exhibit B

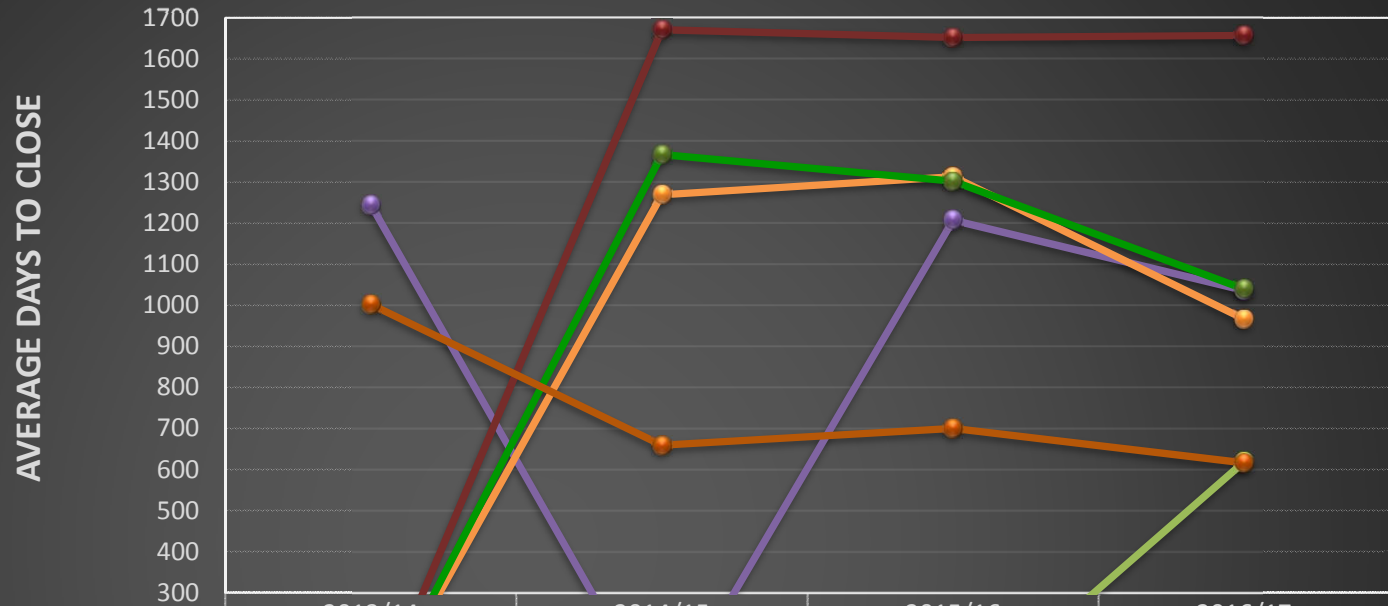
VIOLATION TYPE	2013/14	2014/15	2015/16	2016/17	Notes
SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0	0	0	no data
DRUG RELATED OFFENSES	0	0	0	0	no data
UNSAFE/UNSANITARY CONDITIONS	0	0	0	619	nothing to compare
FRAUD	1245	0	1207	1036	down 17%
NON-JURISDICTIONAL	0	0	0	0	no data
INCOMPETENCE/NEGLIGENCE	0	1269	1313	966	from 14/15 to 16/17 down 24%
OTHER CATEGORY	0	0	0	0	no data
UNPROFESSIONAL CONDUCT	0	1671	1652	1657	from 14/15 to 16/17 down 0.8%
SEXUAL MISCONDUCT	0	1367	1302	1039	from 14/15 to 16/17 down 24%
DISCIPLINE BY ANOTHER STATE/AGENCY	0	0	0	0	no data
UNLICENSED/UNREGISTERED	0	0	0	0	no data
CRIMINAL CHARGES/CONVICTIONS	1002	659	700	616	down 39%
PETITIONS FOR REINSTATEMENTS	0	0	0	0	

GRAPH I: CASES CLOSED WITHOUT DISCIPLINARY REFERRAL BY VIOLATIONS TYPE AND FISCAL YEAR



—●— SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	320	356	0	194
—●— DRUG RELATED OFFENSES	0	0	0	0
—●— UNSAFE/UNSANITARY CONDITIONS	334	311	255	178
—●— FRAUD	359	526	306	233
—●— NON-JURISDICTIONAL	246	8	9	12
—●— INCOMPETENCE/NEGLIGENCE	599	421	494	321
—●— OTHER CATEGORY	0	0	20	19
—●— UNPROFESSIONAL CONDUCT	537	241	190	123
—●— SEXUAL MISCONDUCT	599	477	204	141
—●— DISCIPLINE BY ANOTHER STATE/AGENCY	104	192	1	72
—●— UNLICENSED/UNREGISTERED	464	343	361	250
—●— CRIMINAL CHARGES/CONVICTIONS	286	294	152	116
—●— PETITIONS FOR REINSTATEMENTS	0	0	0	104

GRAPH II: CASES CLOSED WITH DISCIPLINARY REFERRAL BY VIOLATIONS TYPE AND FISCAL YEAR



	2013/14	2014/15	2015/16	2016/17
— SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0	0	0
— DRUG RELATED OFFENSES	0	0	0	0
— UNSAFE/UNSANITARY CONDITIONS	0	0	0	619
— FRAUD	1245	0	1207	1036
— NON-JURISDICTIONAL	0	0	0	0
— INCOMPETENCE/NEGLIGENCE	0	1269	1313	966
— OTHER CATEGORY	0	0	0	0
— UNPROFESSIONAL CONDUCT	0	1671	1652	1657
— SEXUAL MISCONDUCT	0	1367	1302	1039
— DISCIPLINE BY ANOTHER STATE/AGENCY	0	0	0	0
— UNLICENSED/UNREGISTERED	0	0	0	0
— CRIMINAL CHARGES/CONVICTIONS	1002	659	700	616
— PETITIONS FOR REINSTATEMENTS	0	0	0	0

Sunset Background Response
Case Aging for Closed Cases by Violation Type
FY's 13/14 - 16/17

TABLE A

TABLE B

FY 2013/2014							
CLOSED WITHOUT DISCIPLINARY REFERRAL				CLOSED CASES REFERRED FOR DISCIPLINE			
	VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE		VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE
A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	3	320	A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0
D	DRUG RELATED OFFENSES	0	0	D	DRUG RELATED OFFENSES	0	0
E	UNSAFE/UNSANITARY CONDITIONS	3	334	E	UNSAFE/UNSANITARY CONDITIONS	0	0
F	FRAUD	18	359	F	FRAUD	3	1245
J	NON-JURISDICTIONAL	4	246	J	NON-JURISDICTIONAL	0	0
N	INCOMPETENCE/NEGLIGENCE	14	599	N	INCOMPETENCE/NEGLIGENCE	0	0
O	OTHER CATEGORY	0	0	O	OTHER CATEGORY	0	0
R	UNPROFESSIONAL CONDUCT	29	537	R	UNPROFESSIONAL CONDUCT	0	0
S	SEXUAL MISCONDUCT	3	599	S	SEXUAL MISCONDUCT	0	0
T	DISCIPLINE BY ANOTHER STATE/AGENCY	1	104	T	DISCIPLINE BY ANOTHER STATE/AGENCY	0	0
U	UNLICENSED/UNREGISTERED	19	464	U	UNLICENSED/UNREGISTERED	0	0
V	CRIMINAL CHARGES/CONVICTIONS	98	286	V	CRIMINAL CHARGES/CONVICTIONS	6	1002
		192	376			9	1004

FY 2014/2015							
CLOSED WITHOUT DISCIPLINARY REFERRAL				CLOSED CASES REFERRED FOR DISCIPLINE			
	VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE		VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE
A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	1	356	A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0
D	DRUG RELATED OFFENSES	0	0	D	DRUG RELATED OFFENSES	0	0
E	UNSAFE/UNSANITARY CONDITIONS	5	311	E	UNSAFE/UNSANITARY CONDITIONS	0	0
F	FRAUD	10	526	F	FRAUD	0	0
J	NON-JURISDICTIONAL	5	8	J	NON-JURISDICTIONAL	0	0
N	INCOMPETENCE/NEGLIGENCE	11	421	N	INCOMPETENCE/NEGLIGENCE	3	1269
O	OTHER CATEGORY	0	0	O	OTHER CATEGORY	0	0
R	UNPROFESSIONAL CONDUCT	61	241	R	UNPROFESSIONAL CONDUCT	1	1671
S	SEXUAL MISCONDUCT	6	477	S	SEXUAL MISCONDUCT	2	1367
T	DISCIPLINE BY ANOTHER STATE/AGENCY	1	192	T	DISCIPLINE BY ANOTHER STATE/AGENCY	0	0
U	UNLICENSED/UNREGISTERED	35	343	U	UNLICENSED/UNREGISTERED	0	0
V	CRIMINAL CHARGES/CONVICTIONS	90	294	V	CRIMINAL CHARGES/CONVICTIONS	3	659
		225	302			9	1046

FY 2015/2016							
CLOSED WITHOUT DISCIPLINARY REFERRAL				CLOSED CASES REFERRED FOR DISCIPLINE			
	VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE		VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE
A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0	A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0
D	DRUG RELATED OFFENSES	0	0	D	DRUG RELATED OFFENSES	0	0
E	UNSAFE/UNSANITARY CONDITIONS	7	255	E	UNSAFE/UNSANITARY CONDITIONS	0	0
F	FRAUD	27	306	F	FRAUD	1	1207
J	NON-JURISDICTIONAL	6	9	J	NON-JURISDICTIONAL	0	0
N	INCOMPETENCE/NEGLIGENCE	17	494	N	INCOMPETENCE/NEGLIGENCE	4	1313
O	OTHER CATEGORY	1	20	O	OTHER CATEGORY	0	0
R	UNPROFESSIONAL CONDUCT	100	190	R	UNPROFESSIONAL CONDUCT	5	1652
S	SEXUAL MISCONDUCT	5	204	S	SEXUAL MISCONDUCT	6	1302
T	DISCIPLINE BY ANOTHER STATE/AGENCY	1	1	T	DISCIPLINE BY ANOTHER STATE/AGENCY	0	0
U	UNLICENSED/UNREGISTERED	33	361	U	UNLICENSED/UNREGISTERED	0	0
V	CRIMINAL CHARGES/CONVICTIONS	96	152	V	CRIMINAL CHARGES/CONVICTIONS	11	700
		293	222			27	1090

FY 2016/2017							
CLOSED WITHOUT DISCIPLINARY REFERRAL				CLOSED CASES REFERRED FOR DISCIPLINE			
	VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE		VIOLATION TYPE	TOTAL CLOSED	AVERAGE DAYS TO CLOSE
A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	2	194	A	SUB. ABUSE, MENTAL/PHYSICAL IMPAIR.	0	0
D	DRUG RELATED OFFENSES	0	0	D	DRUG RELATED OFFENSES	0	0
E	UNSAFE/UNSANITARY CONDITIONS	9	178	E	UNSAFE/UNSANITARY CONDITIONS	1	619
F	FRAUD	24	233	F	FRAUD	1	1036
J	NON-JURISDICTIONAL	9	12	J	NON-JURISDICTIONAL	0	0
N	INCOMPETENCE/NEGLIGENCE	19	321	N	INCOMPETENCE/NEGLIGENCE	5	966
O	OTHER CATEGORY	3	19	O	OTHER CATEGORY	0	0
R	UNPROFESSIONAL CONDUCT	112	123	R	UNPROFESSIONAL CONDUCT	1	1657
S	SEXUAL MISCONDUCT	5	141	S	SEXUAL MISCONDUCT	1	1039
T	DISCIPLINE BY ANOTHER STATE/AGENCY	7	72	T	DISCIPLINE BY ANOTHER STATE/AGENCY	0	0
U	UNLICENSED/UNREGISTERED	28	250	U	UNLICENSED/UNREGISTERED	0	0
V	CRIMINAL CHARGES/CONVICTIONS	97	116	V	CRIMINAL CHARGES/CONVICTIONS	10	616
	PETITION FOR REINSTATEMENTS	2	104				
		317	149			19	774