

California Acupuncture Board Meeting

October 25-26, 2018

Department of Consumer Affairs

2450 Ashby Avenue

Berkeley, CA 94705

Auditorium #3



Board Members

Dr. Amy Matecki, MD, L.Ac. – President
Kitman Chan – Vice President, Public Member
John Harabedian – Public Member
Ruben Osorio – Public Member
Vacant – Licensed Member
Vacant – Licensed Member
Vacant – Public Member

Legal Counsel

Salwa Bojack, Esq.

Staff

Ben Bodea – Executive Officer
Vacant – Licensing Manager
Vacant – Central Services Manager
Erica Bautista – Administration Coordinator
Cricket Borges – Enforcement Analyst
Kristine Brothers – Enforcement Coordinator
Tammy Graver – Board Liaison
Van Martini – Continuing Education Coordinator
Jay Herdt – Education Coordinator
Marc Johnson – Policy Coordinator
Tammy Stadley – Exam Coordinator
Beck Untalasco – Seasonal Clerk
Sandra Wilson – Licensing Technician
Vacant – Office Technician
Vacant – Exam Analyst



**CALIFORNIA
ACUPUNCTURE
BOARD**

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Members of the Board

Dr. Amy Matecki, M.D., L.Ac.,
President, Licensed Member
Kitman Chan, Vice President,
Public Member
John Harabedian,
Public Member
Ruben Osorio,
Public Member
Vacant, Licensed Member
Vacant, Licensed Member
Vacant, Public Member

BOARD MEETING

October 25 - 26, 2018

LOCATION:

Alta Bates Summit Medical Center
2450 Ashby Avenue
Auditorium # 3
Berkeley, CA 94705
(this meeting will not be webcast)

*Action may be taken on any
item listed on the agenda*

AGENDA – 9:30 a.m., Thursday, October 25, 2018

- 1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki, President)**
- 2. President's Remarks (Dr. Amy Matecki)**
Welcoming message and meeting information
- 3. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)**
The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code §§ 11125, 11125.7(a).)
- 4. Petition for Reinstatement of a Surrendered Acupuncture License – Pill Han (AC# 14493) – 9:30 a.m.**
- 5. Petition for Reinstatement of a Revoked Acupuncture License – Steven Chen Jing Xia (AC# 8907) – 11:30 a.m.**

CLOSED SESSION

- 6. Pursuant to Government Code section 11126(c)(3), the Board will convene in closed session to deliberate on a decision to be reached in the above Petitions.**

RECONVENE OPEN SESSION



7. Discussion on Whether to Proceed with Previously Discussed Rulemaking Packages and Prioritization (Marc Johnson, Policy Coordinator)

(A) To Amend Existing Section, Title 16, CCR §1399.451(a) –

Treatment Procedures: Hand Hygiene Requirements

(B) To Amend Existing Section, Title 16, CCR §1399.455 –

Advertising Guidelines: Display of License Number in Advertising

(C) To Adopt New Section, Title 16, CCR §1399.469.4 –

Prohibited Sexual Acts

8. Discussion on Amending Title 16, CCR §§ 1399.483, 1399.489 (Continuing Education Ethics Requirements) (Marc Johnson)

9. Discussion on Current Legislation (Marc Johnson)

(A) **AB 767 (Quirk-Silva)**

Master Business License Act

(B) **AB 1659 (Low)**

Healing arts boards: inactive licenses

(C) **AB 2138 (Chiu and Low)**

Licensing Boards: denial of application: revocation of licensure: criminal conviction

(D) **AB 3142 (Low and Hill)**

Acupuncture Licensure Act: Acupuncture Board

(E) **SB 1448 (Hill)**

Healing arts licensees: probation status: disclosure

10. Possible Approval of the June 28-29, 2018 Meeting Minutes (Marc Johnson)

Recess until Friday, October 26, 2018 at 9:00 a.m.



AGENDA – 9:00 a.m., Friday, October 26, 2018

- 11. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki)**
- 12. President's Report (Dr. Amy Matecki)**
 - (A) Welcoming message and meeting information
 - (B) 2019 Meeting Calendar
- 13. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)**

The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code §§ 11125, 11125.7(a))
- 14. Executive Officer's Report (Ben Bodea, Executive Officer)**
 - (A) Staff Update
 - (B) Budget Update
 - (C) Outreach Update
- 15. Enforcement Report (Kristine Brothers, Enforcement Coordinator)**
 - (A) Q4 17-18 Enforcement Report
 - (B) Q1 18-19 Enforcement Report
- 16. Education Report (Jay Herdt, Education Coordinator)**
 - (A) Status of Curriculum Reviews
 - (B) Continuing Education and Audit Report
 - (C) Update on the Continued Collaboration with the Bureau for Private Post-Secondary Education and the Accreditation Commission for Acupuncture and Oriental Medicine
- 17. Update on Transition to Computer-Based Testing for the California Acupuncture Licensing Exam (Tammy Stadley, Exam Analyst)**
- 18. Update from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) (Dr. Kory Ward-Cook, CEO of NCCAOM)**
- 19. Updates from Acupuncture Professional Associations**
- 20. Possible Approval of Amendments to the 2018-2022 Acupuncture Board Strategic Plan (Ben Bodea)**



- 21. Discussion of Acupuncture Licensure Standards and Reciprocity Throughout the United States (Ben Bodea and Marc Johnson)**
- 22. Discussion on the Following Previously Discussed Rulemaking Package (Kristine Brothers and Marc Johnson)**
 - (A) To Amend the Title of Division 13.7 of Title 16 of the California Code of Regulations;
 - (B) To Adopt “Article 6.1. Citations” of Division 13.7 of the California Code of Regulations to Include Title 16, CCR §§ 1399.463-1399.468;
 - (C) To Adopt “Article 6.2. Enforcement” of Division 13.7 of the California Code of Regulations to Include Title 16, CCR §§ 1399.469-1399.469.3;
 - (D) To Amend Title 16, CCR § 1399.469 (Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees)
- 23. Future Agenda Items (Dr. Amy Matecki)**
- 24. Adjournment (Dr. Amy Matecki)**

Informational Notes:

Discussion and action may be taken on any item on the agenda. The agenda, as well as any available Board meeting minutes and materials, can be found on the California Acupuncture Board’s website: www.acupuncture.ca.gov. The time and order of agenda items are approximate and subject to change at the discretion of the Board President; agenda items scheduled for a particular day may be moved or continued to an earlier or later day to facilitate the effective transaction of business.

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at the physical location.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board or prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issues before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting. (Government Code sections 11125, 11125.7(a)).

Board meetings are open to the public and are held in barrier free facilities that are accessible to those with physical disabilities in accordance with the Americans with Disabilities Act (ADA). If you are a person with a disability requiring disability-related modifications or accommodations to participate in the meeting, including auxiliary aids or services please contact Erica Bautista, Administrative Coordinator at (916) 515-5202; Fax: (916) 928-2204. You may dial a voice TTY Communications Assistant at 711. Requests should be made as soon as possible, but at least five (5) working days prior to the scheduled meeting.

#7 (A)

Hand Hygiene Requirements - Memo to the Board



DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Discussion and possible Board action on approved regulations on hand hygiene requirements – Title 16, California Code of Regulations §1399.451(a)

Issue:

Discussion of currently approved regulation for hand hygiene requirements for licensees. The regulation was approved by the Board at the February 14, 2014 public meeting but has not been acted upon since, and has not been publicly noticed with the Office of Administrative Law.

Action items for the Board:

Discussion and review of the currently approved text for Title 16, §1399.451(a). If desired, the Board may vote to proceed with the Rulemaking Package, direct staff to further research and develop the language or abandon the proposed regulation.

History:

The Board first reviewed the issue at the February 14, 2014 Board meeting. At the time, staff noted that the Centers for Disease Control (CDC) and the California Department of Public Health (CDPH) had issued hand hygiene guidelines to reduce Healthcare-associated Infections that support the use of alcohol-based hand sanitizer over traditional hand washing when hands are not visibly soiled. The Board's current regulation on hand hygiene contradicts this recommendation and currently does not address the use of alcohol-based hand sanitizers at all. Additionally, the Board requires that students complete clean needle technique coursework and use the "Clean Needle Technique Manual" as its primary reference and the manual's guidelines appear to be consistent with CDC's recommendations.

Public comment at the meeting was made urging the Board not to adopt the regulation, but to simply amend the Infectious Disease Guidelines (IDGs) instead, which are not in regulation and can be easily changed. The Board's IDGs were last changed in 2010. In the discussion, it was determined that the Infectious Disease Guidelines are not actionable and updating the regulation is the only way to make it an actionable standard and update current outdated standards in regulations. The Board approved the



proposed regulatory text on a 6-0 vote and directed the Executive Officer to commence the regulatory process.

Discussion:

Although approved by the Board at the February 14, 2014 public meeting, this regulation has not been acted upon by staff or the Board since then, due to higher priority regulatory items such as SB 1246, the Consumer Enforcement Performance Initiative, and, the Board's Disciplinary Guidelines. This regulation has not been publicly noticed or filed with the Office of Administrative Law.

The existing proposed text is based upon CDC guidelines issued in 2002, and CDPH's 2-day training program on basics of infection prevention. These guidelines support the use of alcohol-based hand sanitizers, but does state that when hands are visibly dirty, contaminated, or soiled, wash with non-antimicrobial or antimicrobial soap and water. If hands are not visibly soiled, it affirms use an alcohol-based hand rub for routinely decontaminating hands. Staff consulted with several other healing arts boards in California, such as the Medical Board, Board of Registered Nursing, Podiatric Board and the Dental Board; these Boards follow these guidelines. It appears there have been no changes to these guidelines since the regulation's approval in 2014.

The Board may wish to:

- 1) If no changes are made to the text, then no action is needed by the Board, and staff will continue the rulemaking process on the regulation.
- 2) If changes are made at the meeting to the text of the regulation a motion to approve those changes will be needed.

Motion: *"Approve the proposed regulatory text presented and amended in Title 16, CCR section 1399.451, subdivision (a), (Optional Language: 'with the additional amendments to [Insert Specific Changes]'), direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified."*

- 3) Direct staff to further research and update the regulation, or,
- 4) Motion to abandon the regulation

Motion: *"Abandon the approved text for Title 16, CCR section 1399.451, subdivision (a) and direct staff to no longer develop a regulatory rulemaking on the matter, and to post a notice on the Board's website informing the public of this action."*

#7 (A)

Hand Hygiene Requirements –
Regulatory Text

**CALIFORNIA ACUPUNCTURE BOARD
PROPOSED REGULATION – HAND HYGIENE REQUIREMENTS**

New proposed text is underlined, and deleted text is in ~~strike through~~.

Amend Section 1399.451 of Article 5 of Division 13.7 of Title 16 of the California Code of Regulations as follows:

§ 1399.451. Treatment Procedures.

In treating a patient, an acupuncturist shall adhere to the following procedures:

- (a) When hands are visibly dirty, contaminated, or soiled, acupuncturists shall wash with non-antimicrobial or antimicrobial soap and water. If hands are not visibly soiled, use an alcohol-based hand rub for routinely decontaminating hands. The acupuncturist's hands shall be ~~brush-scrubbed with soap and warm water~~ immediately cleaned before examining patients or handling acupuncture needles and other instruments, and between patients.
- (b) All instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.
- (c) Acupuncture points, where needles are to be inserted, shall be cleaned with an appropriate antiseptic before insertion of the needle.
- (d) In the event an acupuncture needle inserted in a patient breaks subcutaneously, the treating acupuncturist shall immediately consult a physician. An acupuncturist shall not sever or penetrate the tissues in order to excise such a needle.
- (e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.
- (f) Acupuncture shall not be performed using hypodermic needles.
- (g) All instruments to be discarded shall be disposed of safely.
- (h) Needles shall be disposed of by placing them in a sealed, unbreakable container marked "Hazardous Waste" and disposed of in accordance with state and local law.

Note: Authority cited: Section 4933, Business and Professions Code. Reference: Section 4955, Business and Professions Code.

#7 (A)

Hand Hygiene Requirements:
Dental Board –
Regulatory Text

Dental Board of California – Hand Hygiene Requirements

Existing text from Title 16, §1005(b), subsections (6) and (7)

§ 1005. Minimum Standards for Infection Control.

(b) All DHCP shall comply with infection control precautions and enforce the following minimum precautions to protect patients and DHCP and to minimize the transmission of pathogens in health care settings as mandated by the California Division of Occupational Safety and Health (Cal/OSHA).

Hand Hygiene:

(6) All DHCP shall thoroughly wash their hands with soap and water at the start and end of each workday. DHCP shall wash contaminated or visibly soiled hands with soap and water and put on new gloves before treating each patient. If hands are not visibly soiled or contaminated an alcohol based hand rub may be used as an alternative to soap and water. Hands shall be thoroughly dried before donning gloves in order to prevent promotion of bacterial growth and washed again immediately after glove removal. A DHCP shall refrain from providing direct patient care if hand conditions are present that may render DHCP or patients more susceptible to opportunistic infection or exposure.

(b)(7) All DHCP who have exudative lesions or weeping dermatitis of the hand shall refrain from all direct patient care and from handling patient care equipment until the condition resolves.

#7 (B)

Advertising Regulations – Memo to the Board

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DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Discussion and possible Board action on Title 16, California Code of Regulations (CCR) §1399.455 – Advertising guidelines

Issue:

Review of existing text for regulatory rulemaking package for CCR §1399.455, relating to advertising guidelines: display of license number in advertising. The regulation was originally approved by the Board at the February 19, 2013 public meeting but has not been acted upon since, and has not been publicly noticed with the Office of Administrative Law. Staff has proposed changes to the approved text (attachment).

Action items for the Board:

Discussion, possible approval, or, referral to Committee of the revised text for Title 16, California Code of Regulations § 1399.455, subdivisions (d) and (e). (Attachment)

Suggested Motion for Approval:

Motion: *“Approve the proposed regulatory text presented and amended in Title 16, CCR section 1399.455, (Optional Language: ‘with the additional amendments to [Insert Specific Changes]’), direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified.”*

History:

The following text was initially approved on a 5-1-1 vote by the Board at the February 19, 2013 public Board meeting:

Adopt Title 16, CCR Section 1399.455:

(d) An acupuncturist who advertises his or her services shall hold a current, active license issued by the California Acupuncture Board, and shall include his or her license number, the name and license number of the establishment at which he or she is employed, and the name of the city or community where the business is located on any form of advertising.



(e) This section shall not apply to acupuncture training programs approved by the board.

The intention of this rulemaking was to help further the Board's primary mission of public protection by requiring acupuncturists to include their license number in all forms of advertising, which would help consumers distinguish legal from illegal acupuncture businesses. Any acupuncture advertisement would be required to include the license number of the licensee who owns the business, allowing a consumer to quickly identify an acupuncturist who is advertising for his or her services as legitimate. The addition of a licensee's address and affiliated business name was made by the Board at the February 19 meeting. Although the regulation underwent staff and Legal Counsel review in late 2016, it has not been acted upon since.

Discussion:

Several other professional licensing boards have similar advertising requirements in statute or regulation, such as the Cemetery and Funeral Bureau, Optometry Board, Board of Behavioral Sciences, and the Contractors State License Board. For example, contractors are subject to the provisions of Business and Professions Code section 7030.5, which provides as follows:

"Every person licensed pursuant to this chapter shall include his license number in: (a) all construction contracts; (b) subcontracts and calls for bid; and (c) all forms of advertising, as prescribed by the registrar of contractors, used by such a person."

In the review of the regulation, previous Legal Counsel has raised concerns about the unclear nature of the phrase "the name and license number of the establishment at which he or she is employed", which would might be interpreted as a business license, professional corporation tax identification number or a tax identification number. Therefore, based on these concerns, staff has revised the regulation to remove this portion of the text. Additionally, the Board may wish to consider the following questions in their review of the regulation:

1. How would this regulation apply to large acupuncture groups, such as community acupuncture clinics? Hospitals or Clinics with an acupuncture section? Would they be required to list each individual licensee?
2. Should the address required be an actual practice address or the address of record only?
3. Would a specific name-style defined in Regulation, such as "L.Ac", be more appropriate? Several other Boards, most notably the Board of Behavioral Sciences (requiring 'M.F.T.' for Masters in Family Therapy), and, Optometry Board (requiring 'O.D.' for Optometric Doctor) require the name, license numbers and correct name-style in any forms of advertising.

#7 (B)

Advertising Regulations – Regulatory Text

**CALIFORNIA ACUPUNCTURE BOARD
PROPOSED REGULATION – ADVERTISING**

Text originally approved by the Board in 2013 is underlined. New proposed text is **highlighted** and underlined. Deleted text is **highlighted** and in ~~striketrough~~.

Amend Section 1399.455 of Article 5 of Division 13.7 of Title 16 of the California Code of Regulations as follows:

§ 1399.455. Advertising.

(a) A licensed acupuncturist may advertise the provision of any acupuncture services authorized to be provided by such licensure in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

(b) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising which represents in any manner that the acupuncturist can cure any type of disease, condition or symptom.

(c) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising of a practice, technique or procedure which is not within the scope of the practice of acupuncture as defined in Section 4927 and 4937 of the code and which is the unlawful practice of medicine.

(d) An acupuncturist who advertises his or her services shall hold a current, active license issued by the California Acupuncture Board, and shall include his or her license number, **the name and license number of the establishment at which he or she is employed, and the name of the city or community and the current address of record or duplicate practice address on file with the Board, including street, city, state and zip code, on any form of advertising.**

(e) This section shall not apply to acupuncture training programs approved by the board.

Note: Authority cited: Sections 651 and 4933, Business and Professions Code.
Reference: Sections 651, 2052, 4937, 4938 and 4955, Business and Professions Code.

#7 (C)

Prohibited Sexual Acts – Memo to the Board

**CALIFORNIA
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DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Discussion and possible Board action on approved regulations on Prohibited Sexual Acts – Title 16, California Code of Regulations (CCR)§1399.469.4.

Issue:

Discussion of currently approved regulation regarding prohibited sexual acts by licensees. The regulation was approved by the Board at the December 14, 2016 Public Meeting but has not been acted upon since, and has not been publicly noticed or filed with the Office of Administrative Law.

Action items for the Board:

Discussion and review of the currently approved text for Title 16, CCR §1399.469.4. (Attached). Direction to staff for approval, further development or abandonment of regulation.

History:

In 2014, the Board began discussion over regulations to prevent the usage of Acupuncture offices as fronts for prostitution. Originally, the Board desired to obtain more regulatory authority to discipline licensees who allow their places of business to become places of prostitution but who may not be directly engaging in the sexual acts with patients. While the Board already has authority to discipline licensees who are convicted of crimes related to prostitution, staff found that many licensees were skating by the Board's regulatory authority. In particular, staff and the Attorney General's (AG) office noticed either criminal charges are being dismissed or plea bargained away when the licensee is often only the owner of the business location and then lets other individuals use the business location to engage in the prostitution.

The Enforcement committee reviewed the issue at its February 14, 2014 meeting and reported it to the full Board, which then adopted the proposed language by a 6-0 vote. This language was based upon the California Board of Chiropractic Examiners that prohibits sex on the premises of a licensee. The following is the text of the originally approved language:



§1399.450 Condition of Office.

(b) Where an acupuncture license is used in connection with any premises, structure or facility, no sexual acts or erotic behavior involving patients, employees, patrons or customers, including, but not necessarily limited to, sexual stimulation, masturbation or prostitution, shall be permitted on said premises, structure or facility.”

This text, although adopted by the Board, was reviewed in summer 2016 by staff and the AG’s office, and it was agreed the originally approved text was not specific enough. Staff and the AG believed that the Board would be better served creating a standalone disciplinary regulation within §1399.469.4 using the authority of Business and Professions Code (BPC) §§731 and 4955, rather than plugging new language into an existing regulation. The AG’s office felt this would allow the Board to take disciplinary action against a licensee who aided and abetted acts of prostitution/illicit sexual acts by their employees without the need for a conviction of the licensee or employees. The Enforcement Committee and then the full Board reviewed the text (attached) at the December 14, 2016 public meeting and approved the language on a 6-0 vote.

Discussion:

Although approved by the Board in 2016, this regulation has not been acted upon by staff or the Board since then due to higher priority regulatory items such as SB 1246, Consumer Enforcement Performance Initiative (CPEI) and the Board’s Disciplinary Guidelines. This regulation has not been publicly noticed or filed with the Office of Administrative Law.

There have been several concerns raised with the regulation as currently approved. Previous Legal Counsel felt the approved regulation was overbroad, and a regulation may not be necessary. It was indicated that such conduct is already defined in regulation as unprofessional conduct. Another concern raised was that by the regulation citing BPC §731 as a reference, that the Board still may be required to have a conviction as a basis for action. Theoretically, the Board would want the authority to take administrative discipline on the conduct itself, not a conviction. The AG’s Office has indicated they would not move forward with action unless a conviction is made regardless, but that BPC §4955 could provide the authority for such administrative discipline. This provision is at best unclear and the Board may wish to have Legal Counsel conduct more research into this issue.

Finally, a concern which has been raised by some stakeholders was the stigma such a regulation may have on the industry. Although the use of Acupuncture licenses in conjunction with or as fronts for prostitution has been minimal (2-4 complaints a year on average) there is a potential need for the regulation. It is also unclear how many other



consumer protection Boards directly or indirectly have this type of statute or regulation, but the Chiropractic Board appears to be the only one which does.

Options for the Board:

1. Motion to approve the text (Attached) and continue the rulemaking process. The attached text contains one change the Board will need to approve: a strikethrough of “adoption of a new Article 6.5 Enforcement” which was including as part of the 2016 text. This is not needed as the Board is currently proposing creation of this article header in a separate regulatory package.

Suggested motion:

Motion: “Approve the proposed regulatory text presented and amended in Title 16, CCR section 1399.469.4, (Optional Language: ‘with the additional amendments to [Insert Specific Changes]’), direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified.”

2. Direct staff to research and update the regulation to reflect current 2018 laws and practices including the concern about statutory authority.
3. Motion to abandon the regulation. Suggested motion:

Motion: “Abandon the approved text for Title 16, CCR section 1399.469.4 and direct staff to no longer develop a regulatory rulemaking on the matter, and to post a notice on the Board’s website informing the public of this action.”

#7 (C)

Prohibited Sexual Acts –
Regulatory Text

**CALIFORNIA ACUPUNCTURE BOARD
PROPOSED REGULATION – PROHIBITED SEXUAL ACTS**

Text originally approved by the Board in 2016 is underlined. New proposed text is **highlighted** and deleted text is **highlighted** and in ~~striketrough~~.

Adopt Section 1399.469.4 of Article 6 of Division 13.7 of Title 16 of the California Code of Regulations as follows:

~~Adopt New Article 6.5 Enforcement (beginning with 1399.463):~~

§ 1399.469.4. Prohibited Sexual Acts.

(a) Any person subject to regulation by the Acupuncture Board, who knowingly engages in or who aids and abets in, by owning, leasing, licensing, or operating a location where sexual acts, or attempted sexual acts occur, involving any person, including but not limited to patients, clients, employees, patrons, visitors, or customers, whether or not fees for services are paid, that person, shall be guilty of unprofessional conduct.

(b) “Sexual Acts,” as defined in this regulation, means the touching of any part of a person for the purpose of sexual arousal, gratification, or sexual abuse, and includes, but is not limited to, sexual intercourse, masturbation, sexual stimulation, and sexual penetration.

(c) The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the Acupuncture Board.

NOTE: Authority Cited: Sections 731 and 4955, Business and Professions Code.

#8 (A)

Continuing Education
Ethics Requirements –
Memo to the Board

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DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Discussion on Possible Board Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations (CCR) §§ 1399.483 and 1399.489 – Continuing Education Ethics Requirement

Issue:

Review and possible approval of proposed changes to the text of Title 16, CCR §§1399.483 and 1399.489, regarding a biannual continuing education (CE) requirement of four units in law and ethics. The proposed regulation has not been publicly noticed with the Office of Administrative Law.

Action items for the Board:

Discussion and possible approval of proposed changes to the text of Title 16, CCR §§ 1399.483 and 1399.489. (Attachment)

Suggested motion for approval:

Motion: *“Approve the proposed regulatory text presented and amended in Title 16, CCR sections 1399.483 and 1399.489, (Optional Language: ‘with the additional amendments to [Insert Specific Changes]’), direct staff to submit the proposed text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any technical or non-substantive changes to the rulemaking package, notice the proposed text for a 45-day comment period, and if no adverse comments are received and no hearing is requested, adopt the proposed regulatory changes, as modified.”*

History:

For many years, the Board allowed a licensee to take up to four units of Continuing Education (CE) in practice management or medical ethics in order to meet their biannual CE renewal requirements. This regulation, originally part of CCR §1399.489.2, was repealed in December 1999. Subsequently, the Board approved a new CE ethics requirement at the November 11, 2012 Board meeting, where it was referred to the



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Education Committee for further refinement. The following text was approved in 2012 (which is proposed to not be adopted):

§1399.489.2 Continuing Education: Course in Professional Ethics.

An acupuncturist shall take no less than four (4) hours of continuing education in professional ethics every two years to meet his or her continuing education requirements.

At the December 14, 2016 Education Committee (Committee) Meeting, members reviewed the proposed text at and requested additional changes to be made by staff and to be brought back to the full Board for consideration and possible approval.

Discussion:

Several other Boards currently contain a similar requirement. The Physical Therapy Board requires two hours of CEs in ethics, laws and regulations per each two-year renewal cycle. The Chiropractic Board requires two hours of CEs in Ethics and Law per 1-year renewal cycle. The Psychology Board does not have a specific hour requirement for Laws and Ethics, but licensees are required to self-certify on their renewal application that they have kept abreast of changes to law.

The new proposed text replaces the original placement into §1399.489.2, which will not be adopted. Instead, staff proposes to place the requirements into §§1399.483 and 1399.489. The new text contains the following additions / changes:

- §1399.483(e): Inclusion of a self-assessment of the ethics and law materials, as requested by the Committee. Placing the text in this section creates the requirement that all ethics courses, whether online or in person, need to complete a self-assessment test which tests the understanding of the subject matter. The existing text in subsection (d) only requires tests for courses taken for independent or home study.
- Renumbering of §1399.483 subsections to accommodate the addition of subsection (d), as described above.
- §1399.489(a): Clarifies that all licensees in active status shall complete 50 hours of CEU every two years as a condition of renewal. This change, requested by the Committee, helps to define that the Ethics requirement will be applicable to active licensees only, and not a licensee on inactive status.



- §1399.489(c): This new section creates the requirement of four hours of CEUs in law and ethics, to be taken for every two-year renewal period. It also waives the requirement for licensees who are within their initial two-year renewal period (typically 12-23 months) or on inactive status. The Committee did discuss better defining the requirement for an ethics course to be distance or in person, but staff feels the existing definitions as set out in §1399.483(d) is sufficient. Additionally, staff does not recommend requiring the course as either Category 1 or 2, since that will already occur during the provider's course approval stage. Finally, the Committee had requested adding the words "laws related to the acupuncture profession" in the definition of ethics. Staff feels this is not needed as this clarification is already part of the definition of "course" which is implied in proposed subsection (c). However, the Board may wish to also define further what a Law and Ethics course should contain.
- Renumbering of §1399.489 subsections to accommodate the addition of subsection (c), as described above.

#8 (B)

Continuing Education
Ethics Requirements –
Regulatory Text

**CALIFORNIA ACUPUNCTURE BOARD
PROPOSED REGULATION -- CONTINUING EDUCATION ETHICS
REQUIREMENT**

New proposed text is highlighted and underlined, and deleted text is in highlight and ~~strikethrough~~.

Amend Sections 1399.483 and 1399.489 of Article 8 of Division 13.7 of Title 16 of the California Code of Regulations as follows:

§ 1399.483. Approval of continuing education courses.

(a) Only a provider may obtain approval to offer continuing education courses.

(b) The content of all courses of continuing education submitted for board approval shall be relevant to the practice of acupuncture and Asian medicine and shall fall within the following two (2) categories

(1) Category 1 courses are those courses related to clinical matters or the actual provision of health care to patients. Examples of Category 1 courses include, but are not limited to, the following:

(A) Acupuncture and Asian Medicine

(B) Western biomedicine and biological sciences.

(C) Scientific or clinical content with a direct bearing on the quality of patient care, community or public health, or preventive medicine.

(D) Courses concerning law and ethics and health facility standards.

(E) Courses designed to develop a licensee's patient education skills, including, but not limited to, patient education in therapeutic exercise techniques, nutritional counseling, and biomechanical education.

(F) Courses designed to enhance a licensee's ability to communicate effectively with other medical practitioners.

(G) Courses in acupuncture's role in individual and public health, such as emergencies and disasters.

(H) Courses in the behavioral sciences, patient counseling, and patient management and motivation when such courses are specifically oriented to the improvement of patient health.

(I) Research and evidence-based medicine as related to acupuncture and Asian medicine.

(2) Category 2 courses are those courses unrelated to clinical matters or the actual provision of health care to patients. Examples of Category 2 courses include, but are not limited to, the following:

(A) Practice management courses unrelated to clinical matters and direct patient care, including, but not limited to administrative record keeping, laws and regulations unrelated to clinical medicine,

insurance billing and coding, and general business organization and management.

(B) Breathing and other exercises, i.e. qi gong and taiji quan that are for the benefit of the licensee and not the patient.

(c) Each provider shall include, for each course offered, a method by which the course participants evaluate the following:

- (1) The extent to which the course met its stated objectives.
- (2) The adequacy of the instructor's knowledge of the course subject.
- (3) The utilization of appropriate teaching methods.
- (4) The applicability or usefulness of the course information.
- (5) Other relevant comments.

(d) Courses designed to be completed by an individual on an independent or home study basis shall not exceed 50% of the required continuing education hours.

- (1) Courses that require practical or hands on techniques may not be approved for independent or home study.
- (2) Courses approved for independent or home study shall include a self-assessment by the licensee upon completion of the course that tests the participants mastery of the course material.

(e) Each course in law and ethics shall include a self-assessment by the licensee upon completion of the course that tests the participants mastery of the course material.

(f)(e) A provider is prohibited from selling, advertising or promoting any named brand product or service during a course. A provider shall ensure that any discussion of name product or service is objectively selected and presented with favorable and unfavorable information and balanced discussion of prevailing information on the product, competing products, alternative treatments or services. A provider shall ensure written disclosure to the audience, at the time of the program, of any relationship between any named product(s) or services discussed and the provider or between any such products or service and any individuals' instructor, presenter, panelist, or moderator. However, a provider may offer for sale products or services after the course has been completed as long as it is made clear to all participants that they are under no obligation whatsoever to stay for the sales presentation or purchase any products. Nothing in this subdivision shall be interpreted as restricting a provider from discussing generic products during a course.

Note: Authority cited: Section 4933, Business and Professions Code. Reference: Sections 4934.2 and 4945, Business and Professions Code.

§ 1399.489. Continuing education compliance

(a) With the exception of those holding an inactive license, when renewing an initial license that has been issued for less than two years, licensees shall complete the following hours of board-approved continuing education:

Period of Initial Licensure	Requiring Continuing Education Hours
13-16 Months	35
17-20 Months	40
21-23 Months	45

Thereafter, all licensees shall complete 50 hours every two years as a condition of renewal **in active status**. No more than five (5) hours of continuing education in each two-year period may be obtained in Category 2.

(b) Licensees are limited to fifty percent (50%) of the required continuing education hours every two (2) years for independent or home study courses.

(c) For each two-year period, a licensee's continuing education courses must include a minimum of four (4) hours in law and ethics. This requirement is waived if the licensee is renewing an initial license that has been issued for less than two (2) years or if the licensee is renewed in an inactive status.

(d)(e) Each licensee at the time of license renewal shall sign a statement under penalty of perjury that he or she has or has not complied with the continuing education requirements. It shall constitute unprofessional conduct for any licensee to misrepresent completion of the required continuing education.

(e)(d) The board may audit a random sample of licensees who have reported compliance with the continuing education requirement.

(f)(e) Any licensee selected for audit shall be required to submit documentation or records of continuing education coursework that he or she has taken and completed.

(g)(f) Each licensee shall retain for a minimum of four (4) years records of all continuing education programs that he or she has attended that indicate the provider's name, title of the course or program, date(s) and location of course, and number of continuing education hours awarded.

(h)(g) Instructors of approved continuing education courses may receive one hour of continuing education for each classroom hour completed as an instructor, up to a maximum of six (6) hours of continuing education per year, regardless of how many hours or courses are taught. Participation as a member of a panel presentation for an approved course shall entitle the participant to earn continuing education hours equal to the actual panel presentation time within the appropriate category.

~~(i)(h)~~ Any licensee who participates in the development of an occupational analysis, an examination development session, item review session or a passing score workshop, shall receive one (1) hour of continuing education for every two (2) hours of participation.

Note: Authority cited: Section 4933, Business and Professions Code. Reference: Sections 4938, 4945 and 4955, Business and Professions Code.

#9 (A)

AB 767 (Quirk-Silva)

Master Business License Act –
Bill Language

Assembly Bill No. 767

Passed the Assembly August 31, 2018

Chief Clerk of the Assembly

Passed the Senate August 29, 2018

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2018, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 12096.3 of, to amend, renumber, and add Section 12097.1 of, and to add Article 4.3 (commencing with Section 12096.7) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of, the Government Code, and to repeal Sections 71040 and 71041 of the Public Resources Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 767, Quirk-Silva. GO-Biz Information Technology.

Existing law authorizes various state agencies to issue permits and licenses in accordance with specified requirements to conduct business within this state. Existing law establishes the Governor's Office of Business and Economic Development (GO-Biz) to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

Existing law requires GO-Biz to establish an electronic online permit assistance center, called the California Government Online to Desktops (CalGold), through the Internet for use by any business or entity subject to a law or regulation to assist that business or entity with complying with those laws or regulations. Existing law requires CalGold to be reviewed periodically, as specified.

This bill would, among other things, provide for a GO-Biz Information Technology Unit within GO-Biz, which would create an online Internet platform, called the California Business Development Portal, that is comprised of 3 elements, including economic and business development-related digital information, the systems and processes used to manage that information, and a public interface capability, as prescribed.

The bill would recast provisions related to CalGold by requiring the GO-Biz Information Technology Unit to establish an electronic online government permit and license assistance center and by renaming the center the California Business License Center. The bill would establish, beginning in the 2018–19 fiscal year, 2 state civil service positions for the purposes of supporting the ongoing enhancement of the functionality of the California Business Development Portal, including the California Business License

Center, the California Business Navigator, the California Business Mapping Tool, digital resources, and other online products that improve the state government's digital ecosystem.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) The Information Technology unit of GO-Biz develops, maintains, and updates information technology solutions for GO-Biz programs aimed at furthering GO-Biz's goal of economic growth for California.

(b) Since September 2013, the GO-Biz Information Technology Application Portfolio has grown from one information technology staff member and four supported applications to six information technology staff members and sixteen supported applications.

(c) Each new GO-Biz application needs to be regularly updated and fourteen of the sixteen applications are public facing and play an important role in supporting business development in California including, but not limited to, all of the following:

- (1) The GO-Biz Internet Web site.
- (2) The California Business Portal.
- (3) The California Competes Tax Credit application.
- (4) The CalGold Permit Assistance Tool.
- (5) The California Business Navigator.
- (6) CA Made.
- (7) The California Business Service Desk.
- (8) The IBank Application Portal.
- (9) The California Financing Coordinating Committee.
- (10) The GO-Biz Salesforce.
- (11) The California Business Mapping Tool.

(d) As the home of the world's most creative information technology companies, California should also be a leader in digital government technologies. The California Business Portal brings the state into alignment with other nations and states that are embracing innovation and the Internet of Things to meet business development challenges at scale while still providing the individualized experience that meets a business's unique needs.

SEC. 2. Section 12096.3 of the Government Code is amended to read:

12096.3. The office shall serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. In this capacity, the office may:

(a) Recommend to the Governor and the Legislature new state policies, programs, and actions, or amendments to existing programs, advance statewide economic goals and respond to emerging economic problems and opportunities, and ensure that all state policies and programs conform to the adopted state economic and business development goals.

(b) Coordinate the development of policies and criteria to ensure that federal grants administered or directly expended by state government advance statewide economic goals and objectives.

(c) Market the business and investment opportunities available in California by working in partnership with local, regional, federal, and other state public and private institutions to encourage business development and investment in the state.

(d) Provide, including, but not limited to, all of the following:

(1) Economic and demographic data.

(2) Financial information to help link businesses with state and local public and private programs.

(3) Workforce information, including, but not limited to, labor availability, training, and education programs.

(4) Transportation and infrastructure information.

(5) Assistance in obtaining state and local permits.

(6) Information on tax credits and other incentives.

(7) Permitting, siting, and other regulatory information pertinent to business operations in the state.

(e) Establish a well-advertised telephone number, an online interactive and high-performance Internet platform, and an administrative structure that effectively supports the facilitation of business development and investment in the state.

(f) Encourage collaboration among research institutions, startup companies, local governments, venture capitalists, and economic development agencies to promote innovation.

(g) In cooperation with other state, federal, and local governments, foster relationships with foreign and domestic entities to improve the state's image as a destination for global business investment and expansion.

(h) Conduct research on the state's business climate, including, but not limited to, research on how the state can remain on the leading edge of innovation and emerging sectors.

(i) Support small businesses by providing information about accessing capital, complying with regulations, and supporting state initiatives that support small business.

SEC. 3. Article 4.3 (commencing with Section 12096.7) is added to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, to read:

Article 4.3. GO-Biz Information Technology

12096.7. (a) There shall be within the office, the GO-Biz Information Technology Unit, which shall create an online Internet platform, called the California Business Development Portal.

(b) The Business Development Portal shall be an online platform that is comprised of three distinct elements, including economic and business development-related digital information, the systems and processes used to manage that information, and a public interface capability, which includes, but is not limited to, all of the following:

(1) Storing, retrieving, and exchanging economic and business development-related digital information with due regard to privacy statutes.

(2) An information service detailing business incentives, financing, workforce training, geographic regions in the state, and requirements to establish or engage in business in this state.

(3) Identification and retrieval of economic and business development digital information appropriate for a variety of business types, including sole proprietorships, partnerships, associations, cooperatives, corporations, nonprofit organizations, and social enterprises.

(4) Identification and retrieval of economic and business development digital information useful for state, federal, and local government agencies and other entities that support economic and business development activities in California.

(5) Accessibility through a variety of electronic presentation formats, including Internet Web sites, mobile applications, and other modes of delivery.

(6) A service or application for an individual, business, or other interested party to establish an online account that enhances the ability to conduct business or economic development activities in California.

(c) The office, in developing new programs or services, shall consider the added value of having all or portions of a program and service accessed digitally, including, but not limited to, undertaking outreach, filing applications, and submitting progress and outcome reports to the office.

(d) The office shall adopt and periodically update a schedule for the buildout and upgrading of the California Business Development Portal. The office shall undertake activities on the schedule after the director determines that funding for this project is available and the project is in alignment with required elements of the state planning practices for the development of state information technology projects.

12096.8. Beginning in the 2018–19 fiscal year, there shall be two additional state civil service positions in the GO-Biz Information Technology Unit for the purposes of supporting the ongoing enhancement of the functionality of the California Business Development Portal, including the California Business License Center, the California Business Navigator, the California Business Mapping Tool, digital resources, and other online products that improve the state government’s digital ecosystem.

SEC. 4. Section 12097.1 of the Government Code is amended and renumbered to read:

12097.2. (a) The director shall ensure that the office’s Internet Web site contains information on the licensing, permitting, and registration requirements of state agencies, and shall include, but not be limited to, information that does all of the following:

(1) Assists individuals with identifying the type of applications, forms, or other similar documents an applicant may need.

(2) Provides a direct link to a digital copy of all state licensing, permitting, and registration applications, forms, or other similar documents where made available for download.

(3) Instructs individuals on how and where to submit applications, forms, or other similar documents.

(b) The director shall ensure that the office’s Internet Web site contains information on the fee requirements and fee schedules of

state agencies, and shall include, but not be limited to, information that does all of the following:

(1) Assists individuals with identifying the types of fees and their due dates.

(2) Provides direct links to the fee requirements and fee schedules for all state agencies, where made available for download.

(3) Instructs individuals on how and where to submit payments.

(c) The office shall ensure that the Internet platform is user-friendly and provides accurate, updated information.

(d) (1) Each state agency that has licensing, permitting, or registration authority shall provide direct links to information about its licensing, permitting, and registration requirements and fee schedule to the office.

(2) A state agency shall not use the Internet platform established under this section as the exclusive source of information for the public to access licensing requirements and fees for that agency.

(e) The office may impose a reasonable fee, not to exceed the actual cost to provide the service, as a condition of accessing information on the Internet Web site established under subdivisions (a) and (b).

SEC. 5. Section 12097.1 is added to the Government Code, to read:

12097.1. (a) The GO-Biz Information Technology Unit shall establish an electronic online government permit and license assistance center through the Internet, which shall be known as the California Business License Center. The California Business License Center shall be available for use by any business or other entity subject to a law or regulation implemented by a state agency, authority, bureau, board, commission, conservancy, council, department, or office, and shall provide a business or other entity with assistance in complying with those laws and regulations.

(b) The California Business License Center shall provide special software, hotlinks, and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a state agency, authority, bureau, board, commission, conservancy, council, department, or office.

(c) The California Business License Center shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(d) The GO-Biz Information Technology Unit shall periodically review and, when necessary, update the California Business License Center to assist businesses in the state that would benefit from information on permitting and regulatory compliance.

SEC. 6. Section 71040 of the Public Resources Code is repealed.

SEC. 7. Section 71041 of the Public Resources Code is repealed.

Approved _____, 2018

Governor

#9 (B)

AB 1659 (Low)

Healing Arts Board:

Inactive License –

Bill Language

Assembly Bill No. 1659

CHAPTER 249

An act to amend Sections 701, 702, and 703 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 5, 2018. Filed with Secretary of State September 5, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, Low. Healing arts boards: inactive licenses.

Existing law establishes healing arts boards in the Department of Consumer Affairs to ensure private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. Existing law requires each healing arts board to issue inactive licenses to holders of active licenses whose license is not punitively restricted by that board. Existing law prohibits the holder of an inactive license from engaging in any activity for which an active license is required. Existing law requires the renewal fee for an active license to apply to an inactive license.

This bill would prohibit the holder of an inactive license from representing that he or she has an active license. The bill would also authorize a healing arts board to establish a lower inactive license renewal fee.

The people of the State of California do enact as follows:

SECTION 1. Section 701 of the Business and Professions Code is amended to read:

701. (a) As used in this article, "board" refers to any healing arts board, division, or examining committee which licenses or certifies health professionals.

(b) Each healing arts board referred to in this division shall issue, upon application and payment of the normal renewal fee, an inactive license or certificate to a current holder of an active license or certificate whose license or certificate is not suspended, revoked, or otherwise punitively restricted by that board.

SEC. 2. Section 702 of the Business and Professions Code is amended to read:

702. The holder of an inactive healing arts license or certificate issued pursuant to this article shall not do any of the following:

(a) Engage in any activity for which an active license or certificate is required.

(b) Represent that he or she has an active license.

SEC. 3. Section 703 of the Business and Professions Code is amended to read:

703. (a) An inactive healing arts license or certificate issued pursuant to this article shall be renewed during the same time period at which an active license or certificate is renewed. In order to renew a license or certificate issued pursuant to this article, the holder thereof need not comply with any continuing education requirement for renewal of an active license or certificate.

(b) The renewal fee for a license or certificate in an active status shall apply also for renewal of a license or certificate in an inactive status, unless a lower fee has been established by the issuing board.

#9 (C)

AB 2138 (Chiu and Low)
Licensing Boards: Denial of
Application: Revocation of
Licensure: Criminal –
Bill Language

Assembly Bill No. 2138

CHAPTER 995

An act to amend, repeal, and add Sections 7.5, 480, 481, 482, 488, 493, and 11345.2 of, and to add Section 480.2 to, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 30, 2018. Filed with
Secretary of State September 30, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime only if the applicant or licensee has been convicted of a crime within the preceding 7 years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding 7 years, except as specified. The bill would prohibit a board from

denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction, as defined, for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction.

The bill would require the board to develop criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession. The bill would require a board to consider whether a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

Existing law authorizes a board, after a specified hearing requested by an applicant for licensure to take various actions in relation to denying or granting the applicant the license.

This bill would revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.

This bill would clarify that the existing above-described provisions continue to apply to the State Athletic Commission, the Bureau for Private Postsecondary Education, and the California Horse Racing Board.

This bill would also make necessary conforming changes.

This bill would make these provisions operative on July 1, 2020.

The people of the State of California do enact as follows:

SECTION 1. Section 7.5 of the Business and Professions Code is amended to read:

7.5. (a) A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 2. Section 7.5 is added to the Business and Professions Code, to read:

7.5. (a) A conviction within the meaning of this code means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) or (c) of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(A) The State Athletic Commission.

(B) The Bureau for Private Postsecondary Education.

(C) The California Horse Racing Board.

(c) Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.

(d) This section shall become operative on July 1, 2020.

SEC. 3. Section 480 of the Business and Professions Code is amended to read:

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 4. Section 480 is added to the Business and Professions Code, to read:

480. (a) Notwithstanding any other provision of this code, a board may deny a license regulated by this code on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

(1) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application. However, the preceding seven-year limitation shall not apply in either of the following situations:

(A) The applicant was convicted of a serious felony, as defined in Section 1192.7 of the Penal Code or a crime for which registration is required pursuant to paragraph (2) or (3) of subdivision (d) of Section 290 of the Penal Code.

(B) The applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession for which the application is made, pursuant to regulations adopted by the board, and for which the applicant is seeking licensure under any of the following:

- (i) Chapter 1 (commencing with Section 5000) of Division 3.
- (ii) Chapter 6 (commencing with Section 6500) of Division 3.

- (iii) Chapter 9 (commencing with Section 7000) of Division 3.
- (iv) Chapter 11.3 (commencing with Section 7512) of Division 3.
- (v) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.
- (vi) Division 4 (commencing with Section 10000).

(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis that he or she has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other provision of this code, a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code shall provide proof of the dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

(e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board issuing a license pursuant to Chapter 3 (commencing with Section 5500), Chapter 3.5 (commencing with Section 5615), Chapter 10 (commencing with Section 7301), Chapter 20 (commencing with Section 9800), or Chapter 20.3 (commencing with Section 9880), of Division 3, or Chapter 3 (commencing with Section 19000) or Chapter 3.1 (commencing

with Section 19225) of Division 8 may require applicants for licensure under those chapters to disclose criminal conviction history on an application for licensure.

(2) Except as provided in paragraph (1), a board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. However, a board may request mitigating information from an applicant regarding the applicant's criminal history for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure.

(3) If a board decides to deny an application for licensure based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, consisting of voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

- (1) The State Athletic Commission.
- (2) The Bureau for Private Postsecondary Education.
- (3) The California Horse Racing Board.

(j) This section shall become operative on July 1, 2020.

SEC. 5. Section 480.2 is added to the Business and Professions Code, to read:

480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board to evaluate the rehabilitation of a person when considering the denial of a license under paragraph (1) of subdivision (f).

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the ground that the applicant knowingly made a false

statement of fact that is required to be revealed in the application for the license.

(e) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(f) (1) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall develop criteria to evaluate the rehabilitation of a person either when:

(A) Considering the denial of a license under this section.

(B) Considering suspension or revocation of a license under Section 490.

(2) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(g) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board, in its discretion, may deem proper.

(h) Notwithstanding any other law, in a proceeding conducted by the Bureau for Private Postsecondary Education, the State Athletic Commission, or the California Horse Racing Board to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(i) Notwithstanding Section 7.5, a conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the Bureau for Private Postsecondary

Education, the State Athletic Commission, or the California Horse Racing Board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

(j) This section shall become operative on July 1, 2020.

SEC. 6. Section 481 of the Business and Professions Code is amended to read:

481. (a) Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 7. Section 481 is added to the Business and Professions Code, to read:

481. (a) Each board under this code shall develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed by Section 482.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(f) This section shall become operative on July 1, 2020.

SEC. 8. Section 482 of the Business and Professions Code is amended to read:

482. (a) Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(1) Considering the denial of a license by the board under Section 480;
or

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 9. Section 482 is added to the Business and Professions Code, to read:

482. (a) Each board under this code shall develop criteria to evaluate the rehabilitation of a person when doing either of the following:

(1) Considering the denial of a license by the board under Section 480.

(2) Considering suspension or revocation of a license under Section 490.

(b) Each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met:

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The board, applying its criteria for rehabilitation, finds that the applicant is rehabilitated.

(c) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(d) This section shall become operative on July 1, 2020.

SEC. 10. Section 488 of the Business and Professions Code is amended to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 11. Section 488 is added to the Business and Professions Code, to read:

488. (a) Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(1) Grant the license effective upon completion of all licensing requirements by the applicant.

(2) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(3) Deny the license.

(4) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

(b) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(c) This section shall become operative on July 1, 2020.

SEC. 12. Section 493 of the Business and Professions Code is amended to read:

493. (a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

(b) As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 13. Section 493 is added to the Business and Professions Code, to read:

493. (a) Notwithstanding any other law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact.

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(d) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

(3) The California Horse Racing Board.

(e) This section shall become operative on July 1, 2020.

SEC. 14. Section 11345.2 of the Business and Professions Code is amended to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. Notwithstanding subdivision (c) of Section 480, if the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed.

SEC. 15. Section 11345.2 is added to the Business and Professions Code, to read:

11345.2. (a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. If the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser

refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

(c) This section shall become operative on July 1, 2020.

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AB 3142 (Low and Hill)

Acupuncture Licensure Act:

Acupuncture Board –

Bill Language

Assembly Bill No. 3142

CHAPTER 596

An act to amend Sections 4927.5, 4928, 4934, 4935, 4938, 4955, and 4961 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 20, 2018. Filed with
Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3142, Low. Acupuncture Licensure Act: Acupuncture Board.

Existing law establishes the Acupuncture Board, which consists of 7 members, to administer and enforce laws in the Acupuncture Licensure Act until January 1, 2019. The Acupuncture Licensure Act authorizes the board, until January 1, 2019, to appoint an executive officer. Existing law specifies that, for purposes of the act, an "approved educational and training program" is a school or college that meets specified conditions and requirements, including, among others, being granted candidacy status by the Accreditation Commission for Acupuncture and Oriental Medicine, as provided.

This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2023. The bill would require an approved educational and training program to be granted preaccreditation status, rather than candidacy status, by the Accreditation Commission for Acupuncture and Oriental Medicine.

Existing law makes it a misdemeanor for a person who does not hold a current and valid acupuncturist's license to hold himself or herself out as practicing or engaging in the practice of acupuncture and describes what constitutes a person holding himself or herself out as engaging in the practice of acupuncture to include, among other things, representing that the person is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine.

This bill would instead make it a misdemeanor for a person who does not hold a current and valid acupuncturist's license to advertise or otherwise represent that he or she is practicing or engaging in the practice of acupuncture and would describe what constitutes advertising or representing that a person is practicing or engaging in the practice of acupuncture to include, among other things, representing that the person is trained, experienced, an expert, or otherwise qualified to practice in the field of acupuncture, Asian medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup. Because the bill would expand the scope of a crime, the bill would impose a state-mandated local program.

Existing law provides that unprofessional conduct includes the knowing failure to protect patients by failing to follow infection control guidelines,

as specified, and requires the board to consult, as necessary, with the Medical Board of California and certain other healing arts boards to encourage appropriate consistency in implementing that provision.

This bill would instead require the board to consult, as necessary, with any healing arts board, as specified.

The bill would make other technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 4927.5 of the Business and Professions Code is amended to read:

4927.5. (a) For purposes of this chapter, “approved educational and training program” means a school or college offering education and training in the practice of an acupuncturist that meets all of the following requirements:

(1) Offers curriculum that includes at least 3,000 hours of which at least 2,050 hours are didactic and laboratory training, and at least 950 hours are supervised clinical instruction. Has submitted that curriculum to the board, and has received board approval of the curriculum. Any school or college offering education and training in the practice of acupuncture that was approved by the board prior to January 1, 2017, has not had its approval revoked, and has not changed its curriculum since receiving board approval, is deemed to have had its curriculum approved by the board for the purposes of this section.

(2) Has received full institutional approval under Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code in the field of traditional Asian medicine, or in the case of institutions located outside of this state, approval by the appropriate governmental educational authority using standards equivalent to those of Article 6 (commencing with Section 94885) of Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code.

(3) Meets any of the following:

(A) Is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine.

(B) Has been granted preaccreditation status by the Accreditation Commission for Acupuncture and Oriental Medicine.

(C) Has submitted a letter of intent to pursue accreditation to the Accreditation Commission for Acupuncture and Oriental Medicine within 30 days of receiving full institutional approval pursuant to paragraph (2), and is granted preaccreditation status within three years of the date that letter was submitted.

(b) Within 30 days after receiving curriculum pursuant to paragraph (1), the board shall review the curriculum, determine whether the curriculum satisfies the requirements established by the board, and notify the school or college, the Accreditation Commission for Acupuncture and Oriental Medicine, and the Bureau for Private and Postsecondary Education of whether the board has approved the curriculum.

SEC. 2. Section 4928 of the Business and Professions Code is amended to read:

4928. (a) The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 4934 of the Business and Professions Code is amended to read:

4934. (a) The board, by and with the approval of the director, may appoint an executive officer who is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(b) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 4. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) (1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to advertise or otherwise represent that he or she is practicing or engaging in the practice of acupuncture.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

(b) Notwithstanding any other law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person advertises or otherwise represents that he or she is practicing or engaging in the practice of acupuncture by the use of any title or

description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, an expert, or otherwise qualified to practice in the field of acupuncture, Asian medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup, including Chinese medicine, Japanese medicine, or Korean medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if the person is either of the following:

(1) Engaged in a course or tutorial program in acupuncture, as provided in this chapter.

(2) A graduate of an approved educational and training program and participating in a postgraduate review course that does not exceed one year in duration at an approved educational and training program.

SEC. 5. Section 4938 of the Business and Professions Code is amended to read:

4938. (a) The board shall issue a license to practice acupuncture to any person who makes an application and meets the following requirements:

(1) Is at least 18 years of age.

(2) Furnishes satisfactory evidence of completion of one of the following:

(A) (i) An approved educational and training program.

(ii) If an applicant began an educational and training program at a school or college that submitted a letter of intent to pursue accreditation to, or attained candidacy status from, the Accreditation Commission for Acupuncture and Oriental Medicine, but the commission subsequently denied the school or college candidacy status or accreditation, respectively, the board may review and evaluate the educational training and clinical experience to determine whether to waive the requirements set forth in this subdivision with respect to that applicant.

(B) Satisfactory completion of a tutorial program in the practice of an acupuncturist that is approved by the board.

(C) In the case of an applicant who has completed education and training outside the United States, documented educational training and clinical experience that meets the standards established pursuant to Sections 4939 and 4941.

(3) Passes a written examination administered by the board that tests the applicant's ability, competency, and knowledge in the practice of an acupuncturist. The written examination shall be developed by the Office of Professional Examination Services of the Department of Consumer Affairs.

(4) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

(5) Completes a clinical internship training program approved by the board. The clinical internship training program shall not exceed nine months in duration and shall be located in a clinic in this state that is an approved

educational and training program. The length of the clinical internship shall depend upon the grades received in the examination and the clinical training already satisfactorily completed by the individual prior to taking the examination. The purpose of the clinical internship training program shall be to ensure a minimum level of clinical competence.

(b) Each applicant who qualifies for a license shall pay, as a condition precedent to its issuance and in addition to other fees required, the initial licensure fee.

SEC. 6. Section 4955 of the Business and Professions Code is amended to read:

4955. The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist who is guilty of unprofessional conduct.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Using or possessing any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to any other person, or to the public, and to an extent that the use impairs the acupuncturist's ability to engage in the practice of acupuncture with safety to the public.

(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(c) False or misleading advertising.

(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with healing arts boards within this division, including, but not limited to, the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines,

and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

(i) Any action or conduct that would have warranted the denial of the acupuncture license.

(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

(k) The abandonment of a patient by the licensee without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

(l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which the licensee is licensed as an individual to practice acupuncture.

SEC. 7. Section 4961 of the Business and Professions Code is amended to read:

4961. (a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, the licensee's place of practice, or, if the licensee has more than one place of practice, all of the places of practice. If the licensee has no place of practice, the licensee shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure.

(b) An acupuncturist licensee shall post his or her wall license in a conspicuous location in his or her place of practice at all times. If an acupuncturist licensee has more than one place of practice, he or she shall obtain from the board a duplicate wall license for each additional location and post the duplicate wall license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure. An applicant for renewal of licensure shall specify in the application whether or not there has been a change in the location of the licensee's place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

#9 (E)

SB 1448 (Hill)

Healing Arts Licensure:

Probation Status: Disclosure –
Bill Language

Senate Bill No. 1448

CHAPTER 570

An act to add Sections 1007, 2228.1, 2228.5, 2459.4, 3663.5, and 4962 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 19, 2018. Filed with
Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1448, Hill. Healing arts licensees: probation status: disclosure.

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce specified provisions of the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee within the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of acupuncturists. Existing law authorizes each of these regulatory entities to discipline its licensee by placing her or him on probation, as specified.

This bill, on and after July 1, 2019, would require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, and the Acupuncture Board to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019. The bill, on and after July 1, 2019, would require the Medical Board of California and the Osteopathic Medical Board of California to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, under specified circumstances. The bill would also require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, the Acupuncture Board, the Medical Board of California, and the Osteopathic Medical Board

of California to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known, and may be cited, as the Patient's Right to Know Act of 2018.

SEC. 2. Section 1007 is added to the Business and Professions Code, to read:

1007. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) “Board” for purposes of this section means the State Board of Chiropractic Examiners.

SEC. 3. Section 2228.1 is added to the Business and Professions Code, to read:

2228.1. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee’s probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board’s telephone number, and an explanation of how the patient can find further information on the licensee’s probation on the licensee’s profile page on the board’s online license information Internet Web site, to a patient or the patient’s guardian or health care surrogate before the patient’s first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient’s guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

SEC. 4. Section 2228.5 is added to the Business and Professions Code, to read:

2228.5. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) Section 2314 shall not apply to this section.

(f) For purposes of this section:

(1) "Board" means the California Board of Podiatric Medicine.

(2) "Licensee" means a person licensed by the California Board of Podiatric Medicine.

SEC. 5. Section 2459.4 is added to the Business and Professions Code, to read:

2459.4. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019, in any of the following circumstances:

(1) A final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establishing any of the following:

(A) The commission of any act of sexual abuse, misconduct, or relations with a patient or client as defined in Section 726 or 729.

(B) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.

(C) Criminal conviction directly involving harm to patient health.

(D) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(2) An accusation or statement of issues alleged that the licensee committed any of the acts described in subparagraphs (A) to (D), inclusive, of paragraph (1), and a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact but does include an express acknowledgment

that the disclosure requirements of this section would serve to protect the public interest.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) A violation of this section shall not be punishable as a crime.

(f) For purposes of this section:

(1) "Board" means the Osteopathic Medical Board of California.

(2) "Licensee" means a person licensed by the Osteopathic Medical Board of California.

SEC. 6. Section 3663.5 is added to the Business and Professions Code, to read:

3663.5. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the committee shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the committee, the committee's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the committee's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary

order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the committee shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the committee's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the committee, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the committee.

(e) A violation of this section shall not be punishable as a crime.

SEC. 7. Section 4962 is added to the Business and Professions Code, to read:

4962. (a) On and after July 1, 2019, except as otherwise provided in subdivision (c), the board shall require a licensee to provide a separate disclosure that includes the licensee's probation status, the length of the probation, the probation end date, all practice restrictions placed on the licensee by the board, the board's telephone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's online license information Internet Web site, to a patient or the patient's guardian or health care surrogate before the patient's first visit following the probationary order while the licensee is on probation pursuant to a probationary order made on and after July 1, 2019.

(b) A licensee required to provide a disclosure pursuant to subdivision (a) shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

(c) A licensee shall not be required to provide a disclosure pursuant to subdivision (a) if any of the following applies:

(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

(2) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities.

(3) The licensee who will be treating the patient during the visit is not known to the patient until immediately prior to the start of the visit.

(4) The licensee does not have a direct treatment relationship with the patient.

(d) On and after July 1, 2019, the board shall provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's online license information Internet Web site.

(1) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.

(2) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.

(3) For a licensee granted a probationary license, the causes by which the probationary license was imposed.

(4) The length of the probation and end date.

(5) All practice restrictions placed on the license by the board.

(e) A violation of this section shall not be punishable as a crime.

#9 (A-E)

Legislative Update –
Memo to the Board

**CALIFORNIA
ACUPUNCTURE
BOARD**

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DATE	October 15, 2018
TO	Board Members
FROM	Marc Johnson – Policy Coordinator
SUBJECT	Update on Current Legislation

The 2017-2018 Legislative Session concluded on August 31, 2018, and the Governor's deadline to approve or veto bills was September 30, 2018. Altogether, the Governor signed 1,016 bills and vetoed 201. Bills approved by the Governor will go into effect on January 1, 2019 unless noted otherwise below.

The Board reviewed potential legislation at the June 29, 2018 meeting and took positions on several bills. Set out below is an update on each bill, the Board's position, and staff comments.

A. Assembly Bill 767 (Quirk-Silva) – Master License Business ActCurrent Status:

Vetoed by the Governor on September 23, 2018.

Summary:

This bill would, among other things, provide for a GO-Biz Information Technology Unit within GO-Biz, which would create an online Internet platform, called the California Business Development Portal, that is comprised of 3 elements, including economic and business development-related digital information, the systems and processes used to manage that information, and a public interface capability, as prescribed. The bill would recast provisions related to CalGold by requiring the GO-Biz Information Technology Unit to establish an electronic online government permit and license assistance center and by renaming the center the California Business License Center.

Board position: **Watch**

B. Assembly Bill 1659 (Low) – Healing arts boards: inactive licensesCurrent status:

Approved by Governor on September 5, 2018. Filed with the Secretary of State on September 5, 2018, Chapter 249, Statutes of 2018.

Summary:



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This bill authorizes a healing arts board to establish a lower inactive license renewal fee and prohibits the holder of a healing arts inactive license from representing that he or she has an active license in the healing arts.

Board position: **Support**

Comments:

Non-controversial bill with no real impact to Board daily operations, other than creating an additional violation for disciplinary action if an inactive licensee represents they are holding an active license, which enhances the Board's ability to protect the public.

C. Assembly Bill 2138 (Chiu and Low) – Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Current status:

Approved by Governor on September 30, 2018. Filed with the Secretary of State on September 30, 2018, Chapter 995, Statutes of 2018.

Summary: This bill reduces barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years no longer eligible for license denial, with several enumerated exemptions. The bill sets out an implementation date of July 1, 2020.

Staff recommended position: **Oppose (version as amended June 20, 2018)**

Comments:

The Board took an oppose position on this bill, and many licensing boards within DCA also opposed this bill. Although the number of licensees potentially impacted would be minimal due the Board's low licensing population, the bill narrows the Board's ability to deny licenses, issue licenses with probationary conditions, and take disciplinary action for convictions. The Board will need to promulgate regulations and modify licensing and enforcement processes to implement the bill.

D. Assembly Bill 3142 (Committee on Business and Professions) – Acupuncture Licensure Act: Acupuncture Board

Current status:

Approved by the Governor on September 20, 2018. Filed with Secretary of State on September 20, 2018, Chapter 596, Statutes of 2018.

Summary:



Extends the operation of the Board and the authority to appoint an Executive Officer from January 1, 2019 to January 1, 2023. Additionally, it replaces the term "candidacy" with "pre-accreditation" to match the terms used by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), and clarifies the use of titles and representations, including that the prohibition against holding oneself out as an expert in acupuncture only applies if the person making the representation also conveys the idea that the person is qualified to practice. This bill deletes an outdated and inconsistent reference to the number of required clinical training hours, and clarifies that, consistent with the Board's current policies, the Board should consult with all necessary healing arts boards for purposes of developing infection control guidelines. Finally, this bill clarifies that a licensee must hang a wall license in each practice location, not a pocket card license.

Board position: Support (version as amended June 19, 2018)

Comments:

This bill provides for a four-year extension of the Board's operations to January 1, 2023, and makes no major changes to Board operations.

E. Senate Bill 1448 (Hill) – Healing arts licensees: probation status: waiver

Current status:

Approved by Governor on September 19, 2018. Filed with Secretary of State on September 19, 2018, Chapter 570, Statutes of 2018.

Summary:

This bill, on and after July 1, 2019, would require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, and the Acupuncture Board to require a licensee to provide a separate disclosure, as specified, to a patient or a patient's guardian or health care surrogate before the patient's first visit if the licensee is on probation pursuant to a probationary order made on and after July 1, 2019. The bill would also require the California Board of Podiatric Medicine, the Naturopathic Medicine Committee, the State Board of Chiropractic Examiners, the California Acupuncture Board, the Medical Board of California, and the Osteopathic Medical Board of California to provide specified information relating to licensees on probation on the regulatory entity's online license information Internet Web site.

Board position: Watch

Comments:

This bill would have a minor impact on Board operations but a potential impact on licensees on probation. It requires all licensees on probation to notify patients, in writing,



CALIFORNIA
ACUPUNCTURE
BOARD

STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS – BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

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of their probationary status and conditions of their probation. The Board's Disciplinary Guidelines will need to be modified and regulations may need to be changed to accommodate this change in law

#10

Review & Approval of
June 28-29, 2018
Board Meeting Minutes

ACUPUNCTURE BOARD

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Members of the Board

Dr. Amy Matecki, M.D., L.Ac.,
President, Licensed Member
Kitman Chan, Vice President,
Public Member
John Harabedian,
Public Member
Ruben Osorio,
Public Member
Vacant, Licensed Member
Vacant, Licensed Member
Vacant, Public Member

ACUPUNCTURE BOARD MEETING

Public Board Meeting
Draft Meeting Minutes
June 28 & 29, 2018

LOCATION:

Handlery Hotel San Diego
The Tower Room
950 Hotel Circle North
San Diego, CA 92108

Board Members Present

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member
Kitman Chan, Vice President, Public Member
John Harabedian, Public Member
Ruben Osorio, Public Member

Staff Present

Benjamin Bodea, Executive Officer
Erica Bautista, Administrative Coordinator
Salwa Bojack, Legal Counsel
Kristine Brothers, Enforcement Coordinator
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator
Tammy Stadley, Exam Analyst

Guest List on File

Full Board Meeting – Thursday, June 28, 2018

1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Matecki)

Board President Amy Matecki (Matecki) called the meeting to order at 9:30 a.m.
Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 4 – Matecki, Chan, Harabedian, Osorio.

4-0 Quorum established

2. President's Remarks (Dr. Matecki)

President Matecki had nothing to report.

3. Public Comment on Items Not on the Agenda (Dr. Matecki)

Public Comment: None

4. Petition for Reinstatement of Acupuncture License – Brian Kim (aka Byung Chang Kim) – 9:30 a.m.

The Board heard the petition for reinstatement of acupuncture license for Byung Chang Kim (aka Brian Kim).

Public Comment: None.

5. Petition for Early Termination of Probation – Kyung Kim (AC# 14723) – 11:00 a.m.

The Board heard the petition for early termination of probation for Kyung Kim.

Public Comment: None

CLOSED SESSION (Dr. Matecki)

6. Pursuant to Government Code section 11126(c)(3), the Board will convene in closed session to deliberate on a decision to be reached in the above Petitions.

The Board went into closed session at 12:40 p.m. to deliberate on the above petitions.

RECONVENE OPEN SESSION (Dr. Matecki)

The Board resumed open session at 2:30 p.m.

7. Review and Approval of October 20, 2017 Board Meeting Minutes (Johnson)

Johnson presented the Board meeting minutes from the October 20, 2017 public meeting. Changes were made on page one for the '4-1 quorum' listed, and global changes were made to capitalizations of 'Board' and spelling out of all acronyms.

Public Comment: None.

MOTION:

Vice President Kitman Chan (Chan) motioned to approve the October 20, 2017 Board Meeting Minutes with changes made here today, and to delegate authority to the Executive Officer to make technical, non-substantive changes. Board Member Ruben Osorio (Osorio) seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

8. Review and Approval of November 17, 2017 Board Meeting Minutes (Johnson)

Johnson presented the Board meeting minutes from the November 17, 2017 public meeting. Changes were made on page one for the '4-1 quorum' listed, and global changes were made to capitalizations of 'Board' and spelling out of all acronyms.

Public comment: None.

MOTION:

President Matecki motioned to approve the November 17, 2017 Board Meeting Minutes with changes made here today, and to delegate authority to the Executive Officer to make technical, non-substantive changes.

Board Member John Harabedian (Harabedian) seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

9. Review and Approval of December 15, 2017 Board Meeting Minutes (Johnson)

Johnson presented the Board meeting minutes from the December 15, 2017 public meeting. He noted the meeting was mostly a strategic plan session for the Board. Changes were made on page two for the '4-1 quorum' listed, and global changes were made to capitalizations of 'Board' and spelling out of all acronyms. On page three, item number eight, a change was made to note that no future agenda items were raised by the public.

Public comment: None.

MOTION:

Member Harabedian motioned to approve the December 15, 2017 Board Meeting Minutes with changes made here today, and to delegate authority to the Executive Officer to make technical, non-substantive changes.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

10. Review and Approval of March 30, 2018 Board Meeting Minutes (Johnson)

Johnson presented the Board meeting minutes from the March 30, 2018 public meeting. This was the second strategic plan meeting for the Board. A change was made on page three to spell out acronyms.

Public comment: None

MOTION:

President Matecki motioned to approve the March 30, 2018 Board Meeting Minutes with changes made here today, and to delegate authority to the Executive Officer to make technical, non-substantive changes.

Member Harabedian seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

11. Review and Approval of April 13, 2018 Board Meeting Minutes (Johnson)

Johnson presented the Board meeting minutes from the April 13, 2018. A change was made on page three to spell out acronyms.

Public Comment: None

MOTION:

Member Osorio motioned to approve the April 13, 2018 Board Meeting Minutes with changes made here today, and to delegate authority to the Executive Officer to make technical, non-substantive changes.

Vice President Chan seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

12. Recess until Friday, June 29, 2018 at 9:00 a.m. (Dr. Matecki)

President Matecki called the meeting into recess at 3:00 p.m., until Friday, June 29, 2018 at 9:00 a.m.

Full Board Meeting – Friday, June 29, 2018

13. Call to Order, Roll Call, and Establishment of Quorum (Dr. Matecki)

President Matecki called the meeting to order at 9:00 a.m. Johnson called the roll.

Members Present: 4 – Matecki, Chan, Harabedian, Osorio. 4-0

Quorum re-established.

14. President's Report (Dr. Matecki)

President Matecki thanked the Board, Board staff, and the public for attending.

15. Public Comment on Items Not on the Agenda (Dr. Matecki)

A commenter wanted the Board to accept students' peer reviewed articles and research for academic credit. He also asked the Board to clarify transfer credit for Biology courses.

A commenter also wanted the Board to discuss transfer credit issues with Biology and Statistics.

A commenter noted support for computer-based testing and noted there was confusion among students on how it would be implemented.

A commenter provided an update on an effort by acupuncture groups to merge into one association. He noted the group has succeeded in incorporating and is looking to be operational by September 2018.

Two comments were made supporting Assembly Bill 3142 (the Board's sunset bill).

16. Executive Officer's Report (Bodea)

Executive Officer Benjamin Bodea (EO Bodea) gave his report to the Board.

(A) Staff Update:

EO Bodea reported the Board was in the process of hiring a staff services manager, and that the licensing technician position remains vacant and would be filled in the coming months.

(B) Budget Update:

EO Bodea reported the Board was currently about \$300,000 under budget but was looking at the bottom line. Vice President Chan noted the Board's pending structural imbalance and was concerned about budget reserves dwindling in the next two years. He wanted to see a fee increase rolled out soon. EO Bodea agreed and stated the Board would complete a fee study next year.

(C) Outreach Update:

EO Bodea reported he participated in Chinese Medicine Day on March 18, 2018 in San Francisco, and also in Acupuncture Day at the State Capital.

Public Comment: None.

17. Enforcement Report (Brothers)

Enforcement Coordinator Kristine Brothers (Brothers) gave the Enforcement report.

(A) Q1 17-18 Enforcement Report

She started with first quarter fiscal year 2017/2018, with 34 complaints received and 51 closed or referred to investigation. There were 50 investigations initiated, 139 pending at the close of the quarter, and 57 investigations closed, with an average process time

of 154 days. Vice President Chan noted the spike in unprofessional conduct during the quarter and wanted to know why. Brothers replied that the number captured all of the incoming applications for the exam. President Matecki asked that more information be given on the number of re-testers other Boards have.

(B) Q2 17-18 Enforcement Report

Brothers reviewed the second quarter of fiscal year 2017/2018. She reported 78 investigations were initiated and 149 were pending at the close of the quarter; 68 investigations were closed, which resulted in the average process time of 172 days.

(C) Q3 17-18 Enforcement Report

For third quarter fiscal year 2017/2018, she reported 45 complaints received and 43 investigations initiated, 134 pending, and 58 closed, and a process time in 240 days.

EO Bodea noted Enforcement staff was participating in the business modernization process which are affecting process times; Member Harabedian commented on the need for more enforcement staff to keep the process times down.

Public Comment:

A commenter wanted the Board to take action on dry needling, which he felt has taken on a greater urgency since physical therapists and chiropractors were performing with minimal training.

A commenter agreed with the first and was also concerned about athletic trainers performing dry needling.

A commenter stated dry needling was acupuncture, and a federal lawsuit was being pursued.

A commenter urged the Board to keep high standards.

18. Education Report (Herdt)

Education Coordinator Jay Herdt (Herdt) gave the Education Report.

(A) Status of Curriculum Reviews:

Herdt noted there were 34 approved training programs and 23 were in full compliance with two programs that have completed clinical corrective actions. Seven training programs have submitted clinical corrective actions and are pending staff review of their curriculum, and three new programs have received curriculum approval.

(B) Continuing Education and Audit Update:

Herdt reported that the Board has resumed continuing education (CE) audits starting where it left off in the 2015/2016 fiscal year audit process, with six months of CE audit notices sent out to date. He also highlighted that staff are selecting two months' worth of audits every month until the backlog was addressed.

The Board processed 3,196 applications for CE courses, and there were 548 CE providers.

There were 43 active acupuncture tutorial programs in process.

(C) Sunset Review Recommendations:

Herdts explained that Board staff have identified issues to be considered by the Board pertaining to changes and the impact of the language of Business and Profession Code (BPC) section 4927.5, resulting from the language in SB 1246. He noted confusion by approved training programs as to when they could begin training students in the clinic, and when they would be recognized as “approved educational and training programs” that are able to qualify students for the California Acupuncture Licensing Exam (CALE). He also highlighted the lack of statutory requirement of a site visit, upon initial accreditation, by Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). Herdt then reviewed ACAOM’s accreditation timeline.

Herdts highlighted an issue of accountability for schools in operating their clinics, and one option identified would allow the Board to put together the various approvals needed before a school could begin operation. He also identified several areas of regulation which needed to be updated, including Sections 1399.435, 1399.438, and 1399.439. An additional issue identified was a review of curriculum, which is required by statute to be completed within 30 days. However, the costs for doing so are borne by licensees, not applicants. This was also noted as a Sunset Review issue.

President Matecki assigned the issues to the Education Committee for further study.

Public Comment:

A commenter referred to the high number of CE providers and courses, and the gray area of live and online courses. His college has been providing courses since the 1970s and has seen the changes; he wanted the Board to look closer at the technology and the hands-on component of the training.

A commenter wanted an increase in the CE provider fee and hoped for a four-year Board sunset extension.

A commenter felt increasing provider fees would be a burden on schools, especially those which offer courses for doctorate level students and, also, commended the Board for requiring pre-accreditation for schools.

A commenter wondered how the Board could collect information on the programs and felt clinic supervisors should be protected.

Another commenter updated the board on a unification effort for acupuncture associations.

Vice President Chan wondered if online acupuncture courses had a safeguard to make sure students were paying attention to the course. EO Bodea replied this could be looked into by the Education Committee.

19. Examination Report (Stadley)

EO Bodea referred to the recent Spring 2018 exam statistics, noting they were broken down by school, first time versus re-testers and language. Discussion commenced on pass rates. Vice President Chan commented on the need for better preparation of student by acupuncture schools and wondered if there were some guidelines for a school to better identify the weaknesses the student does not understand. He wanted to see a limit on the amount of times an applicant can re-test. EO Bodea reported the Board has discussed a limit on re-testers of the exam, and that it may be an item for the Exam Committee to review. President Matecki agreed. Member Harabedian noted the low pass rates for attorneys and felt there was more of a need for applicants to be able to pass the exam, and to go through the process of the exam to weed out those who should not be treating patients. He felt the topic was a good conversation to have.

Exam Analyst Tammy Stadley (Stadley) reported on the Board's upcoming transition to Computer-Based Testing for the CALE. She noted there were questions about the change and that the Board would be placing more information on its website. Stadley explained that the exam itself was not changing and that applicants will still need to meet the same qualifications to be eligible for the exam. Applicants will now be able to take the exam at test sites throughout California; Stadley said she expected this new system to go live in October. EO Bodea added that the Board would no longer accept or reward conditional approvals for the exam, and that the Board would only accept applicants who have completed the required curriculum and all other requirements.

Public Comment:

A commenter wondered how the exam statistics would be published after the change.

A commenter asked the Board to reconsider a six-month wait period for a re-taker for the exam.

A commenter felt this was a significant step for the Board.

A commenter asked if the fees were going to change and if the Board would be having the test taken in one sitting, or as modules on different days.

A commenter agreed with reconsidering the six-month waiting period and asked about which transcripts to send.

A commenter asked about application timelines.

A commenter wanted to make sure California kept its high standards and a quality test.

20. Regulatory Update (Johnson)

Johnson provided an update on the following regulatory rulemaking packages currently under development by the Board. He noted that the four existing rulemaking packages were due to be reviewed by staff and Legal Counsel.

Johnson stated that recommendations will be made to the Board at a future public meeting regarding whether the rulemaking packages should be continued, rolled into another package, or abandoned.

(A) Title 16, CCR §1399.451(a) –

Hand Hygiene Requirements

(B) Title 16, CCR §1399.455 –

Advertising Guidelines: Display of License Number in Advertising

(C) Title 16, CCR §1399.469.4 –

Prohibited Sexual Acts

(D) Title 16, CCR §1399.482.2 –

Continuing Education Ethics Requirement

Public Comment: None.

21. Discussion and Possible Board Action on Current Legislation (Johnson)

Johnson reported on legislative bills of interest to the Board. He set out how positions on legislation are taken and how the Legislature would be notified of the positions.

(A) AB 767 (Quirk-Silva): Master Business License Act

Board staff recommended a watch position on the bill due to the uncertain nature of how it may affect the Board.

MOTION:

Member Harabedian motioned for the Board to take a watch position on AB 767.

President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

(B) AB 1659 (Low): Healing arts boards: inactive licenses

Johnson noted it had no opposition in the Legislature.

Board staff recommended a support position on AB 1659 as the bill was not controversial and gives the Board another tool for public protection.

MOTION:

President Matecki motioned for the Board to take a support position on AB 1659, and to direct the Executive Officer to inform the Legislature of the Board's position.

Member Harabedian seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

(C) AB 2138 (Chiu and Low): Licensing boards: denial of application: revocation of licensure: criminal conviction

Johnson described the overall purpose of AB 2138, which covers denial of application for licensure, revocation or suspension of licenses, and the role of criminal convictions in application for licensure. He reviewed some of the potential effects of the bill on Board operations, including restrictions on denying, revoking or suspending the license on the grounds an applicant has been convicted of a crime; narrowing the information on background checks available to the Board and increases in workload due to regulatory and practical effects on the Board.

Board staff recommended an oppose position due to the bill not being in line within the Board's mandate of public protection.

MOTION:

Member Harabedian motioned for the Board to take an oppose position on AB 2138, and to direct the Executive Officer to inform the Legislature of the Board's position.

President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

(D) AB 3142 (Committee on Business and Professions): Acupuncture Licensure Act: Acupuncture Board

This bill is the Board's sunset bill and extends operations of the Board until 2021. Johnson noted it was a two-year sunset extension, not a four-year sunset extension as originally proposed.

Board staff recommended a support position.

Public Comment:

A commenter asked what needed to be done to receive a four-year extension.

MOTION:

Vice President Chan motioned for the Board to take a support position on AB 3142, and to direct the Executive Officer to inform the Legislature of the Board's position.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

(E) SB 762 (Hernandez): Healing arts licensee: license activation fee: waiver

Johnson reported this bill was amended after the agenda publication date and is no longer of interest to the Board.

(F) SB 1448 (Hill): Healing arts licensees: probation status: disclosure

Johnson reported that SB 1448 would require licensees to notify patients in writing of their probationary status.

Board staff recommended a watch position due to the uncertain impact of the proposed bill on licensees

MOTION:

Vice President Chan motioned for the Board to watch SB 1448 and for the Executive Officer to watch bill developments.

Member Osorio seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

Public Comment: None.

Lunch break was taken at 12:28 p.m. Board meeting resumed at 1:16 p.m.

22. Discussion and Possible Board Action on 2018-2022 Acupuncture Board Strategic Plan (Bodea)

EO Bodea provided background on the 2018-2022 Acupuncture Board Strategic Plan (Strategic Plan), which will guide Board operations from 2018-2022. He noted that two public meetings were held on the Strategic Plan, and it comprises input from Board members, staff, a stakeholder survey, and the public. He reviewed the document page by page and clarified it was considered a five-year plan. Member Harabedian offered a change to a footnote from 2021 to 2022. On Objective 1.3, Vice President Chan added the word 'California' for clarity; Board agrees.

Public Comment:

A commenter asked for clarity on the potential requirement for TOEFL score. EO Bodea suggested a change listing TOEFL be required for people not taking the exam in English, but the terminology was left as is.

Board discussion resumed with Objective 5.2 regarding informing the public via newsletter as to what the newsletter would contain and how it would be formatted. The objective was reworded to 'develop and release a digital newsletter to inform, update, and educate the public on the acupuncture profession'. Objective 6.2 was changed to 'IT solution'.

Public Comment:

A commenter asked how the newsletter would be distributed. EO Bodea replied it would be posted on the website or sent via email when developed.

Board discussion resumed. A section referring to a message from the Board President and EO on page four of the draft Strategic Plan was removed since there was no material for that section. No further changes were proposed.

Public Comment:

No further public comment was made on the item.

MOTION:

Member Osorio motioned to approve the Strategic Plan, with the changes made here today, and to delegate to the EO the authority to make non-substantive changes.

Vice President Chan seconded the motion.

Vote: Matecki – Yes; Chan – Yes; Harabedian – Yes; Osorio – Yes.

4-0 motion passes.

23. Discussion and Possible Board Action on Proposed Acupuncture Board 2018 Update to Disciplinary Guidelines and Implementation of Uniform Standards Related to Substance-Abusing Licensees (Brothers and Johnson)

Johnson opened on the item, which originally was to include changes to the text of the regulation in California Code of Regulations Section 1399.469, changes to the Disciplinary Guidelines (Guidelines) document and changes to the separate Uniform Standards (Standards) document.

(A) Proposed text to amend the title of Division 13.7 of Title 16 of the California Code of Regulations; create new Article 6.1 of Chapter 13.7 of Title 16 of the California Code of Regulations; create new Article 6.2 of Chapter 13.7 of Title 16 of the California Code of Regulations; and amend Section 1399.469 of Article 6.2 of Chapter 13.7 of Title 16 of the California Code of Regulations

Johnson explained the Board would only be reviewing and making changes to the Guidelines at this meeting and hoped to bring back the other two items at a future Board meeting as they were not finalized yet.

(B) Acupuncture Board Disciplinary Guidelines (Rev. June 2018)

Johnson noted the Board has been working on revising the Disciplinary Guidelines (Guidelines) for many years and described how the changes between different versions were notated within the Board packet. Changes already approved by the Board at the February 20, 2017 meeting are listed as version 1 (V1) and proposed changes for the current meeting are listed as version 2 (V2) in the Board packet.

Brothers began review of additions as part of V2 of the Guidelines. The introduction on page four and five added a reference to the Uniform Standards, and on page six under 'general considerations' added items eight and nine to provide for the Board's review of respondent's acceptance of responsibility of their actions and respondent's honesty during the proceedings. On page seven, another reference to the Uniform Standards

was added; on page eight, optional condition two, a reference to the most current DSM manual was added and an additional term as a footnote to the condition was added.

Member Harabedian asked about the difference between the psychotherapy and psychiatric evaluation terms; Brothers responded that either can be a condition, and a psychiatric evaluation can be used to recommend more ongoing psychotherapy. Discussion commenced on whom can be a “Board approved mental health professional” and how it should be defined in the Guidelines. Brothers pointed out the Board already had a list of Board-approved providers; EO Bodea proposed the addition of “or psychiatrist” to the conditions. Board agrees. Brothers referred to optional condition seven - practice restrictions – which was rewritten to be less limiting. She also suggested adding ‘Respondent shall notify all present and future employers of the restrictions imposed on their practice while on probation’ into the condition for more specificity; Board agreed.

Brothers referred to term and optional condition ten – alcohol and drug abuse treatment program; she noted that V2 added that the Board would accept a recovery program taken under court order within the last three years. Member Harabedian asked about accepting the recovery program and felt there should be a practical application to it; he felt three years was too long and suggested one year. Board agrees. Legal Counsel Bojack recommended that the footnote added to the condition, which refers to the Standards being used ‘in any probationary order’, be changed to ‘in lieu of any probationary order’.

Brothers suggested the change to also affect conditions 11 and 12; Board agreed. She then noted that modifications to optional condition 11 which removed 12-step meetings as part of the treatment program and made them their own standalone term. In optional condition 12, she noted the removal of ‘marijuana’ due to the legalization for medicinal purposes. Member Harabedian referred back to condition four and wanted to add ‘California licensed’ to denote who can be a practice monitor in California. ‘California’ was also added to ‘licensed acupuncturist’ under optional condition 15.

Legal Counsel Bojack suggested changing the order of conditions, listing standard conditions first and then optional conditions. These alterations would also affect wording of several sections. Board agreed with these changes. Brothers noted modifications in V2 to standard condition 16, obey all laws and standard condition 17, quarterly reports. She then noted changes to standard condition 18, which was renamed ‘monitoring program’ and the respondents shall not have contact with any witnesses. Standard condition 19, which was changed to allow the Board to request interviews with or without prior notice and requiring payment for cost recovery during a period of tolling as altered as part of standard condition 21. EO Bodea offered a change to condition 21 altering conditions for tolling which must not exceed 30 days outside the state; Board agreed.

President Matecki raised the issue of probationers teaching as part of CE courses - it is already prohibited in regulations, but it should be added to the Guidelines for clarity; Board agreed. It was also added to standard condition 22. A minor wording change was made to standard condition 24.

Legal Counsel Bojack proposed two new separate conditions for notification to patients and notification to employers. Member Harabedian felt both could be optional conditions and it was a discussion worth having. Brothers agreed but raised the concern about notification to employers possibly driving probationers out of business. She also noted consumer safety was number one with this condition. Legal Counsel Bojack then raised a 'no solo practice' condition, which used to be part of the Guidelines, but is not included in the current version. Board requested that staff research language and bring back at a future meeting. On page 23, the section was renamed 'Penalty Recommendations'. Legal Counsel Bojack recommended listing BPC section 480 and 490 on page 24, recommended action by violations, since both are commonly used; Brothers pointed out the Board already used BPC Section 4955(b) for discipline instead of 490. Board requested that staff research adding language and bring back at a future meeting.

Member Osorio asked about unprofessional conduct and the treatment of minors and wondered if a form could be incorporated; Legal Counsel Bojack replied such a form would be more of an existing law, rather than a disciplinary condition. EO Bodea noted Board staff would look into what governs the treatment of minors. . On page 28, Brothers pointed out a global change in the Guidelines that added listing of a special condition relating to substance abusing licensees to applicable violations. An additional global change revised the numbering of conditions to optional and standard conditions. Legal Counsel Bojack noted that BPC sections 4935 and 4936 were not included in the Guidelines; Brothers replied that Section 4935 is a criminal misdemeanor, which she believed the Board would not take action on. Section 4936 would often be cited back to Section 4955, which was already listed. She felt it would not be used as a sole violation, but it could be added in if the Board felt it was needed. Board agreed.

Public Comment:

A commenter asked the Board to provide more detail for misleading false advertising as an M.D.

A second commenter noted the differences in doctorate titles.

Board discussion resumed. On page 32, Brothers noted a reference added in V2 to BPC section 480; on page 39 a reference is added to Government Code (GC) section 11520. On page 40, the language was rewritten stating the Board is not interested in retrying facts of a case. On page 41, another refence to GC section 11520 was added. EO Bodea concluded the review by informing the Board that the changes made here today would be incorporated and would be brought back at the next meeting with all changes made in single strikethrough with highlights to denote all the changes.

///

Public Comment:

A commenter raised the option of including qualified billing monitors who specialize not just in acupuncture.

Board agreed and requested staff research the option.

(C) California Acupuncture Board Uniform Standards Related to Substance-Abusing Licensees (June 2018)

Johnson explained the Board would only be reviewing and making changes to the Guidelines at this meeting and hoped to bring back the other two items at a future Board meeting as they were not finalized yet.

24. Future Agenda Items (Dr. Matecki)

Board members did not have any future agenda items.

Public Comment:

A commenter wanted further disclosure on the use of the title 'Dr.' on the website.

A commenter wanted further review on curriculum requirements and clinic hour requirements.

A commenter asked the Board to disclose investigations into schools to allow students to be aware.

A commenter asked the Board to review the issue of CE provider quality.

25. Adjournment.

Meeting was adjourned at 3:53 p.m.

#12 (B)

2019 Meeting Calendar

2019 Calendar

January

Su	Mo	Tu	We	Th	Fr	Sa
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

February

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	1	2

March

Su	Mo	Tu	We	Th	Fr	Sa
24	25	26	27	28	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	1	2	3	4	5	6

April

Su	Mo	Tu	We	Th	Fr	Sa
31	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1	2	3	4

May

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1

June

Su	Mo	Tu	We	Th	Fr	Sa
26	27	28	29	30	31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	1	2	3	4	5	6

July

Su	Mo	Tu	We	Th	Fr	Sa
30	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31	1	2	3

August

Su	Mo	Tu	We	Th	Fr	Sa
28	29	30	31	1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	1	2	3	4	5

October

Su	Mo	Tu	We	Th	Fr	Sa
29	30	1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31	1	2

November

Su	Mo	Tu	We	Th	Fr	Sa
27	28	29	30	31	1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2	3	4

#14 (B)

Budget Update

CALIFORNIA ACUPUNCTURE BOARD - 0108
BUDGET REPORT
FY 2018-19 EXPENDITURE PROJECTION
FISCAL MONTH 2

OBJECT DESCRIPTION	FY 2017-18	FY 2018-19				
	ACTUAL EXPENDITURES (FM12)	BUDGET STONE 2018-19	CURRENT YEAR EXPENDITURES 8/31/2018	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
PERSONNEL SERVICES						
Salary & Wages (Staff)	518,774	631,000	92,106	15%	552,636	78,364
Statutory Exempt (EO)	87,168	80,000	15,110	19%	90,660	(10,660)
Temp Help Reg (Seasonals)	66,880	19,000	7,414	39%	44,484	(25,484)
Board Member Per Diem	3,600	7,000	100	0%	7,000	0
Overtime		5,000		0%	0	5,000
Staff Benefits	323,932	418,000	56,762	14%	340,572	77,428
TOTALS, PERSONNEL SVC	1,000,354	1,160,000	171,492	15%	1,035,352	124,648
OPERATING EXPENSE AND EQUIPMENT						
General Expense	13,972	59,000	5,053	9%	30,318	28,682
Fingerprint Reports		20,000		0%	0	20,000
Minor Equipment		15,000		0%	15,000	0
Printing	12,345	18,000		0%	18,000	0
Communication	2,723	18,000	413	2%	2,478	15,522
Postage	23,397	28,000		0%	28,000	0
Insurance	3,243					
Travel In State	17,188	34,000		0%	34,000	0
Travel, Out-of-State					4,000	
Training	420	4,000		N/A	1,000	3,000
Facilities Operations	119,832	65,000	19,723	30%	118,338	(53,338)
C & P Services - Interdept.	43	9,000		0%	0	9,000
C & P Services - External		4,000		0%	0	4,000
DEPARTMENTAL SERVICES:						
OIS Pro Rata	169,000	147,000	24,500	17%	147,000	0
Administration Pro Rata	159,000	179,000	29,833	17%	179,000	0
DOI - ISU Pro Rata	4,000	9,000	1,500	17%	9,000	0
Communications Division	13,000	12,000	2,000	17%	12,000	0
PPRD Pro Rata	83,000	74,000	12,333	17%	74,000	0
INTERAGENCY SERVICES:						
IA w/ OPES	298,828	334,000		0%	334,000	0
Consolidated Data Center		4,000	10	0%	60	3,940
DP Maintenance & Supply		5,000	36	1%	216	4,784
Exam Site Rental						
C/P Svcs-External Expert Administrative	386,367	287,000	18,179	6%	386,367	(99,367)
C/P Svcs-External Expert Examiners		84,000		0%	0	84,000
C/P Svcs-External Subject Matter	21,566			0%	21,566	0
ENFORCEMENT:						
Attorney General	117,691	386,000	12,710	3%	152,520	233,480
Office Admin. Hearings	14,745	107,000		0%	29,490	77,510
Court Reporters	400	11,000		0%	1,000	0
DOI - Investigations	414,000	269,000	44,833	17%	269,000	0
MISC:						
Major Equipment	22,804	6,000	1,050	18%	6,000	0
Other (Vehicle Operations)		3,000		0%	0	3,000
TOTALS, OE&E	1,897,564	2,191,000	172,174	8%	1,872,353	334,213
TOTAL EXPENSE	2,897,918	3,351,000	343,666	23%	2,907,705	458,861
Sched. Reimb. - External/Private		(1,000)			(1,000)	
Sched. Reimb. - Fingerprints	(294)	(22,000)			(22,000)	
Sched. Reimb. - Other	(470)					
Sched Interdepartmental						
Unsched. Reimb. - Other	(88,022)					
NET APPROPRIATION	2,809,132	3,328,000	343,666	10%	2,884,705	458,861
SURPLUS/(DEFICIT):						13.8%

0108 - Acupuncture Analysis of Fund Condition

(Dollars in Thousands)

Prepared 10/9/2018

2018-19 Budget Act with 2017-18 FM 12 Actuals		FM12 ACTUAL 2017-18	CY 2018-19	BY 2019-20	BY+1 2020-21	BY+2 2021-22
BEGINNING BALANCE		\$ 4,858	\$ 4,206	\$ 3,451	\$ 3,667	\$ 2,775
Prior Year Adjustment		\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance		\$ 4,858	\$ 4,206	\$ 3,451	\$ 3,667	\$ 2,775
REVENUES AND TRANSFERS						
Revenues:						
4129200	Other regulatory fees	\$ 53	\$ 66	\$ 66	\$ 66	\$ 66
4129400	Other regulatory licenses and permits	\$ 397	\$ 734	\$ 734	\$ 734	\$ 734
4127400	Renewal fees	\$ 1,891	\$ 2,048	\$ 2,048	\$ 2,048	\$ 2,048
4121200	Delinquent fees	\$ 14	\$ 15	\$ 15	\$ 15	\$ 15
4163000	Income from surplus money investments	\$ 44	\$ 10	\$ 8	\$ 8	\$ 5
4163000	Interest Income From Interfund Loans	\$ -	\$ -	\$ 40	\$ -	\$ -
4171400	Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2	\$ 2	\$ 2
Totals, Revenues		\$ 2,401	\$ 2,875	\$ 2,913	\$ 2,873	\$ 2,870
Transfers from Other Funds						
Proposed GF 2011-12 Loan Repayment, 1110-011-0108 Budget Act		\$ -	\$ -	\$ 1,000	\$ -	\$ -
Totals, Revenues and Transfers		\$ 2,401	\$ 2,875	\$ 3,913	\$ 2,873	\$ 2,870
Totals, Resources		\$ 7,259	\$ 7,081	\$ 7,364	\$ 6,540	\$ 5,645
EXPENDITURES						
Disbursements:						
1111 - Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)		\$ 2,809	\$ 3,351	\$ 3,418	\$ 3,486	\$ 3,556
8880 - Financial Information System for California		\$ 6	\$ -	\$ -	\$ -	\$ -
9892 - Supplemental Pension Payment		\$ -	\$ 20	\$ 20	\$ 20	\$ 20
9900 - Statewide General Administrative Expenditures (ProRata)		\$ 238	\$ 259	\$ 259	\$ 259	\$ 259
Total Disbursements		\$ 3,053	\$ 3,630	\$ 3,697	\$ 3,765	\$ 3,835
FUND BALANCE						
Reserve for economic uncertainties		\$ 4,206	\$ 3,451	\$ 3,667	\$ 2,775	\$ 1,809
Months in Reserve		13.9	11.2	11.7	8.8	5.7

#15

Enforcement Report

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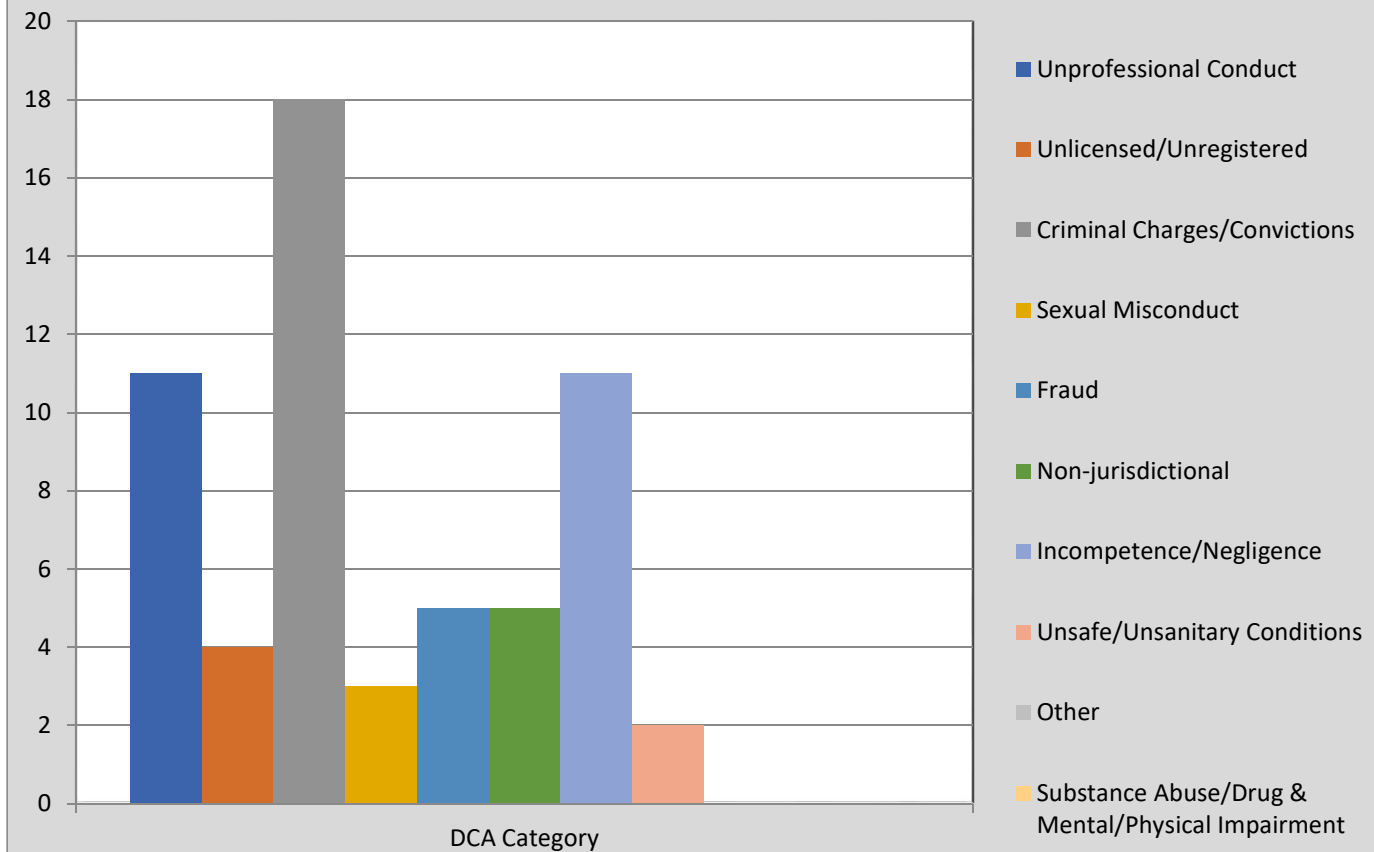
DATE	October 26, 2018
TO	Board Members
FROM	Kristine Brothers, Enforcement Coordinator
SUBJECT	Enforcement Update for Quarter (Q4) FY 2017/2018: April 1, 2018 to June 30, 2018

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category	Received	Closed/Referred to Investigation
Unprofessional Conduct	11	12
Unlicensed/Unregistered	4	4
Criminal Charges/Convictions*	18	17
Sexual Misconduct	3	2
Fraud	5	4
Non-jurisdictional	5	5
Incompetence/Negligence	11	13
Unsafe/Unsanitary Conditions	2	1
Other	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	0	0
Total	59	58
Average Intake Time: 6 days		

*Of the 18 Criminal Charges/Convictions, 7 were received on Applicants and 11 were received on Licensees.

Complaint Volume from Q4 FY 17/18



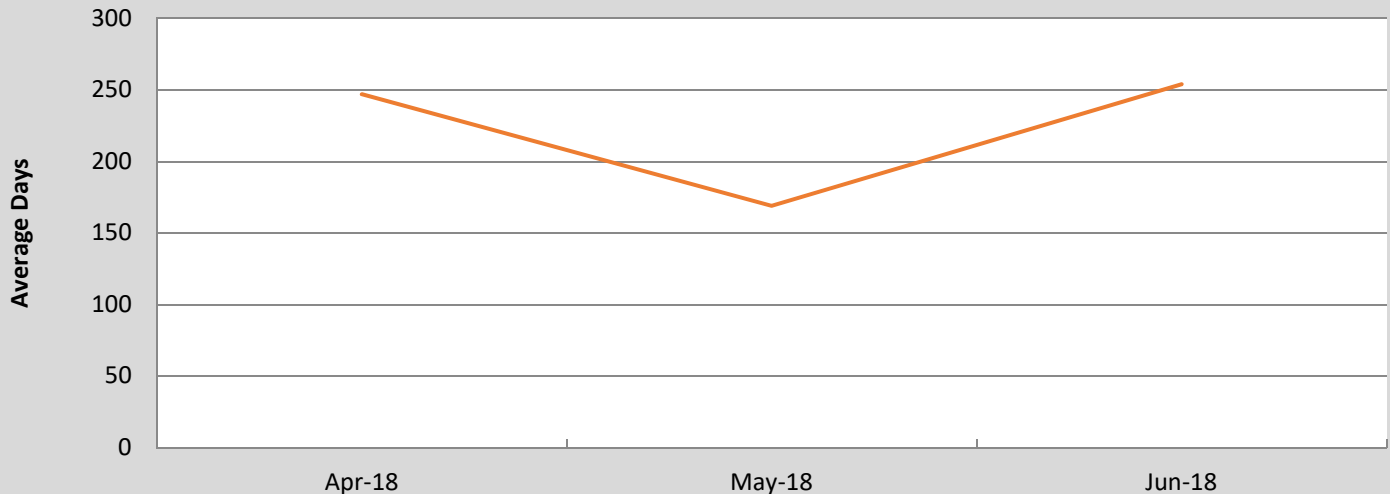
The bar graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

INVESTIGATIONS

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

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	12	25	8
Unlicensed/Unregistered	4	21	9
Criminal Charges/Convictions (includes pre-licensure)	17	27	26
Sexual Misconduct	2	7	3
Fraud	4	20	7
Non-jurisdictional	5	1	4
Incompetence/Negligence	13	31	10
Unsafe/Unsanitary Conditions	1	3	4
Other	0	1	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	0	0	0
Total	58	136	72
Average days			229

Case Aging for Closed Investigations



	Apr-18	May-18	Jun-18
Average Days	247	169	254
# of Cases	23	19	30

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

DISCIPLINARY ACTIONS

Requested	4
Pending	16
Accusation/SOI Filed	5
Decisions	2
• Revoked	1
• Voluntary Surrender	1
• Probation	0
• License Denied	0
• Public Reprimand	0
Avg. Overall Process Time	261 days*
Citations Issued	7
Open Probation Cases	34

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

QUARTER 4 FY 17/18 TREND ANALYSIS

Complaint Trends

This quarter's data is better understood when we use last year's FY 16/17 quarter 4 (Q4) data as a point of reference. In comparing the same quarter from last year to this year, the Board can assess the performance and progression of the Board's Enforcement program.

This quarter saw a decrease in complaints compared to this time last year from 96 to 59. This represents a 39% decrease in volume. The most notable changes in the types of complaints received were found in unprofessional conduct complaints, which significantly decreased from 46 to 11. There was also a major change in convictions received, which went from 27 last year to 18 this year. The comparison also shows an increase in incompetence/negligence complaints from last year to this year. Last year only six complaints were received, whereas this year 11 incompetence/negligence complaints were received. The other complaint types only had minor changes from last year's Q4 to this year's Q4.

Investigation Trends

Along with the lower volume in complaints received this year, there was also a decrease in the volume of investigations initiated this year versus last year from 76 to 58 – a 24% decrease. The total investigations closed have also dropped, showing a 33% decrease. Last year 107 were closed and 72 were closed this year in Q4. The statistics also show an increase in average investigation time for these closed cases. Last year the average investigation time for closed investigations was 135 days whereas this year it went up to 229 days. The number of days it took to complete an investigation has increased by 70%. The trend is showing that less cases are being closed out, and those that are getting closed out include a handful of older cases with increased age.

Starting in January 2018, staff began meeting with the Department's Organizational Change Management (OCM) team to work on the Business Modernization Plan to map out the Board's business processes in preparation for a new IT system. Since this time, staff has been split between developing the Board's business process maps with OCM and carry out its regular duties and caseload. The impact to the Board's enforcement statistics is now showing up in Q4. Although the average investigation time is not directly affected by the business modernization project this early on, there will likely be some impact to the Board's case aging in future quarters. On the other hand, the time dedicated to developing the maps is directly affecting the volume of cases staff can work on. The business mapping was finished in mid-October and staff has returned their attention to their regular duties.

Formal Discipline Trends

This quarter shows a 43% decrease in complaints referred to the Office of the Attorney General for discipline, going from seven complaints referred last Q4 to four complaints referred this year's Q4. The other noteworthy change in discipline statistics is the average overall process time for cases that were disciplined. Last year the average overall process time was 596 days and decreased significantly by 56% to 261 days this year. The Department's performance measure target is 540 days for complaint receipt to the close of discipline so the Board is well under its target and performing very well on this discipline measure this year.



**CALIFORNIA
ACUPUNCTURE
BOARD**

STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS – BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY

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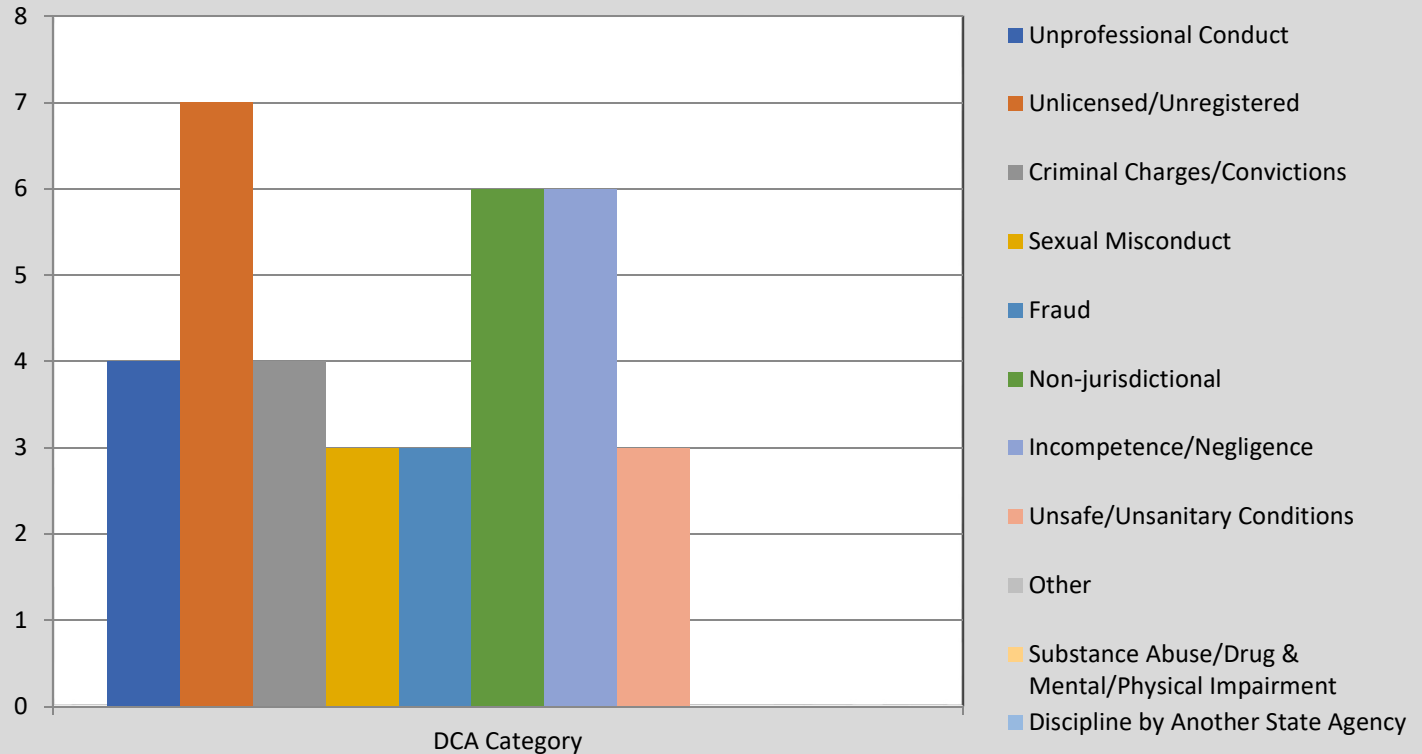
DATE	October 26, 2018
TO	Board Members
FROM	Kristine Brothers, Enforcement Coordinator
SUBJECT	Enforcement Update for Quarter (Q1) FY 2018/2019: July 1, 2018 to September 30, 2018

COMPLAINTS/CONVICTIONS & ARRESTS

DCA Category	Received	Closed/Referred to Investigation
Unprofessional Conduct	4	4
Unlicensed/Unregistered	7	7
Criminal Charges/Convictions*	4	5
Sexual Misconduct	3	3
Fraud	3	3
Non-jurisdictional	6	6
Incompetence/Negligence	6	6
Unsafe/Unsanitary Conditions	3	3
Other	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	0	0
Total	36	37
Average Intake Time: 7 days		

*Of the 4 Criminal Charges/Convictions, 1 was received on an Applicant and 3 were received on Licensees.

Complaint Volume from Q1 FY 18/19



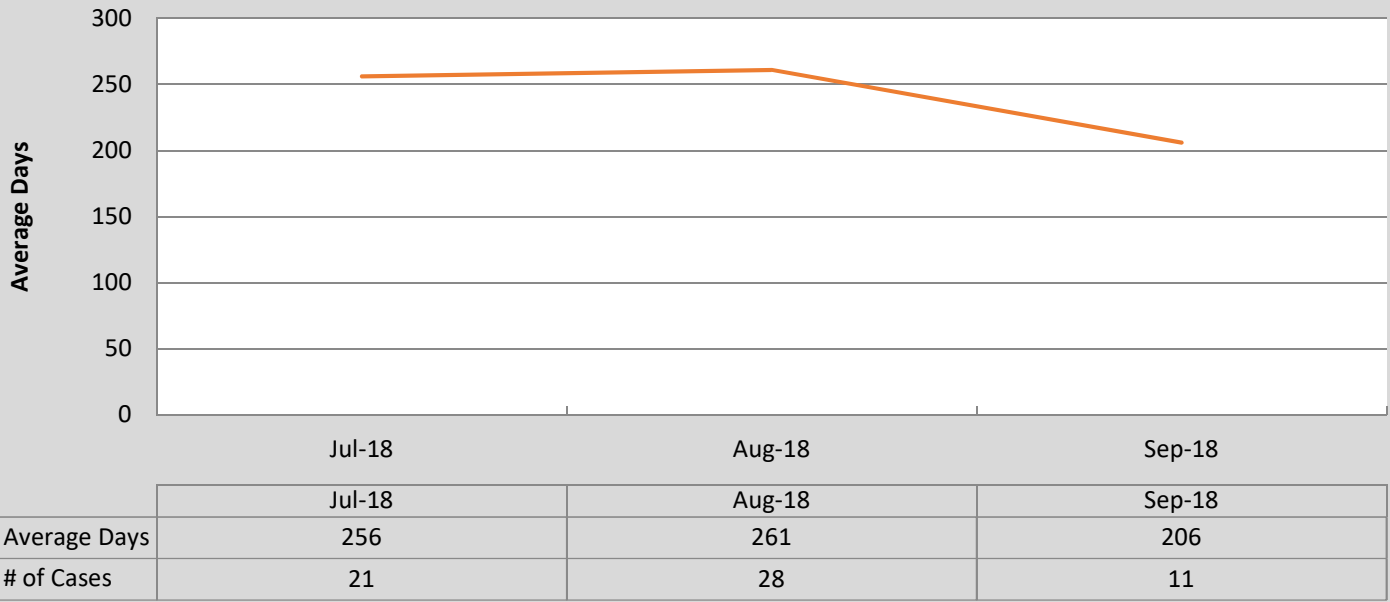
The graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

INVESTIGATIONS

Includes formal investigations conducted by DOI and desk investigations conducted by staff.

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	4	19	10
Unlicensed/Unregistered	7	22	6
Criminal Charges/Convictions (includes pre-licensure)	5	10	22
Sexual Misconduct	3	9	1
Fraud	3	17	6
Non-jurisdictional	6	2	5
Incompetence/Negligence	6	29	8
Unsafe/Unsanitary Conditions	3	5	1
Other	0	0	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	0	0	0
Total	37	113	60
Average days			249

Case Aging for Closed Investigations



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

DISCIPLINARY ACTIONS

Requested	9
Pending	18
Accusation/SOI Filed	4
Decisions	3
• Revoked	0
• Voluntary Surrender	2
• Probation	1
• License Denied	0
• Public Reprimand	0
Avg. Overall Process Time	412 days*
Citations Issued	6
Open Probation Cases	36

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

QUARTER 1 FY 18/19 TREND ANALYSIS

Complaint Trends

This quarter's data is better understood when we use last year's FY 17/18 quarter 1 (Q1) data as a point of reference. In comparing the same quarter from last year to this year, the Board can assess the performance and progression of the Board's Enforcement program.

The complaint volume in this year's Q1 is comparable to last year's Q1; last year the Board received 34 complaints and this year the Board received 36 complaints. Since last year, the Board has seen a downturn in complaints received in Q1. The only notable change in the types of complaints received was found in unprofessional conduct complaints, which decreased from ten to four. The other complaint types only had slight differences from last year's Q1 to this year's Q1.

Investigation Trends

This quarter there was a break from working with OCM on the business modernization project, therefore, the investigation statistics look more favorable than the prior quarter, Q4 of fiscal year 17/18. Additionally, when compared with last year's Q1, there were some more favorable trends as well. The total investigations pending at the close of Q1 this year is 12% lower than last year. Last year there were 150 investigations pending whereas this year there were 113 investigations pending. The total investigations closed increased slightly by 9% with 55 investigations closed last year to 60 investigations closed this year. Staff was able to turn its attention to closing more cases this quarter. In turn, there was a 72% increase in the average investigation time going from 145 days last year to 249 days this year. This is a reflection of staff being able to focus its attention on some aging cases that needed to be closed without discipline, closed with citations, or closed and transmitted to the Attorney General's Office for discipline.

Formal Discipline Trends

This quarter shows a significant 800% increase in complaints referred to the Office of the Attorney General for discipline, going from one complaint referred last Q4 to nine complaints referred this year's Q4. Similarly, there has been an increase in Accusations and Statement of Issues filed this year, going from only one filed last year to four filed this year. There was also an increase in the number of cases pending at the Attorney General's Office. There were 14 cases pending last year whereas this year there were 18 pending cases, which is a 29% increase. The increased Pending Cases is a direct result of the higher number of complaints referred to the Attorney General's Office this year. The rest of the discipline statistics do not show any significant trends or changes to highlight. The average overall process time for decisions is fairly comparable to last year's, with 482 days from complaint to discipline to this year's 412 days. Consistently in Q1, the Board has been meeting its performance measure target in this area.

#16

Education Report

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DATE	October 26, 2018
TO	Board Members
FROM	Jay Herdt – Education Coordinator
SUBJECT	Education Staff Report

Acupuncture Training Programs:

There are currently 37 approved acupuncture training programs as defined by Business and Professions Code section (BPC§) 4927.5(a).

Status of Curriculum Reviews - Curriculum Compliance Status as of FY 17- 18:

25 programs are in full compliance:

- Acupuncture and Integrative Medicine College, Berkeley, CA (MAIM, DAIM)
- Alhambra Medical University, Alhambra, CA
- American College of Traditional Chinese Medicine, San Francisco, CA
- Atlantic Institute of Oriental Medicine, Ft. Lauderdale, FL
- College of Eastern Medicine at Southern California University of Health Sciences (MAOM and DACM), Whittier, CA
- Dongguk University, Los Angeles, CA
- Emperor's College of Traditional Chinese Medicine, Santa Monica, CA
- Five Branches University, Santa Cruz, CA
- Five Branches University, San Jose, CA
- Golden State University, Downey, CA
- Institute of Clinical Acupuncture and Oriental Medicine, Honolulu HI
- Kingston University, Norwalk, CA
- Maryland University of Integrative Health, Laurel, MA
- Nine Star University of Health Sciences, Sunnyvale, CA
- Oregon College of Oriental Medicine, Portland, OR
- Pacific College of Oriental Medicine, Chicago, IL
- Pacific College of Oriental Medicine, New York, NY
- Pacific College of Oriental Medicine, San Diego, CA
- Phoenix Institute of Herbal Medicine and Acupuncture, Phoenix, AZ
- South Baylo University, Anaheim, CA
- Southern California University, School of Oriental Medicine and Acupuncture, Los Angeles, CA

- University of East West Medicine, Sunnyvale, CA
- University of Herbal Medicine
- University of South Los Angeles, Gardena, CA
- Yo San University, Los Angeles, Yuan University, Compton, CA

The Academy of Chinese Culture and Health Sciences, in Oakland, CA, has completed clinical corrective actions and has had their curriculum reviewed by staff. This program is now in the process of submitting corrective actions to address the issues of noncompliance identified by staff.

The remaining seven (7) training programs in compliance review have submitted curriculum and clinical corrective actions to the Acupuncture Board (Board) and are pending staff review of their curriculum:

- Austin Oriental Medical College Austin, TX
- American College of Traditional Chinese Medicine, Houston TX
- Bastyr University, Seattle WA
- National University for Natural Medicine
- New England School of Acupuncture, Worcester MA
- Southwest Acupuncture College Santa Fe, NM and Boulder, CO

There are currently three (3) doctoral training programs that have met the requirements of an approved education and training program:

- Acupuncture and Integrative Medicine College, Berkeley, CA - DAIM
- Southern California University of Health Sciences, Whittier, CA - DACM
- University of Bridgeport Acupuncture Institute, Bridgeport CT – DTCM

No training programs have lost Board approval status since the last report.

New Applications for Board Approval of Curriculum:

At present, the Board has completed a total of five (5) Applications for Board Approval of Curriculum within the mandated 30-day statutory reporting requirement during the Q1 FY18/19. This includes training programs that have applied for curriculum changes that have resulted from corrective actions that were implemented after January 1, 2017 using the Application for Board Approval of Curriculum as the final requirement of compliance. Programs have averaged 3 application submissions to reach full compliance.

One (1) new program has received curriculum approval after demonstrating full compliance with the Board's requirements:

Whitewater Institute of CA, Cupertino CA

- Whitewater Institute currently does not meet the definition of an approved education and training program as defined by BPC §4927.5:
 - BPC §4927.5 (a)(2) Approval to operate from the Bureau for Private Postsecondary Education (BPPE)

- BPC §4927.5 (a)(3) Accreditation status from the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM)

To be recognized as an approved training program, an acupuncture training program must maintain the three requirements described by BPC §4927.5. The consequence of the loss of any of these requirements is the inability of the programs to qualify applicants for the California Acupuncture Licensing Exam (CALE).

Collaboration with the Bureau of Private Postsecondary Education and Accreditation Commission for Acupuncture and Oriental Medicine

As required by Senate Bill (SB) 1246 and the May 24, 2017 implementation of the California Code of Regulations (CCR) §1399.434, the Board now focuses on Applications for Board Approval of Curriculum which includes monitoring of the BPC §4927.5 requirements. This is accomplished by effective communications with both the Bureau of Post-Secondary Private Education (BPPE) and the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

The Board, ACAOM, BPPE, and the Division of Investigation (DOI), have held joint meetings in the consideration of both, non-compliant programs, and, complaint investigations. This effort has resulted in improved understanding of each other's roles in this process, a clearer approach to triaging training program complaints, and enforcement action-planning based on each agency's varied authority and jurisdictions. In working collaboratively, all agencies have improved compliance in the oversight of educational qualifications and the clinical practice of acupuncture. Board staff, ACAOM, BPPE, and DOI have all shown proactive behavior in reaching out to each other, as well as assisting each other when necessary.

Continuing Education (CE) and Audit Update:

The Continuing Education Unit has resumed the FY 15/16 CE audit process where it last left off beginning with the month of July, FY 15-16. To date; 12 months of CE Audit letters have been processed, with July 31, 2016 as the final month for FY 2015/2016. Board staff are randomly selecting 10% of the renewing population of licensees every month. In the interest of managing workload, Board staff are selecting two months' worth of Auditees for every month moving forward until the back log is addressed. Once current, the CE audit process will be conducted monthly.

- CE Course applications processed Q1 FY18-19 (July 1, 2018- Sept 30, 2019): 831
- Number of CE Providers with current and valid approval status: 547

Tutorial Program Update:

- Currently there are 46 active tutorials in progress.
- Tutorial training statistics for Q1 FY 18-19:
 - Three (3) programs completed
 - Five (5) new program approvals
 - Two (2) programs terminated

#18

NCCAOM Update

NCCAOM Activities Report:
A Presentation to the California
Acupuncture Board Meeting

October 26, 2018



*Public Protection Through
Quality Credentials*



Prepared by Dr. Kory Ward-Cook
CEO NCCAOM

Introduction

This report serves as an update to the California Acupuncture Board (CAB) on activities of the NCCAOM®, as requested, to include governance, certification policy changes, examination development and administration activities and as well as advocacy and public education campaign efforts. This update includes activities affecting applicants, candidates for certification and licensure, and NCCAOM Diplomates. The 2019 Exam Administration Schedule for all NCCAOM exams is also provided.

The [NCCAOM Mission Statement](#) is to assure the safety and well-being of the public and advance the professional practice of acupuncture and Oriental medicine by establishing and promoting national evidence-based standards of competence and credentialing.

NCCAOM Governance

The NCCAOM Board of Commissioners (BOC) appointed for 2018 and 2019 are:

- Afua Bromley, MSOM, Dipl. Ac. (NCCAOM)® - Chair
- Zonglan Xu, MD(China), Dipl. O.M. (NCCAOM)® - Vice Chair
- Steve Kazmierczak, Ph.D., DABCC – Treasurer – **Public Member**
- Carl Jew, M.A., A.B. (NCCAOM)® - Secretary – **Public Member**
- Daniel Jiao, DAOM, Dipl. OM (NCCAOM)® LAc.
- Eugene London, DAOM, Dipl. Ac. (NCCAOM)® LAc.
- Iman Majd, MD, MS, EAMP, Dip. ABFM, ABoIM, Dipl. Ac. (NCCAOM)®
- Matthew Stanley - **Public Member**
- Janet Zand, OMD, Dipl. Ac., CH, OM (NCCAOM)® LAc.
- Kory Ward-Cook, Ph.D., CAE - CEO

Bios and photos of all current NCCAOM Board of Commissioners members can be found on the NCCAOM website: [NCCAOM Governance: NCCAOM Board of Commissioners](#).

NCCAOM Job Analysis & New Examination Blueprints in 2020

The updated exam blueprints for Foundations of Oriental Medicine, Biomedicine, Acupuncture with Point Location, and Chinese Herbology are now accessible from the [Examination Preparation page](#)

[on the NCCAOM website](#). All NCCAOM exams administered beginning January 1, 2020, will adhere to the new blueprints, based on the outcomes of the [2017 JA Analysis Survey](#).

The 2018 Expanded Content Outlines, published in English, Chinese and Korean can be accessed via our website and will still be in effect for 2019. All English exams will be offered as year-round adaptive tests; the Chinese and Korean exams will be a fixed, length linear exams equated to the adaptive exams and will also be still available to candidates taking an exams into 2019. To help avoid confusion, the [2018 and 2019](#) exam blue prints are accessible from a different webpage than the [2020 exam blueprints](#).

Also available with the [2020 exam blueprints](#) is the [NCCAOM 2017 Job Analysis Executive Summary](#). A full JA Survey Report to the Profession of the results will be available on the NCCAOM website by March 2019.

The Credentials & Service Marks

The NCCAOM has trademarked the term **NCCAOM Board-Certified Acupuncturist™**. We encourage all NCCAOM certified Diplomates to use this term on their business cards, social media sites and business websites.

Below are the new NCCAOM Service Marks. Beginning mid-November, we encourage all NCCAOM Diplomates to use the following NCCAOM credential and Service Mark:

Oriental Medicine Dipl. O.M. (NCCAOM)®



Acupuncture Dipl. Ac. (NCCAOM)®



Chinese Herbology Dipl. CH (NCCAOM)®



Now Diplomates can access these service marks by contacting Olga Cox, Director of Customer Relations and Marketing at ocox@thenccaom.org.

The NCCAOM has continued the organization's Public Education Campaign to promote NCCAOM National Board-Certified Acupuncturists™ through multiple press releases and articles that were covered by media outlets through the months of June through September. This *Public Education Campaign* page by [Clicking here](#). The campaign provides a monthly recap of media and social media activities featuring NCCAOM and Diplomates. NCCAOM is working with Echo Media Group on day-to-day public education and media activities.

Chinese Herbal Compounding Safety Certificate



The NCCAOM Chinese Herbal Compounding and Dispensing Safety Taskforce (CHCS COQ) Taskforce delivered an informational, free, NCCAOM – sponsored webinar which covered the need for the voluntary COQ, and acquainted webinar participants with the objectives and the overall content of the COQ. **To view the webinar held on June 19, 2018 [click here](#).** The NCCAOM is currently in the process of reviewing applications from SMEs who will assist in developing the CHCS COQ content. For more information please contact Jennifer Nemeth at jnemeth@thenccaom.org.

The article *Safety First: Patient Protection and the Practice of Herbal Medicine*, written by A. Bromley, Chair, NCCAOM Board of Commissioners published in the June 2018 [Acupuncture Today](#), provides more information on the need for this COQ.

New AMS System



On November 12, 2018 the NCCAOM will launch a new Association Management System (AMS) to streamline its certification and recertification processes. Please note the NCCAOM certification database migration will occur between November 1 – 9, 2018.

Applications and exam approvals will not be processed during the migration period. **All** current applications will be accessible online as the NCCAOM moves to a fully paperless environment on November 12th.

One of the major benefits of the new system is a separate online portal for each ACAOM accredited school officials, CCAOM, and our international education transcript authentication and assessment company, [International Consultants of Delaware \(ICD\)](#).

Each of these primary stakeholders to the certification process will be able to upload and attach student transcripts and CNT certificate forms directly into a student's profile, which will save trees, time and money and considerably **shortens all NCCAOM candidate approval processes.**

NCCAOM® Official Practice Tests™

The Official NCCAOM® Examination Prep Center launched, May 2018!!

The NCCAOM is very pleased that many individuals are finding and using the Official NCCAOM® Examination Prep Center, a one-stop hub to help students and candidates prepare for the NCCAOM exams, to include The Official NCCAOM Practice Tests™ for all NCCAOM exams. The **Official NCCAOM Practice Tests™** include a score and a diagnostic report to help students and examination candidates prepare for the NCCAOM National Board Exams. Most importantly, these practice tests are structured and administered similarly to the actual NCCAOM certification exams. Candidates and students can test their readiness for taking the NCCAOM exams by experiencing a simulated format and flow of the NCCAOM exams using the practice tests available from the NCCAOM, to include questions developed using the same methodology as the exam itself. The practice tests are also open to NCCAOM Diplomates who can earn 5 PDA points for successfully passing one practice test per recertification cycle. To access the NCCAOM Official Practice Tests, please follow the link: <http://www.nccaom.org/nccaom-exam-preparation-center/>. Do not hesitate to contact Olga Cox at ocox@thenccaom.org if you have any questions about this new product.

NCCAOM® Exam Administration



English Language Certification Exams Administration for 2019 and 2020:

The NCCAOM Customer Relations Team and senior staff have fielded questions regarding the administrations change and has compiled this set of Frequently Asked Questions (FAQs): [NCCAOM Response to all Stakeholders Regarding 2019 and 2020 Exam Administrations](#), which is posted on the NCCAOM website.

The FAQ provides:

1. More in-depth information to candidates and stakeholders about the 2019 exam administrations and what is planned for 2020 related to the updated content outlines;

2. Rationale why the NCCAOM must switch the examinations to linear format and why NCCAOM must temporarily suspend adaptive testing at the commencement of these administrations. Below is a table showing the exam administration dates for 2019 and 2020.

English Language Exams Administration Periods: 2019 and 2020

2019 Testing Window	English Language Adaptive Exams Offered	Registration Open	Registration Ends
January 1, 2019 Through October 31, 2019	Foundations of Oriental Medicine (FOM)	NOW	October 30, 2019
	Acupuncture with Point Location (ACPL)		
	Biomedicine (BIO)		
	Chinese Herbology (CH)		

2020 Testing Window	English Language Linear Exams Offered	Registration Begins	Registration Ends
January 13 – February 1, 2020 New Content Outlines g	FOM	November 1, 2019	January 31, 2020
	ACPL		
	BIO		
	CH		
April 27 – May 16, 2020	FOM	February 3, 2020	May 15, 2010
	ACPL		
	BIO		
	CH		

The NCCAOM English language adaptive certification exams will resume during the second half of 2020. This actual date will be posted by early 2019.

Foreign Language Exams (FLEs): Currently there are two planned testing windows for the

FLEs in 2019. Please note that the Korean language exam administrations have earlier registration deadlines than the Chinese language exams, and the associated administration will be canceled if too few candidates register for a Korean language exam by the registration deadline.

2019 Testing Window	Languages Offered	Registration Begins	Registration Ends
March 14-16, 2019	Chinese	November 1, 2018	March 15, 2019
August 5-17, 2019	Chinese	November 1, 2018	August 16, 2019
	Korean		May 31, 2019
November 4-16, 2019	Chinese	November 1, 2018	November 15, 2019
	Chinese		September 15, 2019

Reinstatement Exams: The NCCAOM offers Reinstatement exams to former Diplomates who have let their certification in Acupuncture, Chinese Herbology, or Oriental Medicine terminate. For information on applying for certification through the Reinstatement Route, see the NCCAOM website for information on the [Reinstatement Process for Terminated Constituents](#). See below for the 2019 Reinstatement Exam testing windows and exam registration dates.

2019 Testing Window	Exams Offered	Registration Begins	Registration Ends
March 14-16, 2019	All Reinstatement Exams	November 1, 2018	March 15, 2019
August 5-17, 2019	All Reinstatement Exams	November 1, 2018	August 16, 2019
November 4-16, 2019	All Reinstatement Exams	November 1, 2018	November 15, 2019

NCCAOM Certification and Examination Metrics

Annual and semi-annual NCCAOM® *Comprehensive Examination Statistics Comparison Reports*,

broken down by certification exam, are maintained on the NCCAOM website in an area specifically designed for [School Officials](#). The 2018 NCCAOM® Program Performance Reports are available on the NCCAOM website School Officials page in the 'Helpful Resources' box on the right of this page. You may use the 2018 NCCAOM PPR order form to order prior year annual data for your school if needed (please indicate which prior year is being ordered). The [2018 January 1 – June 30](#) comparison data is now posted; also the most recent annual report is for [2017](#).

NCCAOM Certification and Recertification Policies Update



New Policy and Process! Any student in their final year of training who has met the pre-graduation requirements may apply for NCCAOM certification through the Pre-Graduation Route on or before October 31, 2018. School officials have the final say in approving their students to sit for the NCCAOM examinations prior to graduation.

Effective **November 1**, 2018, the NCCAOM will only authorize new applicants to test, whose school submits a **graduation** transcript and the CCAOM submits a completed CNT certificate via the new certification database online portals. This will reduce time and paperwork for both the school officials and the NCCAOM certification processing team and it will save money for the students. More importantly, all routes of certification eligibility will be comparable. By requiring all certification documents prior to testing candidates will be able to become certified rapidly once they have passed their required certification exams. Please note that students may apply up to 60 days in advance of completing their academic program so that their online application can be set up and their application fee can be applied; after the application is submitted and paid the school officials will be electronically notified to upload the student transcript as soon as it is available.

The NCCAOM School Webinar was held on July 18, 2018 and the NCCAOM Student Webinar was held on July 24, 2018. You may view all NCCAOM informational webinars on the [NCCAOM website webinars page](#). Details about this process and the new portal are explained in this webinar. For more information, please see the updated NCCAOM Frequently Asked Questions: [Elimination of the NCCAOM Pre-Graduation Route](#).



We've gone
paperless

100% Paperless: The NCCAOM application submission and certification processing will be 100% paperless as of November 12, 2018 when the new Association Management System (AMS)

is launched this November. The NCCAOM has embraced a paperless environment in an effort to increase processing efficiencies, reduce risk to our applicants and Diplomates, and help the environment. Paper applications will no longer be accepted or processed after October 31, 2018.

With the launch of our new AMS All Diplomates recertifying will be able to upload, at any time during their recertification cycle, their PDA certificates and recertification supporting documentation in the new AMS system directly into their online portal.



NEW Route 8: Reciprocal Certification for California Licensed Acupuncturists!

Beginning February 1, 2019, the NCCAOM will open [Route 8: Reciprocal Certification for California Licensed Acupuncturists](#). This route was created for two purposes:

1. In anticipation of the CAB using the NCCAOM exams in the future, this route will allow those active CA licensed acupuncturists, who were licensed before January 1, 2017 to become NCCAOM certified in Oriental Medicine. This will create greater portability among the 24 states that require NCCAOM certification for licensure; and
2. This route creates more opportunities for those licensed acupuncturists in CA who do not currently have NCCAOM National Board Certification to become eligible for employment and referrals from the VA system, as well as potentially the Department of Defense (DOD), most hospital in-patient and out-patient centers, as well as other private practice settings such as *Modern Acupuncture*, certain cruise lines.

This will be a time-limited route that will **close on December 31, 2020**. Applicants who meet all requirements of Route 8 will be granted NCCAOM Oriental Medicine certification without taking the NCCAOM examinations. Eligibility requirements to apply to become NCCAOM certified in Oriental Medicine through Route 8 are as follows.

The applicant must:

- Hold an active California Acupuncture license that is in good standing and was obtained on or before December 31, 2016;
- Submit an NCCAOM Route 8 application and pay the application fee;
- Submit verification of a completed Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) *Clean Needle Technique (CNT) Course*. Applicants who completed the CNT course more than six years ago must also complete the CCAOM *CNT and Blood Borne Pathogen Review Course* and submit verification to the NCCAOM.

[Frequently asked questions and answers](#) about the new, time-limited Route 8 are available on the NCCAOM website. Any questions or comments should be directed to Dr. Kory Ward-Cook, Chief Executive Officer of the NCCAOM, at executiveoffices@thenccaom.org.

NCCAOM's New Brand Coming Soon



As announced in the [September 2018 NCCAOM Diplomate E-News You Can Use](#) the NCCAOM will launch an organizational rebranding that includes a fresh look for the NCCAOM logo, certification service marks, and website.

NCCAOM Fact Sheets

All [NCCAOM Fact Sheets](#) are periodically updated, and can be found in the Resource Center Home Page subsection – [Press Center](#) - Internal News page. In September of 2018 the [NCCAOM Information for California Licensed Acupuncturists Fact Sheet](#) was updated. For questions or more information on the NCCAOM Fact Sheets, Press Releases or Informational website pages, please contact Olga Cox at ocox@thenccaom.org.

Please note that all hyperlinks in this document will not be valid once the new NCCAOM website is launched in the latter part of November 2018. Please continue to check our website for future updates.



If you have specific questions about this Update, please contact Dr. Ward-Cook via email at executiveoffices@thenccaom.org.

#19

Acupuncture Professional Associations Update



**CALIFORNIA
ACUPUNCTURE
BOARD**

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October 12, 2018

The California Acupuncture Board (Board) is holding a public meeting on Friday, October 26, 2018 beginning at 9:00 a.m. in Oakland, CA, and is inviting all professional acupuncture associations within California to participate. Agenda item #19 is for updates from acupuncture professional associations, and it is anticipated this agenda item will take place mid-to-late morning. For your convenience, the agenda for the meeting is attached.

The Board invites and encourages your association to attend and present a short briefing on your association. Your presentation should provide the following:

1. A short history of your Association.
2. Description of your membership.
3. Your Association's services and benefits for potential members.
4. Your Association's views on current acupuncture issues, including scope of practice, training program educational hours, dry needling and the proposed unification of Acupuncture Associations.
5. Any other information you think may be helpful.

The presentation should be no more than 3-5 minutes in length and time limits will be enforced.

If you have any further questions, please contact Marc Johnson, Policy Coordinator, at 916-515-5216 or marc.johnson@dca.ca.gov.

Thank you in advance for your participation.

Regards,

Ben Bodea, Executive Officer
California Acupuncture Board

List of Professional Associations registered with the Board

**American Association of Chinese
Medicine and Acupuncture**
777 Stockton Street, #105
San Francisco, CA 94108

**Accreditation Commission for
Acupuncture & Oriental Medicine**
8941 Aztec Drive
Eden Prairie, MN 55347

American Acupuncture Council
1100 W. Town & Country Road,
Suite 1400
Orange, CA 92868

**American Association of
Acupuncture and Oriental Medicine**
P.O. Box 96503 #44114
Washington, DC 20090

**Association of Korean Asian Medicine
& Acupuncture of California**
3242 8th Street, Rm #110
Los Angeles, CA 90005

**American Society of Chinese
Medicine**
1025 B Street
Hayward, CA 94541

California Acupuncture Association
23440 Hawthorne Blvd. #235
Torrance, CA 90505

**California Association of
Acupuncture Tutorials**
124 Pine Street
San Anselmo, CA 94960

**California State Oriental Medical
Association**
777 Stockton Street #105
San Francisco, CA 94108

**California Acupuncturist United
Association**
3042 S. Hacienda Blvd
Hacienda Heights, CA 91745

**Council of Acupuncture and Oriental
Medicine Association**
P.O. Box 7775 #68552
San Francisco, CA 9412

**Council of Colleges of Acupuncture
and Oriental Medicine**
P.O. Box 65120
Baltimore, MD 21209

**Japanese Acupuncture Association
of California**
1227 Lincoln Blvd., Suite 303
Santa Monica, CA 90401

National Guild of AOM
542 Hopmeadow Street, PMB #104
Simsbury, CT 06070

**California Acupuncture and
Traditional Medicine Association,
Inc.**
1017 L Street PMB 783
Sacramento CA 95814-3805

#20

Acupuncture Board Strategic Plan

Acupuncture Board

Strategic Plan

2018-2022



Acupuncture Board

Board Members

Amy Matecki, MD, L.Ac, President, Licensed Member

Kitman Chan, Vice-President, Public Member

John Harabedian, Public Member

Ruben Osorio, Public Member

Vacant, Licensed Member

Vacant, Licensed Member

Vacant, Public Member

Edmund G. Brown Jr., Governor

Alexis Podesta, Secretary, Business Consumer Services and Housing Agency

Dean R. Grafilo, Director, Department of Consumer Affairs

Benjamin Bodea, Executive Officer, Acupuncture Board

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About the Acupuncture Board

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

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

Mission, Vision, and Values

Mission

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

Vision

The exemplary practice of acupuncture for the health and safety of the people of California.

Values

Consumer Protection

Collaboration

Excellence

Integrity

Professionalism

Strategic Goal Areas

1. Licensing

Establishes and maintains licensing requirements that protect consumers through improving standards in licensing examination, continuing education, and reasonable access to the profession.

2. Enforcement

Protects the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.

3. Education

Advances education standards to increase the quality of education and ensure consumer protection.

4. Legislation and Regulation

Advocates for statutes and adopts regulations, policies, and procedures that strengthen and support its mandate, mission, and vision.

5. Outreach

Educates consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.

6. Board Administration

Continues to build and maintain an excellent organization through the development of staff, responsible management, strong leadership, and effective Board governance.

Goal 1: Licensing

Establishes and maintains licensing requirements that protect consumers through improving standards in licensing examination, continuing education, and access to the profession.

- I.1 Develop and implement a computerized licensing examination to increase access and facilitate entry into the profession.
- I.2 ~~Adopt regulations requiring~~ Seek legislative or regulatory authority to require a passing Test of English as a Foreign Language (TOEFL) score for applicants ~~taking the licensing exam~~ who have completed their education in ~~languages~~ a language other than English to enhance communication with the healthcare industry.
- I.3 Research the feasibility of establishing a clinical inspection program to ~~educate licensees~~ and promote compliance with the laws and regulations governing the practice of acupuncture in California
- I.4 Improve pocket license material quality to reduce fraudulent activity.

Goal 2: Enforcement

Protects the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.

- 2.1 Develop and implement the continuing education provider audit process to increase compliance.
- 2.2 Recruit additional Subject Matter Experts (SMEs) to meet the needs of the Examination, Enforcement, and Education ~~units~~Units to increase enforcement resources.
- 2.3 Research the feasibility of requiring licensees to maintain medical records in English to facilitate enforcement efforts and increase accessibility.
- 2.4 Update the Board's Disciplinary Guidelines to preserve consistency, fairness, and ensure effective consumer protection when taking disciplinary actions against licensees.
- 2.5 ~~Promulgate the Uniform Standards regulations on substance abuse~~Amend regulations to implement the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, developed pursuant to Senate Bill No. 1441 (2007-2008 Sess.), to safeguard the health and safety of licensees and consumers.

Goal 3: Education

Advance education standards to increase the quality of education and ensure consumer protection.

- 3.1 Research and develop transfer credit evaluation policies and procedures to ensure competent compliance with education outcomes requirements.
- 3.2 Conduct a cost analysis on training program curriculum application reviews to properly allocate costs and ensure training program compliance.
- 3.3 Review current curriculum standards to ensure it prepares licensees for entry level practice and consumer safety.
- 3.4 Define what constitutes “live continuing education courses” to ensure that hands on hands-on training for continuing education in treatment methods is received in the proper setting with the appropriate supervision to practice on the public.

Goal 4: Legislation and Regulation

~~The Board advocates~~Advocates for statutes and adopts regulations, policies, and procedures that strengthen and support its mandate, mission, and vision.

- 4.1 Recommend legislation relating to the number of times an applicant can take the examination for licensure to reduce fraud and enhance qualification of licensees.
- 4.2 Investigate the feasibility of obtaining site inspection authority of licensees to increase enforcement resources and access.
- 4.3 Seek legislative citation authority over curriculum violations of training programs to enforce existing curriculum requirements established in regulation.
- 4.4 Review and update regulations to align with existing statutory requirements.
- 4.5 Research ~~the feasibility of amending and seek amendments to~~ Business and Professions Code ~~§section 4935 to coincide, subdivision (a)(2) to increase the penalty for violations to be equivalent with general~~the penalty provided by Business and Professions ~~code~~ Code section 585 and to ~~(change from misdemeanor to felony) to establish deterrent~~protect the public further deter violations and enhance consumer protection.
- 4.6 Implement a continuing education course and monitoring fee structure pursuant to Business and Professions Code section 4945, subdivision (b) to allocate the cost of the process to the continuing education provider applicant.

Goal 5: Outreach

~~The Board educates~~Educates consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.

- 5.1 Develop and implement a communication plan to inform the public about the practice and regulation of the ~~Acupuncture~~acupuncture profession.
- 5.2 Develop and release a digital newsletter to inform, educate, and update the public on the practice of ~~Acupuncture~~acupuncture in California.
- 5.3 Determine and communicate licensing reciprocity to and from California to convey California's standards to the public and ensure consumer protection.
- 5.4 Update and publish an informational brochure to educate the public on the standards of practice.

Goal 6: Board Administration

~~The Board continues~~Continues to build and maintain an excellent organization through the development of staff, responsible management, strong leadership, and effective Board governance.

- 6.1 Conduct a yearly workload study to ensure adequate staffing levels.
- 6.2 Map the Board's business processes to procure an information technology system that addresses the Board's functions.
- 6.3 Conduct a fee study; at the appropriate time; to address the Board's budgetary structural imbalance.
- 6.4 Respond to the Department of Consumer Affairs' routine internal audit to address any findings.
- 6.5 Expand targeted training and materials ~~for~~to educate Board members ~~to educate on~~ Board governance and ~~the~~ subject matter ~~of the Board~~.

Strategic Planning Process

To understand the environment in which the Board operates ~~as well as, and to~~ identify factors that could impact the Board's success in carrying out its regulatory duties, the Department of Consumer Affairs' SOLID Unit conducted an environmental scan of the Board's internal and external environments by collecting information through the following methods:

- ♦ Interviews conducted with current and former Board members in August 2017. There was a total of four responses from a population of eight for a 50%¹ response rate.
- ♦ Interview conducted with Board Executive Officer in August 2017. There was a total of one participant from a population of one for a 100% response rate.
- ♦ Online survey sent to Board staff in August 2017. There was a total of twelve responses from a population of twelve for a 100% response rate.
- ♦ Online survey sent to the Board's stakeholders via several resources² in August 2017. There was a total of 156 responses from a sample size³ of 1,394 for an 11% response rate.

The most significant themes and trends identified from the environmental scan were discussed by the Board Members, Executive Officer, Board staff, and stakeholders during the strategic planning sessions facilitated by SOLID on December 15, 2017 and March 30, 2018. This information guided the Board in the development of its strategic objectives outlined in this 2018 – 2022 ~~strategic plan~~Strategic Plan.

¹ All response rates are rounded to the nearest one (whole number).

² ~~List Serve~~Listserve subscribers and schools lists.

³ Sample size is an approximation.



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www.Acupuncture.ca.gov

Prepared by:



Department of Consumer Affairs
1747 N. Market Blvd., Ste. 270
Sacramento, CA 95834

Strategic plan adopted June 29, 2018.

| This ~~strategic plan~~Strategic Plan is based on stakeholder information and discussions facilitated by SOLID for the Acupuncture Board in December 2017 and March 30, 2018. Subsequent amendments may have been made after the Board's adoption of this plan.

#21

Acupuncture Licensure
Standards in the
United States

**CALIFORNIA
ACUPUNCTURE
BOARD**

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DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator
SUBJECT	Discussion of Acupuncture Licensure Standards in the United States

Summary:

As part of the Board's 2018 Sunset Review, the Legislature raised the issue of Acupuncture licenses throughout the United States and the potential for the Board to work with those states on reciprocity of California's license. This agenda item is designed to increase awareness of other state requirements for Acupuncture License and their reciprocity policies.

History:

As stated in Legislature's 2018 Background Paper:

"The CALE demonstrates minimum competency to practice acupuncture in California and provides a pathway to licensure in California. Because the CALE is developed by California to meet California standards, it can be difficult for other states, hospitals, or other health systems to determine whether California license holders meet the standards used elsewhere or nationally. As a result, the CALE is not recognized by default in other states, nor are the NCCAOM or other state examinations accepted in California. However, of the states that license acupuncturists, approximately 16 states recognize out-of-state licenses, review substantially-similar qualifications on a case-by-case basis, or are open to reciprocal licensing agreements with other states. Passing the NCCAOM examination demonstrates competence in the knowledge, skills, and abilities developed by the NCCAOM for entry-level practitioners in other states, and provides a pathway to NCCAOM certification. The NCCAOM voluntary certification program is accredited by the National Commission for Certifying Agencies (NCCA) with a separate set of prerequisites, code of ethics, and disciplinary guidelines. The NCCAOM examination is a pathway to licensure in 46 other states and the District of Columbia.

Staff Recommendation:

The CAB should discuss feasibility, cost, and time constraints related to working nationally with other states, and, potentially federal healthcare agencies, to increase the



portability of the California acupuncture license and improve reciprocity with other out-of-state licenses.”

In the Response to the Background Paper, specifically to Item #3, the Board notes:

“In the absence of national standards for acupuncture education and practice, each state sets their own specific standards. As the Background Paper notes, there are 16 states that license acupuncturists which recognize out-of-state licenses and can administer reciprocal licensing agreements. The Board has discussed and directed board staff to research other states’ licensing requirements and the possibility of working with other states to accept the CALE or the California Acupuncture License. With each state enforcing their own standards, there may be the additional requirement of California licensees to pass that state’s supplemental examination. In California, applicants are required to complete an approved 3000-hour curriculum at an approved training program. Many states require 1900 hours. The Board needs to discuss the feasibility, cost, and time constraints necessary to increase the portability of the California acupuncture license and improve reciprocity with other out-of-state licenses.”

Discussion:

Staff has researched and reviewed other states’ issuance of Acupuncture Licenses, training requirements, and, any reciprocity agreements. These items are reflected in the attached spreadsheet. The information is taken from state websites, discussions with those state boards, and NCCAOM’s website.

It is important to note the data in the attached spreadsheet is informational only and not to be used as a reference. Many of the laws, regulations and rules may have changed or be subject to different legal interpretations or are incomplete.

Some general observations:

1. As noted above, 46 states and the District of Columbia use the NCCAOM examination or certification for licensure.
2. The states of Alabama, Oklahoma and South Dakota do not issue an Acupuncture license.
3. Of those states, New Jersey, New Mexico and Texas appears to use a supplemental exam to the NCCAOM for their states’ laws and regulations. Nevada also requires a practical examination, administered by the state, in addition to the NCCAOM.
4. New York has the highest number of hours (4,050) required of its applicants; however, their reciprocity laws and regulations are not clear how an out-of-state



applicant would meet those requirements. Staff was unable to obtain responses from the New York Professional Licensing Services Acupuncture Unit regarding these questions.

5. Arizona, Alaska and Wyoming appear to allow the either the CALE or NCCAOM to be accepted as the licensing exam requirement.
6. Staff research identified 16 states that appear to allow their board or commission to examine an individual licensee's application for equivalency for licensure in their state. These states include: AK, AZ, AR, CT, DE, FL, ID, MD, MI, MS, MO, NH, ND, TN, WI and WA. These states do require the NCCAOM exam, but it is unclear if a passing CALE score, or California licensure, could be used in lieu of the NCCAOM in that state to satisfy an exam requirement.
7. States including NJ, OH, PA, SC and VI do not appear to have any laws, rules or regulations which address licensure reciprocity.

It appears that the Board may be able to enact a reciprocity agreement with other states which appear to have statutes authorizing their boards or commissions to enter into reciprocal agreements with other states. Such agreements may allow for acceptance of the CALE in those states. However, it is unclear how applicants in those states with lower training requirements than California would be accepted in California. The Board may wish to direct Staff/Legal Counsel to research the possibility of how such an agreement would be reached via a Memorandum of Understanding (MOU) or some other mechanism.

Beyond those states, it is unclear how other states would accept the CALE, since many states already require the NCCAOM exam and for their boards or commissions to individually examine an applicant's credentials for licensure. Those types of changes might require legislative or regulatory change action to be enacted by each individual state, which would be beyond the scope of the Board's jurisdiction. The acupuncture industry via professional associations would be better suited for this type of action.

Informational only - not to be used as a reference

State	Acupuncture Practice Act? Code Sections	Education Hours (EH) - Clinic Hours (CH) - Text if applicable	BA/BS or min credits needed	NCCAOM Cert (C) or Exam (E) required?	Reciprocity - other State Licensure / Exams Accepted? Text if applicable	Notes
Alabama	None					No acupuncture license issued
Alaska	Yes - AS 08.01 - 08.03	EH: Not specified CH: not specified <i>"has completed a course of study consistent with the core curriculum and guidelines of ACAOM at a school of acupuncture approved by the department"</i>	No	C	Yes - <i>"is licensed to practice acupuncture in another jurisdiction that has acupuncture licensing requirements equivalent to those of this state"</i>	
Arizona	Yes - Ch. 39, ARS 32-3901 -- 32-3954	EH: Minimum 1850 hours CH: 800 hours (included in 1850 EH) ACAOM accreditation required	No	C or E	Yes - <i>"have been certified in acupuncture by another certifying body or examination that is recognized by the Board (CALE) or have been licensed by another state with substantially similar standards"</i>	Accepts CALE as proof of exam; certifies auricular acupuncturist
Arkansas	Yes - ACA 17-102-101	EH: Not specified CH: 800 hours which meets ACAOM requirements <i>"institution must require a program of study of at least 4 academic years which must meet ACAOM level of education and standards or other criteria as found reasonable by the Board"</i>	No	Unclear, laws are not specific to NCCAOM	Yes - <i>"the board may enter into reciprocal licensing agreements with other states or jurisdictions, provided the requirements and qualifications for licensure in that state or jurisdiction meet or exceed the requirements and qualifications for licensure in Arkansas"</i>	Requires registration for acupuncturist detox specialists; website does not appear to be updated
Colorado	Yes - CRS 12-29.5-102 29.5-104	EH: Not specified CH: not specified <i>"applicant to either successfully complete an education program that conforms to the standards approved by the Director or provide documentation of qualifications that are substantially similar to an approved education program. The Director approved education program includes any diploma program in acupuncture and Oriental medicine accredited by ACAOM or a successor organization" and "applicant to have a current certification at the time of initial license application by the NCCAOM or a successor organization."</i>	No	Both	Yes - <i>"For an applicant to establish substantially equivalent credentials and qualifications under Section 12-29.5-104.5(1), C.R.S., the Director requires the applicant to submit a certification by NCCAOM or a successor organization. Verification of the certification shall be provided directly from NCCAOM or its successor in a manner prescribed by the Director; and verification of licensure in another state shall be provided in a manner prescribed by the Director."</i>	Acupuncturists may perform non-intravenous injection therapy with correct training

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Connecticut	Yes - Ch 384 Sec 20-206 aa - cc	Prior to 2012: EH: 1350 hours, including 500 CH After 2012: EH: 1905 hours, including 660 clinic hours ACAOM accreditation required	No	E	Yes - <i>"The Department of Public Health may issue a license to an out-of-state licensee provided the applicant holds a current, valid acupuncturist license in good standing in another state or territory of the United States and the state or territory of current licensure maintains licensing standards equal to or higher than Connecticut's requirements."</i>	
Delaware	Yes - T24, CH17, Sec 1796-1799	EH: 1800 hours (includes 300 clinical hours) CH: 300 clinical hours must meet ACAOM standards	60 credits min	Both	Yes - <i>"applicant must hold a current license of the same type in another jurisdiction (state, D.C. or U.S. territory), and a jurisdiction where you hold a current license has licensing requirements that are at least equal to Delaware's requirements, and no outstanding or unresolved complaints are pending against you."</i>	Acupuncture detoxification specialist license available
District of Columbia	Yes - T17, Ch47, Sec. 4700 et al.	EH: Not specified, but minimum 3 years required CH: 500 hours clinical (as part of EH) must be ACAOM certified		E; + regs list District Practical Exam	Yes - <i>"Reciprocity" means the process of issuing a license, registration, or certification to an applicant who is licensed, registered, or certified and in good standing under the laws of another state with requirements that, in the opinion of the Board, were substantially equivalent at the time of licensure, registration, or certification to the requirements of this chapter, and that state admits health professionals licensed, registered, or certified in the District of Columbia in a like manner."</i>	Apprenticeship route available; must be referred by MD for treatment
Florida	Yes - Sec 457 FS; Rule Ch 64B1	EH: 2700 hours including 20 hours on FL law CH: not specified must meet ACAOM standards	4 year inc. 60 credits as prereq	E	Yes - <i>"Has successfully completed a board-approved national certification process, is actively licensed in a state that has examination requirements that are substantially equivalent to or more stringent than those of this state, or passes an examination administered by the department, which examination tests the applicant's competency and knowledge of the practice of acupuncture and oriental medicine."</i>	Law requires 8 hours of instruction in interpretation of lab tests; scope of practice includes laser biostimulation (must provide prior notice to Board with proof of FDA compliance)

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Georgia	Yes - GA Code 43-34-60	EH: Not specified CH: Not specified <i>"Have successfully completed a degree in acupuncture or a formal course of study and training in acupuncture. The applicant shall submit documentation satisfactory to the board to show that such education or course of study and training was: (A) Completed at a school that is accredited by ACAOM or other accrediting entity approved by the board: or (B) Completed by means of a program of acupuncture study and training that is substantially equivalent to the acupuncture education offered by an accredited school of acupuncture approved by the board."</i>	No	Both	No NCCAOM only - must meet GA requirements	Separate certification for "auricular detoxification technician"; tutorial route for licensure available
Hawaii	Yes - T16, Ch 72	EH: 2175 hr including 1515 didactic hours CH: 660 clinic hr program must meet ACAOM requirements	MCAOM	E only - Foundations & Acu modules	Yes - but must have passed NCCAOM exam	Tutorial route ("intern permit") for licensure available
Idaho	Yes - T 54, Ch 47	EH: 1725 hours, including 1000 didactic CH: 500 clinical hours (included in EH) program must meet ACAOM requirements or <i>"an equivalent evaluation performed by a private, state government, or foreign government agency recognized for that purpose by the NCCAOM Eligibility Committee"</i>	No	Both	Yes - <i>"The board may waive the requirements of section 54-4706, Idaho Code, and grant a license to any applicant who shall present proof of current licensure to engage in the practice of acupuncture in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the board to be equivalent to the requirements for licensure pursuant to this chapter."</i>	Tutorial route ("intern permit") for licensure available
Illinois	Yes - 225 ILCS 2/	EH: 1905 hours including: 795 hours in theory and 450 hr bioscience; CH: 660 clinic hours; program must be ACAOM approved	Not specified	prior to 1/1/20 E; after 1/1/20, C Required	Yes - if licensed prior to 2002 - pass NCCAOM exam or equivalent or hold NCCAOM certification; after 2002 - graduated from ACAOM or IL approved program and passed NCCAOM exam or equivalent exam approved by IL	

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Indiana	Yes - IC 25-2.5	EH: not specified CH: not specified <i>"successfully completed a three (3) year postsecondary training program or acupuncture college program that meets the standards substantially equivalent to the standards for a three (3) year postsecondary training program or acupuncture college program approved by a national acupuncture association (ACAOM) approved by the board"</i>	No	Both	Yes - NCCAOM certification required w/ proof of 3 years of training	"Acupuncture detoxification specialist" license available with limited scope to treat detox patients and under supervision of acupuncturist or physician; offers tutorial program
Iowa	Yes - IC T IV, Ch 148E	EH: Not specified CH: not specified	No	Both	Yes - NCCAOM certification and passing of exam required	
Kansas	Yes - KS 65-7601 - 7624	EH: Not specified CH: not specified <i>"(c) has satisfactorily completed a course of study involving acupuncture from an accredited school of acupuncture which the board shall determine to have educational standards substantially equivalent to the minimum educational standards for acupuncture colleges as established by the ACAOM or NCCAOM"</i>	No	Exam only - 3 modules	Yes - <i>"(2) that the applicant's original license was based upon an examination at least equal in quality to the examination required in this state and that the passing grade required to obtain such original license was comparable to that required in this state"</i>	Apprenticeship route available; can apply for license if 1,350 hours of study completed before 1/1/18 and NCCAOM exam passed
Kentucky	Yes - KRS 311.671 - 311.686	EH: 1800 hours CH: 300 clinical hours must be ACAOM approved	No	E	Yes - But must have NCCAOM certification - <i>"An acupuncturist who is legally authorized to practice acupuncture in another state and who is presently in good standing in that other state may be licensed by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth."</i>	Temporary six month license may be issued
Louisiana	Yes - T37, Part IV, Sec 1356 - 1358	EH: : Not specified CH: not specified 36 months training in program approved by ACAOM required	No	E	Yes - must have completed min 36 months ACAOM training and passed NCCAOM exam	Licensee must "maintain relationship with MD"; offers sublicense for acupuncture detoxification, under direction of MD

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Maine	Yes - T32, Ch 113-B, Sub Ch 2	EH: 1000 hours (including 300 clinical hours); 400 hours additional required if applying for herbal certification must be ACAOM approved or equivalent	BS/BA required; MA required if prescribing herbs	Both	No - applicant must have NCCAOM certification	Can also obtain license if RN or PA; naturopathic acupuncture license available
Maryland	Yes - Sec 1A-101 - 1A-502	CH: 1800 hours (including 300 clinical hours) must be ACAOM or Maryland approved	Not specified	Both	Yes - <i>"2 (b) Passing score on an examination that is determined by the Board to be equivalent to the examination given by the NCCAOM; or (3) Existing license, certification, or registration in acupuncture in another state that has a reciprocity agreement with Maryland and has education, practice, or examination requirements equal to or greater than those established in this State."</i>	Offers animal acupuncture certification (must consult with Vet), auricular detoxification sublicense under direction of acupuncturist
Massachusetts	Yes - 243 CMR 5.00	EH: 1905 hours (including 100 clinical hours) excluding bio, physiology and anatomy requirements; herbology requires 1905 hours with 660 hours in herbs and 210 clinical hours in herbs must be ACAOM approved and approved by the Board	60 sem hours minimum	C	No - <i>"An applicant for full licensure who holds a license to practice acupuncture in another state or foreign nation shall not be excused from any of the application requirements in M.G.L. c. 112 and 243 CMR 4.00 and 5.00 unless the Committee has entered into a reciprocal licensing agreement with that state, or unless the Committee has specifically exempted that applicant from a particular requirement."</i>	Internship program available
Michigan	Yes - MCL 333.16521	EH: 1900 hours including 660 clinical hours and 450 biomedical clinical science must be ACAOM approved	No	Both	Yes - <i>" If an applicant was registered or licensed as an acupuncturist in another state where the requirements for registration or licensure were substantially equivalent to the requirements specified in the code and these rules, has held a valid registration or license in that state immediately preceding the date of filing an application for a Michigan registration, and provides documentation that he or she is currently certified in acupuncture or oriental medicine either by nccaom or by an organization with equivalent certification standards as determined by the board, then it is presumed that the applicant meets the requirements of R 338.13005."</i>	Must practice under direction of MD

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Minnesota	Yes - MS Ch 147B	EH: Not Specified CE: not specified	No	C	Yes - Verification of current and unrestricted license from another state requiring a current and valid NCCAOM certificate	Chiros able to practice under scope of their license
Mississippi	Yes - T73, Ch 71	EH: 2500 hours CH: not specified program must be ACAOM or NCCAOM approved - minimum 3 years	No	Both; diplo required	Yes - <i>"The board may, at its discretion, issue a license without examination to an acupuncture practitioner who has been licensed, certified or otherwise formally legally recognized as an acupuncturist or acupuncture practitioner in any state or territory if all three (3) of the following conditions are met to its satisfaction: (a) The applicant meets the requirements of practice in the state or territory in which the applicant is licensed, certified, or registered as an acupuncturist or acupuncture practitioner; (b) The requirements for practice in the state or territory in which the applicant is licensed, certified or registered as an acupuncturist or acupuncture practitioner are at least as stringent as those of this state; and (c) The state or territory in which the applicant is licensed, certified or legally recognized as an acupuncturist or acupuncture practitioner permits an acupuncture practitioner licensed in this state to practice acupuncture or acupuncture in that jurisdiction by credentials examination."</i>	Can only treat with referral from MD; must consult with MD during treatment
Missouri	Yes - Title XXII, Ch 324	EH: Not Specified CH: not specified must meet NCCAOM requirements	No	C or E	Yes - <i>"(b) Is actively licensed, certified or registered in a state or jurisdiction of the United States which has eligibility and examination requirements that are at least equivalent to those of the National Commission for the Certification of Acupuncture and Oriental Medicine, as determined by the committee and approved by the board"</i>	Detox specialist sublicense available; must practice under acupuncturist direction
Montana	Yes - T37, Ch 13	1000 hours - not specified - must be ACAOM approved program	No	Exam	Yes - <i>"(2) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license to submit a current verification of licensure directly to the board on behalf of the applicant."</i>	

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Nebraska	Yes - 38-2006 et al.	EH: 1725 hours total including 1000 didactic and 500 clinical must be ACAOM approved	No	E	Yes, but must have passed NCCAOM exam	
Nevada	Yes - NRS 634A	EH: 3000 hours (including 500 clinical hours)	BA or 4 years min	E; additional practical Exam required	Yes - BS/BA and 4 years practice - must pass NCCAOM exam	
New Hampshire	Yes - RSA 328-G	EH: Not specified CH: not specified must be ACAOM or Board approved	Not specified	Both	Yes - various waivers exist <i>"(f) Has earned a baccalaureate, registered nurse, or physician's assistant degree from an accredited institution. An applicant who possesses a current, valid license to practice acupuncture from another state who meets all other requirements of licensure may have this requirement waived at the discretion of the board."</i>	Detox specialist sublicense available; must practice under acupuncturist direction. Uses "points" system to assign applicant meeting various requirements
New Jersey	Yes - 45:2 C1 -19	EH: 2500 hours CH: not specified must be ACAOM approved	BA degree	E; additional NJ laws and regs Exam required	Unclear - not specified in laws or regs	Must have certification from NCCAOM to use herbs
New Mexico	Yes - 61-14A 1-22	EH: 2400 hours, including 450 hours herbology and 900 clinical hours <i>"All applicants must show proof of having completed and educational program comprising 2,400 total hours. The 2,400 total hours must have 1,100 didactic hours with a minimum of 450 hours in herbology, 900 supervised clinical hours with a minimum of 400 actual treatment hours performed by the student."</i> must be NCCAOM or ACAOM approved and also approved by NM board		E; requires NM clinical skills and jurispruden ce exam	Yes - must have NCCAOM licensure and meet all requirements of in-state licensees	Temporary licenses available. Detox specialist sublicense available - must practice under acupuncturist direction. Sublicenses available for injection, intravenous and bioidentical hormone therapy
New York	Yes - T8, Art 160, Sec 8214	EH: Minimum 4050 hours: 200 hours biosciences, 600 hours acupuncture and 650 hours supervised clinical. Program must registered with NY and ACAOM approved	60 semester hours minimum	E	Unclear - State law counts out of classroom study time towards hour requirement; 9 cr hrs of bioscience in 60 cr undergrad or ACAOM program	

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North Carolina	Yes - 21 NCAC 01 .0101	EH: Not specified CH: not specified 3 year minimum program must be ACAOM approved		E	Yes - Minimum 3 year acupuncture training program or 10 years continuous licensure	Uses "points" system to assign applicant meeting various requirements
North Dakota	Yes - 46-61 01-10	EH: Not specified CH: not specified <i>"Completion of an approved accredited acupuncture program, which requires, at a minimum, a 4-year, full time program of academic and clinical study plus a six-month full time clinical internship at an approved internship site."</i>	Not specified	E	Yes - <i>"The board may issue an acupuncture license by endorsement to an applicant who complies with licensure requirements and who passed an examination given by a recognized certifying agency approved by the licensing agency if the board determines the examination was equivalent in every respect to the examination required under this chapter"</i>	
Ohio	Yes - Title 47, Chap 4762 et al.	EH: Not specified CH: not specified	Not specified	Both; Diplo req	Unclear - out of state license verification form on website	Requires referral from M.D.; Chiroso can obtain acupuncture sublicense
Oklahoma	No					No acupuncture license issued
Oregon	Yes - Chap 847, Div 70	EH: Not specified CH: not specified must be ACAOM approved	Not specified	Both	Yes - must have NCCAOM certification, 7 years experience, graduation from ACAOM program	Tutorial route available
Pennsylvania	Yes - B 18.11 - 18.19	EH: Not specified CH: not specified <i>"Training and instruction in acupuncture or supplemental acupuncture techniques offered by a degree-granting institution authorized by the Department of Education that leads to a master's degree, master's level certificate or diploma or first professional degree, that meets the relevant and appropriate requirements of 22 Pa. Code (relating to education) and 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries) and that meets or exceeds the standards required for acupuncture or Oriental medicine programs established by an accrediting agency recognized by the United States Department of Education. "</i>	Not specified	E	Unclear - statutes and rules do not appear to address reciprocity	Separate OM license needed if practicing herbology

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Rhode Island	Yes - Ch 5 - 37.2 et al	EH:2500 hours CH: clinical hours not specified but must meet NCCAOM requirements overall program must meet ACAOM requirements	Not specified	E	Yes - if applicant meets requirements in 5-37.2-12.2 and rules 8.4.2	Separate OM license needed if practicing herbology - 660 didactic and 210 clinical hours needed via ACAOM program
South Carolina	Yes - Art 6 - Sec 40-47-700 et al	CH: Not specified EH: not specified 3 year minimum program - must be meet ACAOM requirements	Not specified	Both	Unclear - statutes and rules do not appear to address reciprocity	Separate auricular and detox sublicenses available
South Dakota	No					No acupuncture license issued; AG says acupuncture is within scope of Chiropractor license
Tennessee	Yes - Sec. 63-6-1001	EH: Not specified CH: not specified 3 year minimum program - must be meet ACAOM requirements	Not specified	Both; Diplo required	Yes - <i>"(c) The committee shall waive the requirements of subsection (a) and an applicant presenting satisfactory evidence to the committee that such applicant held a license in good standing from another state immediately prior to practicing in Tennessee and who has continually practiced in Tennessee since that time shall be granted certification by the board."</i>	Auricular detox sublicense available
Texas	Yes - T3 SubC Ch205	EH: 1800 hours including 450 hours of herbs CH: clinical not specified program must be ACAOM approved	60 semester hours minimum	E, + TX jurisprudence Exam	Unclear - allowed per T22, Sec 205.206, but per Texas Medical Board: <i>"not licensing acupuncturists by reciprocity at this time"</i>	Auricular detox sublicense available; requires referral from MD, Dentist or Chiropractor except for treatment of substance abuse or alcoholism
Utah	Yes - T 58, Ch 72	CH: Not specified EH: not specified must be ACAOM approved	Not specified	Both	No - must pass NCCAOM exam and hold NCCAOM certification	Animal acupuncture sublicense available through Utah Vet Board

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Vermont	Yes - Title 26, Ch 75 Sec 3401-3412	EH: 1725 hours of which 800 hours must be supervised clinic must be ACAOM approved	Not specified	E	Yes - <i>"To qualify to be licensed as an acupuncturist based on credentials, an applicant must be licensed or certified in good standing in another jurisdiction in which the standards and qualifications required for regulation in that jurisdiction are at least equal to those required by this chapter."</i>	Acupuncture detox license available
Virginia	Yes - 54.1-2400 et al.	EH: 1905 hours, including 1155 didactic and 660 clinical hours must be ACAOM approved	Not specified	Both	Unclear - statutes and regulations do not appear to address reciprocity	Must obtain diagnostic exam from MD, DPM or Chiro prior to treatment; Acupuncture Detox license available
Washington	Yes - T18, Ch 18.06	EH: Not specified, minimum 2 years academic training CH: 500 hours clinical must be ACAOM approved	Not specified	E	Yes - <i>"The secretary may license a person without examination if such person is credentialed as an East Asian medicine practitioner or licensed acupuncturist, or equivalent, in another jurisdiction if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state."</i>	Tutorial program available; license allows point injection therapy
West Virginia	Yes - Sec 30-36-1 et al.	EH: 1800 hours which includes 300 hour clinic; must be ACAOM approved	Not specified	E	Yes - <i>"Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately prior to application that consisted of at least five hundred patient visits per year"</i>	
Wisconsin	Yes - SPS 70 - 73	EH: Not specified CH: Not specified Minimum 2 years academic training; must be ACAOM approved or NCCAOM approved	Not specified	E	Yes - <i>"Upon application and payment of the fee specified in s. 440.05 (2), the department shall grant an acupuncturist certificate to any applicant who holds an acupuncturist certificate or license in another state or territory of the United States if the department determines that the applicant has actively engaged in the practice of acupuncture for at least 5 years or that the requirements for certification or licensure in the other state or territory are substantially equivalent to the requirements under s. 451.04 (2)."</i>	

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Wyoming	Yes - WS 33-49-101 et al.	EH: Not specified CH: not specified <i>"applicants for a general acupuncture license shall submit: an official transcript giving evidence of graduation from an accredited ACAOM program or a substantially equivalent program."</i>	Not specified	E	Yes - <i>"The board may issue a license by endorsement to practice acupuncture in Wyoming to an applicant who is license to practice acupuncture in another state subject to the following: (i) the toher state shall have substantially equivalent acupuncture licensure requirements as Wyoming, including similar licensure by endorsement provisions for licensees of this state"</i>	Accepts CALE as proof of exam; Auricular acupuncture licesne available; tutorial program available
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#22

Disciplinary Guidelines and
Uniform Standards Related to
Substance Abusing Licensees –
Memo to the Board



DATE	October 26, 2018
TO	Board Members
FROM	Marc Johnson, Policy Coordinator Kristine Brothers, Enforcement Coordinator
SUBJECT	Further discussion on the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees – amend California Code of Regulations (CCR) §1399.469 and document incorporated by reference into CCR §1399.469

Issue:

The Board will be continuing its discussion of the proposed 2018 update of the Board's Disciplinary Guidelines (DGs). The Board last reviewed the regulation at the June 29, 2018 public meeting and suggested several changes, which are detailed below. Staff originally proposed creating a separate document and regulation to implement the Uniform Standards Related to Substance Abusing Licensees (Uniform Standards); however, staff is now proposing to combine the Uniform Standards into the DGs document as detailed below, creating one primary document. These changes will further strengthen the Board's primary mandate of public protection by detailing the discipline which may be taken against licensees who break the law and are put on probation. This regulation has not been publicly noticed nor filed with the Office of Administrative Law.

Action items for the Board:

1. Continued discussion and review of proposed text for Title 16, CCR §1399.469. (attachment A)
2. Continued discussion and review of the proposed "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees – revised June 2018" document incorporated by reference into CCR §1399.469. (attachment B)

As noted below, several highlighted sections of the Disciplinary Guidelines have not been finalized as of October 22, 2018, and this memo reflects as such. Staff does not propose a Board vote on the amended text and DGs handbook; this is recommended for the next board meeting in early 2019.

History:

The Board's current DGs, which are used by attorneys, administrative law judges (ALJ's), licensees, others involved in the disciplinary process, and ultimately the Board itself, date to 1996. The DG are used to impose discipline, including conditions of



probation, for licensees, that address the violations charged and provide public protection. The Board has been reviewing and refining the DGs in various forms since 2012. Substantial changes to the DGs were approved by the Board at the February 24, 2017 and June 29, 2018 public meetings.

For the Uniform Standards, in 2008, SB 1441 (Ridley Thomas, Chapter 548, Statutes of 2008) was signed into law. This bill established the Substance Abuse Coordination Committee (SACC) within the California Department of Consumer Affairs (DCA), which required SACC to formulate, by January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with persons designated as substance abusing licensees. The SACC developed sixteen uniform standards as required by SB 1441 and published 'the Uniform Standards Regarding Substance Abusing Licensees (April 2011)' which is used as template language for the Standards.

Thus, the Board is directed to implement these Uniform Standards, as required by Business and Professions Code (BPC) §315, via the regulatory process. Similar to the DGs, the Board has approved several versions of this rulemaking since 2012, although none have become regulation. Staff is now proposing to merge the required uniform standards into the DGs, fulfilling the requirements of BPC §315. This includes implementation of SACC uniform standards #1-10. SACC uniform standards #13 - #15 are not applicable to the Acupuncture Board as the Board does not have a diversion program.

Implementation of uniform standards 11 and 12 has not been finalized and will be determined during the review process.

Changes to the text of CCR §1399.469 (attachment A):

Changes to the text have not been finalized and will be determined during the review process.

Changes to the 'Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees', incorporated by reference into CCR §1399.469 (attachment B):

The Board reviewed the DGs at the June 29, 2018 public meeting and suggested numerous changes and revisions, which are reviewed below. Additionally, staff and Legal Counsel have also recommended changes. Within the DGs attachment, all additions to the 1996 Guidelines are underlined, and deletions are ~~struck through~~. However, additions or deletions made by the Board at the June 2018 meeting are **highlighted in yellow**, and additions or deletions made by staff since the June 2018 meeting are **highlighted in blue**.



Throughout the document, standard conditions are now listed in front of the optional conditions, per the direction of the Board at the June 2018 Meeting, and have been renumbered as such. The page numbers on the table of contents, and throughout the document, are not final due to edits being made by the Board and staff.

Introduction (Page 4):

Board requested a change in the listing of terms and conditions, listing standard conditions first, then optional conditions. A new subcategory ‘special conditions’ was added to incorporate the uniform standards as special conditions with the specific language added from CCR §1399.469(b).

Terms and Conditions (Page 6-7):

Staff is proposing removal of this section, as it is redundant to the introduction.

#6 Tolling for Out-of-State Practice or Residence (Page 9):

Board requested changes to include removal of language specifying vacation or practice outside of the state and specifying a period of 30 days spent outside of California will not apply to the reduction of the probationary period.

#7 Restriction on Employment or Supervision of Trainees (page 9):

Title has been renamed and language has been added restricting a respondent from teaching continuing education courses. This is a Board requested change.

#17 Psychological Evaluation (Page 12-13):

Board requested changes include the word “approved” instead of “appointed”, and addition of a licensed psychiatrist to those who can perform a psychological evaluation on a respondent.

#22 No Solo Practice (Page 17):

This is a new optional condition requested by the Board, and the proposed language is sourced from the California Medical Board. It prohibits a respondent from engaging in the solo practice of Acupuncture when the respondent is sharing office space with another licensee or in sole practice. It requires that respondent fails to establish a practice within 60 days of the decision with another licensee, and that the Board may issue a cease practice order within three days. Additionally, the condition requires a five-day notice if the practice setting changes in a setting complaint with the Decision.

#26 Alcohol and Drug Abuse Treatment Program (page 19):

Staff added a note at the bottom of the condition which specifies that the special terms and conditions #33 – 38, relating to substance abusing licensees, will be used in lieu of this condition.

#27 Attend Chemical Dependency Support and Recovery Groups (Pages 19-20):



Staff added a note at the bottom of the condition which specifies that the special terms and conditions #33 – 38, relating to substance abusing licensees, will be used in lieu of this condition.

#28 Abstain from Drugs and Alcohol and Submit to Tests and Samples (Page 20):

Staff added a note at the bottom of the condition which specifies that the special terms and conditions #33 – 38, relating to substance abusing licensees, will be used in lieu of this condition.

#31 Supervised Practice (Page 22):

The word “California” was added to require a California licensee be the supervisor for a respondent.

#32 Notification of Probationer Status to Employers (Page 22):

This is a new optional condition requested by the Board, and the proposed language is sourced from the Physical Therapy Board of California. It specifies that respondents shall notify all present and future employers during the probation of the reasons and terms and conditions of their probation. The respondent is required to provide documents relating to their probation to the employer before accepting employment, and, provide information about the respondent’s probation monitor and their duties within 10 days.

Special Conditions - Language to be included in all Stipulations and Proposed Decisions when it has been determined the case fits the criteria for a substance abusing license (Page 28):

A table listing all special conditions was added, and the text taken directly from CCR §1399.469(c) was listed.

As part of the Uniform Standards Related to Substance Abusing Licensees, staff is proposing to add language directly from the SACC uniform standards document into the DGs, to ensure the conditions do not deviate from the SACC document.

Implementation of the uniform standards has not been finalized and will be determined during the review process.

#33 Clinical Diagnostic Evaluations and Reports (Pages 28-29):

This proposed special condition implements the following SACC uniform standards:

- *#1 Clinical Diagnostic Evaluations –*

This condition sets out specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.



- ***#2 Temporary Removal from Practice –***

This condition lists specific requirements for the temporary removal of the licensee from practice to enable the licensee to undergo the clinical diagnostic evaluation described in #1 and any treatment recommended by the evaluator described in #1 and approved by the board, and, specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

- ***#6 Determining What Treatment is Necessary –***

This condition lists the Uniform Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#34 Notice of Employer or Supervisor Information (Page 29):

This proposed special condition implements SACC uniform standard #3 (Notification to Employer), which lists specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#35 Biological Fluid Testing (Pages 30-32):

This proposed special condition implements the following SACC uniform standards:

- ***#4 Drug Testing Standards –***

This condition sets out standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

- ***#8 Procedure for Positive Testing –***

This condition specifies procedures to be followed when a licensee tests positive for a banned substance.

- ***#9 Procedures for a Confirmed Ingested Banned Substance –***

This condition sets out procedures to be followed when a licensee is confirmed to have ingested a banned substance.

- Although not implemented fully as part of this condition, a reference is made to special condition ***#38 Violation of Probation Conditions*** for actions the Board shall take if this special condition is violated.



#36 Substance Abuse Support Group Meetings (Page 33):

This proposed special condition implements SACC uniform standard *#5 Participation in Group Support Meetings*, which sets out standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#37 Worksite Monitor for Substance-Abusing Licensee (Page 33-34):

This proposed special condition implements SACC uniform standard *#7 Worksite Monitoring*, which details worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#38 Violation of Probation Condition for Substance Abusing Licensees (Pages 35-36):

This proposed special condition implements SACC uniform standard *#10 Violation of Probation*, which defines major and minor violations and the consequences for each. If a licensee commits a major violation, the Board is required to automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board. If a licensee commits a minor violation, the Board is required to determine what action is appropriate.

Penalty Recommendations (Page 37):

Title changed from "Guidelines" to "Recommendations" by the Board.

Recommended Action by Violation of General California Business and Professions Code Provisions (Pages 37-46):

Several general changes were made by the Board. The numbering of standard / optional conditions has changed in each listing to correspond with the renumbering of condition from throughout the DGs, and minimum/maximum penalties were changed to list the maximum penalty on top. The proposed special conditions for licensees who have been designated substance abusing licensees were added to each BPC section where applicable.

The addition of proposed BPC sections has not been finalized and will be determined during the review process.

Several BPC sections were also added by the Board:

- Section 480 –
Conviction of a Crime; Committed Any Act Involving Dishonesty, Fraud or Deceit
- Section 490 –
Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist.



- Section 4936 –

Usage of the title “Doctor” or the abbreviation “Dr.” in connection with the practice of acupuncture unless he or she possesses a license that authorizes the use, or, possesses an earned doctorate degree in a related field.

Proposed Decisions (Page 54):

A minor change listing the Standard terms and conditions first, followed by the Optional terms.

Reinstatement/Penalty Relief Hearings (Page 55):

A minor change placing “is not interested” into the language was added.

Index of Violations (Page 57):

Page numbers were changed to correspond to the correct new page. BPC Sections 480, 490 and 4936 were added.

Additional changes to the DGs requested by the Board:

At the June 29, 2018 meeting, the Board requested two additional conditions to be added. Staff researched potential language for the conditions and has comments on each of these changes.

1. Notification to Patients (Source: Physical Therapy Board) – Standard Condition

Respondent shall notify each patient, in writing, his or her license is on probation and that [INSERT LANGUAGE SPECIFIC TO CASE, e.g. practice monitor will be reviewing patient records acupuncturist will be reviewing patient records or other specific requirement]. Such notification shall be signed and dated by each patient prior to the commencement or continuation of any examination or treatment of each patient by Respondent. A copy of such notification shall be maintained in the patient’s record and Respondent shall offer the patient a copy of the acknowledgement.

The notification shall include the following language unless the Board or its designee agrees, in writing, to a modification: “The California Acupuncture Board has placed license [INSERT LICENSE #], issued to [INSERT LICENSEE NAME], on probation. As a condition of probation, the above-named licensee must notify patients and/or employers that [INSERT LANGUAGE SPECIFIC TO CASE, e.g. practice monitor will be reviewing patient records or other specific requirement]. In addition, Respondent is required to notify and obtain written acknowledgement from each patient of this condition. A copy of the acknowledgement shall be offered to the patient and placed in the patient’s record. Information regarding California Acupuncture Board license disciplinary actions may be accessed online at acupuncture.ca.gov.”

Staff does not recommend inclusion of this condition at this time. Senate Bill 1448 (Hill, Chapter 570, Statutes of 2018) was recently signed into law and will take effect on July 1, 2019. This bill requires the Board to direct all licenses who are on probation to



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provide a separate disclosure which includes the licensee's probation status and other information to a patient. Due to the uncertain effect of the law, it may be best to await guidance from DCA on implementation of this requirement.

2. Notification of Probationer Status to Employees (Source: Physical Therapy Board) – Standard Condition

“If Respondent is an employer, Respondent shall notify all directly employed present or future employees (during the period of probation) of the reason for and terms and conditions of the probation. Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within ten (10) days. The confirmation(s) provided to the Board shall include the name, address, and phone number of the employees.”

#22

Disciplinary Guidelines and
Uniform Standards Related to
Substance Abusing Licensees –
Regulatory Text

Acupuncture Board Update to Disciplinary Guidelines and Implementation of Uniform Standards Related to Substance-Abusing Licensees

Changes approved by the Board at the February 24, 2017 public meeting are underlined to denote new text and ~~strike through~~ to denote removed text. New changes proposed are underlined to denote new text and ~~strike through~~ to denote removed text and highlighted in yellow

Amend the title of Division 13.7 of Title 16 of the California Code of Regulations:

Division 13.7. Acupuncture Board Examining Committee of the Board of Medical Quality Assurance

Create new Article 6.1 of Chapter 13.7 of Title 16 of the California Code of Regulations:

Article 6.1. Citations

To include §§ 1399.463, 1399.464, 1399.465, 1399.466, 1399.467, and 1399.468. The text of these sections would not change.

Create new Article 6.2 of Chapter 13.7 of Title 16 of the California Code of Regulations:

Article 6.2 Enforcement

To include §§ 1399.469, 1399.469.1, 1399.469.2, and 1399.469.3. The text of these sections would not change, except for § 1399.469 detailed below.

Amend Section 1399.469 of Article 6.2 of Chapter 13.7 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.469. Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees.

(a) 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 and Uniform Standards Related to Substance Abusing Licensees' 1996~~ (Revised June 2018)," 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 or aggravating factors; the age of the case; evidentiary problems.

(b) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Acupuncture Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions applying the uniform standards related to substance abusing licensees shall be used in any probationary order of the Acupuncture Board affecting that licensee, in addition to any and all other relevant terms and conditions contained in the Acupuncture Board's guidelines referenced in subsection (a).

(c) Nothing in this Section shall prohibit the Acupuncture Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Acupuncture Board's guidelines referenced in subsection (a) in any order that the Acupuncture Board determines would provide greater public protection.

NOTE: Authority cited: Sections 315, 4928 and 4933, Business and Professions Code; and Sections 11400.20, 11425.50(e) and 11400.21, Government Code. Reference: Sections 315, 315.2, BPC 315.4, Business and Professions Code. ~~Sections 11400.20, 11400.21 and 11425.50(e), Government Code.~~

#22

Disciplinary Guidelines

~~Department of Consumer Affairs~~

~~Medical Board of California~~

~~ACUPUNCTURE COMMITTEE~~

~~DISCIPLINARY
GUIDELINES~~

~~1996~~

Acupuncture Board



Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees

Revised June 2018

The following informational note will be removed upon Board adoption of the Guidelines:

Changes approved by the Board at the February 24, 2017 public meeting and 2018 staff changes are underlined to denote new text and ~~strikethrough~~ to denote removed text.

New changes, including those detailed at the June 29, 2018 public meeting, are **highlighted in yellow** with underlined to denote new text and ~~strikethrough~~ to denote removed text.

Staff changes since the June meeting are **highlighted in pink** with underlined to denote new text and ~~strikethrough~~ to denote removed text.

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

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Introduction

The ~~Acupuncture Committee (AC) Board~~ (Board) is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the AC Board has adopted the following recommended "Acupuncture Board Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Revised June 2018)" (hereafter "Guidelines") for disciplinary orders and conditions of probation for violations of the Acupuncture Licensure Act.

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

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

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

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

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

2. Standard Conditions are those conditions of probation which should be used in all cases. Optional Conditions are those conditions of probation which may be used to address the sustained violations and any significant mitigating or aggravating circumstances of a particular case.

3. Special conditions to be used in the following cases:

a. As provided in Title 16, California Code of Regulations section 1399.469, subdivision (b), if after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Acupuncture Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions applying the uniform standards related to substance abusing licensees shall be used in any probationary order of the Acupuncture Board affecting that licensee, in addition to any and all other relevant terms and conditions contained in the Acupuncture

Board's guidelines referenced in subsection (a).

b. As provided in Title 16, California Code of Regulations section 1399.469.1, if an individual is required to register as a sex offender pursuant to section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Board shall do the following: (1) Deny an application by the individual for licensure; (2) Revoke the license of the individual and shall not stay the revocation nor place their license on probation; or (3) Deny any petition to reinstate or reissue the individual's license.

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

To enhance the clarity of a Proposed Decision or stipulation **Stipulated Settlement and Disciplinary Order**, the AG Board requests that all **optional-standard** conditions **that are being imposed** be listed first in sequence followed immediately by all of the **standard optional** terms and conditions **that are being imposed**.

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

~~The Board has adopted the "Department of Consumer Affairs, Acupuncture Board, Disciplinary Guidelines, 1996" as an administrative regulation pursuant to the Administrative Procedures Act. (Government Code Section 11400.20, 11400.21 and 11425.50, Sub. (E); Operative 7/1/97 [Statutes of 1995, Chapter 938, Section 98].)~~

General Considerations

In determining whether revocation, suspension, or probation is to be imposed in a given case, the following mitigating or aggravating 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 any consumer, client, or the public.
3. Number and/or variety of current violations.
4. Time that has elapsed since commission of act(s) or crimes(s).
5. Prior record of discipline, warnings, or citations, including level of compliance.
6. Evidence of any additional, subsequent acts which also could be considered grounds for discipline.
7. Overall criminal record. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation. If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.
8. Evidence of rehabilitation submitted by respondent.
9. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Respondent's ability or inability to convey remorse for his or her wrongdoing and whether respondent accepts or does not accept responsibility for the actions which are resulting in the imposition of discipline on respondent's license.
12. Evidence that respondent was dishonest, untruthful, or engaged in corruption during the pendency of the Board's proceedings.
13. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
14. The financial benefit to the respondent from the misconduct.

No one of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

Terms and Conditions

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

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee pursuant to Title 16, Code of Regulations section 1399.469, subdivision (b), then the terms and conditions contained in shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations section 1399.469.1, if an individual is required to register as a sex offender pursuant to section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Board shall do the following: (1) Deny an application by the individual for licensure; (2) Revoke the license of the individual and shall not stay the revocation nor place the licensee on probation; or (3) Deny any petition to reinstate or reissue the individual's license.

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

Standard Terms and Conditions

(To be included in all Decisions)

1	<u>Obey All Laws</u>	9	<u>Violation of Probation</u>
2	<u>Quarterly Reports</u>	10	<u>Probation Monitoring Costs</u>
3	<u>Surveillance Monitoring Program</u>	11	<u>License Surrender</u>
4	<u>Interview with the Board or Its Designee</u>	12	<u>Severability Clause</u>
5	<u>Changes of Employment</u>	13	<u>Notification of Name, Address, Telephone Number or E-mail Address Changes</u>
6	<u>Tolling for Out-of-State Practice or Residence</u>	14	<u>Maintenance of Clear and Active License</u>
7	<u>Employment and Supervision of Trainees</u>	15	<u>Completion of Probation</u>
8	<u>Cost Recovery</u>		

1. 43 Obey All Laws

Respondent shall obey all federal, state and local laws, remain in full compliance with any court ordered criminal probation terms, payments, and/or other orders, and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the Respondent to the AC Board or its designee in writing within ~~seventy-two (72)~~ hours of occurrence. This condition applies to any jurisdiction with authority over the Respondent, whether inside or outside California.

2. 44 Quarterly Reports

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

3.15 Surveillance Monitoring Program

Respondent shall comply with the AC's Board's probation surveillance monitoring program and shall, upon reasonable notice, report to the assigned probation monitor ~~investigative district office~~. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Unless the Respondent obtains prior approval from his or her assigned Board probation monitor to allow for contact, Respondent shall not have any unsolicited or unapproved contact with (1) victims, witnesses, and/or complainants

associated with the case; (2) Board members and/or members of its staff; (3) persons serving the AG Board as subject matter experts; and/or (4) persons who previously rendered expert opinions on behalf of the Board in Respondent's disciplinary proceeding.

4.16 Interview with the AG Board or Its Designee

Respondent shall appear in person for interviews with the AG Board or its designee upon request at various intervals and with or without prior reasonable notice throughout the term of probation.

5.17 Changes of Employment

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

6.18 Tolling for Out-of-State Practice or Residence

The period of probation shall run only during the time Respondent is practicing or performing acupuncture within California. In the event Respondent should leave California ~~to reside, to vacation~~ exceeding 30 days, ~~or to practice outside the State,~~ Respondent must notify the AG Board or its designee immediately in writing of the dates of departure and return. Periods ~~of residency or practice~~ exceeding 30 days spent outside California will not apply to the reduction of this probationary period.

For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be tolled. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

7.19 Employment Restriction on Employing and Supervision of Trainees

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

8.20 Cost Recovery

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

At Respondent's request, if Respondent has not complied with this condition during

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

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

9.24 Violation of Probation

If Respondent violates probation in any respect, the AG Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was **stated-stayed**. If an accusation or petition to revoke probation is filed against Respondent during probation, the AG 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 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.

10. Probation Monitoring Costs

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

11. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of his or her license or registration. The Board or its designee reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 days, deliver Respondent's pocket and/or wall certificate to the Board or its

designee and Respondent shall no longer practice acupuncture. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of Respondent's license shall be considered ~~to be~~ disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent reapplies for an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked or surrendered license.

12. 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.

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

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

14. Maintenance of Clear and Active License

Respondent shall, at all times, maintain a clear and active current license with the Board, including any period of suspension or tolled probation.

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

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

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

15. 22 Completion of Probation

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

Optional Terms and Conditions

<u>16 Actual Suspension</u>	<u>25 Restitution</u>
<u>17 Psychological Evaluation</u>	<u>26 Alcohol and Drug Abuse Treatment Program</u>
<u>18 Physical Examination</u>	<u>27 Attend Chemical Dependency Support and Recovery Groups</u>
<u>19 Practice/Billing Monitor</u>	<u>28 Abstain from Drugs and Alcohol and Submit to Tests and Samples</u>
<u>20 Psychotherapy</u>	<u>29 Coursework</u>
<u>21 Restrictions on Patient Population or Practice Setting</u>	<u>30 Community Service</u>
<u>22 No Solo Practice</u>	<u>31 Supervised Practice</u>
<u>23 Restrictions on Practice Techniques and Modalities</u>	<u>32 Notification of Probationer Status to Employers</u>
<u>24 Examination(s)</u>	

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

16.1. Actual Suspension

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

17.2. Psychological Evaluation

Within 90- days of the effective date of this Decision and on a periodic basis thereafter as may be required by the AG Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AG Board ~~appointed~~ approved California licensed psychologist or psychiatrist. Respondent shall sign a release that authorizes the evaluator to furnish the AG Board or its designee shall receive with a diagnosis based on currently accepted standards, such as the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5),-III-R diagnosis and a written report regarding the Respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the AG Board or its designee deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the AG. The

completed evaluation is the sole property of the AG Board.

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

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then optional term and condition 31, Supervised Practice, shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), Respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the Respondent's practice will be supervised.

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

NOTE: *Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the Respondent or where there has been a history of abuse of or dependency on 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 AG Board has accepted and approved the evaluation. The Board requires that therapists, psychologists or psychiatrists have appropriate knowledge, training, and experience in the area involved in the violation.*

18.3. Physical Examination

Within ninety (90) days of the effective date of this Decision, Respondent shall undergo a physical examination by a licensed physician and surgeon approved by the AG Board or its designee. Respondent shall bear all costs of such an examination. Failure to pay costs will be considered a violation of the probation order. The AG 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 AG Board or its designee on a quarterly basis or as otherwise determined by the AG Board or its designee.

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

NOTE: This condition permits the AG 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.

19.4. Practice/Billing Monitor

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

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

Within 90 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 **California** licensed acupuncturists whose license is clear and active, in good standing and not disciplined by the Board. Prior to the Board's approval, Respondent shall provide a copy of the Board's Accusation and Decision to the monitor(s). A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board or its designee, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs. The Board in its sole discretion shall have the option of rejecting the proposed monitor(s) for any reason and Respondent shall work to provide an alternative monitor(s) as set forth above.

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

with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 120 days of the effective date of this Decision, and continuing through probation, Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

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

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

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

20. Psychotherapy

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board or its designee. Within 15 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one

or more therapists of Respondent's choice. ~~Such~~ The therapist shall: (1) be a California-licensed psychologist with a clear and current license; (2) ~~possess a valid California license to practice and~~ shall have had no prior business, professional, personal, or other relationship with Respondent ~~person as respondent's monitor. Counseling Psychotherapy shall consist of one hour per week be at least once a week,~~ unless otherwise determined by the Board or its designee. Respondent shall continue in ~~therapy~~ therapy at the Board's or its designee's discretion. Cost of such therapy is to be borne by the Respondent.

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

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

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

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

21.5. Restrictions of on Patient Population or Practice Setting

Respondent's practice shall be restricted to [specify patient population and/or setting] for the first _____ years of probation. Within 60 days from the effective date of the Decision, Respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof,

satisfactory to the Board, of compliance with this term of probation.

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

22. No Solo Practice

Respondent is prohibited from engaging in the solo practice of acupuncture. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another licensed practitioner, but is not affiliated for the purpose of providing patient care, or 2) Respondent is the sole licensed practitioner at that location.

If Respondent fails to establish a practice with another licensed practitioner or secure employment in an appropriate practice setting within 60 days of the effective date of this Decision, Respondent shall receive notification from the Board or its designee to cease the practice of acupuncture within three (3) days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting compliant with this Decision, the Respondent shall notify the Board or its designee within five (5) days of the practice setting change. If Respondent fails to establish a practice with another licensed practitioner or secure employment in an appropriate practice setting within 60 days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of acupuncture within three (3) days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

23. Restrictions on Practice Techniques and Modalities

Respondent's practice shall be prohibited from providing [insert treatment modalities]. Within 30 days from the effective date of the Decision, Respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify all present and future employers of the restrictions imposed on their practice while on probation.

NOTE: The restrictions shall be appropriate to the violation. The condition shall be used in cases where public protection is achieved by Respondent abstaining from a specific

acupuncture service (herbs, moxibustion, an alternative treatment not in the Acupuncture Licensure Act, etc.)

24.6. Examination(s)

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

~~If Respondent fails the~~ has not passed the examination three times, his/her license to practice acupuncture is suspended until the examination is successfully passed. within 18 15 months from the effective date of this Decision, Respondent shall be considered to be in violation of probation.

NOTE: *In cases involving evidence of severe deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the Respondent to pass both the written and clinical the examination(s) during the course within the first 15 18 months of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).*

25.7. Restitution

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

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

26.8 Alcohol and Drug Abuse Treatment Program

Effective 30 days from the date of this Decision, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program (a minimum of ~~six (6)~~ three months duration) or an equivalent program as approved by the AC Board or its designee. The Board may consider accept a recovery program taken under court order within the last three years prior to the effective date of the Decision. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. ~~Subsequent to the program,~~ Respondent shall submit proof of completion of the recovery program to the Board or its designee within 15 days of its conclusion. ~~participate in on-going treatment~~

~~such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the AC at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the AC. Respondent shall pay all costs of treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the equivalent as approved by the AC. The psychologist shall confirm that Respondent has complied with the requirements of this Decision and shall notify the AC immediately if he or she believes the Respondent cannot safely render acupuncture services. Respondent shall execute a release authorizing the psychologist to divulge the aforementioned information to the AC.~~

NOTE: *Alcohol and other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by Respondent has impaired Respondent's ability to safely provide acupuncture services to patients. This condition must be accompanied by optional terms and conditions # 9Q27 (Attend Chemical Dependency Support and Recovery Groups) and 28 (Abstain from Drugs and Alcohol and Submit to Tests and Samples). If, after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance Abusing Licensees (June 2018)", then the special terms and conditions shall be used in any probationary order of the Board affecting that licensee in lieu of this condition.*

10. ~~Reimbursement for Probation Surveillance Monitoring~~

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

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

27. Attend Chemical Dependency Support and Recovery Groups

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

NOTE: *If, after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance Abusing Licensees (June 2018)", then the special terms and conditions shall be used in any probationary order of the Board affecting that licensee*

in lieu of this condition.

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

Respondent shall abstain completely from the personal use or possession or use of alcohol and controlled substances, as defined in the California Uniform Controlled Substances Act (Division 10, commencing with Section 11000, Health and Safety Code) and dangerous drugs as defined in Section 4244 4022 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall abstain completely from the use of alcoholic beverages.

Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription or referral for the drug was legitimately issued and is a necessary part of the medical treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, shall be considered a violation of probation.

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

NOTE: *This condition provides documentation that the probationer is substance or chemical free. It also provides the AG Board or its designee with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. If, after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance Abusing Licensees (June 2018)," then the special terms and conditions shall be used in any probationary order of the Board affecting that licensee in lieu of this condition.*

29.11. Coursework

~~Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following area(s) _____.~~ All coursework shall be taken at the graduate level at a school approved by the AG. Classroom attendance must be specifically required. Course

~~content shall be pertinent to the violation and all coursework must be completed within the first 3 years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.~~

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

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

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

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

30.12. Community Service

Within 60 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, a community service program in which Respondent shall provide volunteer services on a regular basis to a community or charitable facility or agency for at least _____ hours per month for the first _____ months of probation. Such community service does not necessarily include acupuncture service. Respondent shall ensure that the Board receives documentation and/or certification of community service hours by the facility or agency on a quarterly basis.

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

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

31. Supervised Practice

During the period of probation, when Respondent conducts evaluations and/or

treatments on _____ (specific population of patients), such evaluations and treatments shall be performed only under the supervision and direct observation of a **California** licensed acupuncturist whose license is clear and active, in good standing and not disciplined by the Board. Upon and after the effective date of this Decision, Respondent shall not practice acupuncture and his or her license shall be automatically suspended until a supervisor is approved by the Board or its designee. The supervision shall be direct observation of all evaluations and/or treatments provided to all _____ (specific population of patients).

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

Within 30 days of the effective date of this Decision, Respondent shall have his or her supervisor submit notification to the Board or its designee in writing stating that the supervisor ~~have~~ has read the Decision in case number _____ and is familiar with the required level of supervision as determined by the Board or its designee. It shall be the respondent's responsibility to ensure that his or her supervisor submit timely acknowledgement(s) to the Board or its designee. If Respondent changes employment, it shall be the Respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board or its designee. Respondent shall have his or her new supervisor, within 15 days after employment commences, submit notification to the Board **or its designee** in writing stating the direct supervisor has read the Decision and is familiar with the level of supervision as determined by the Board or its designee. Respondent shall not practice acupuncture and his or her license shall be automatically suspended until the Board or its designee approves a new supervisor. Failure to cause the direct supervisor to submit timely acknowledgements to the Board or its designee shall be considered a violation of probation. Within 10 days of leaving employment, Respondent shall notify the Board or its designee in writing.

32. Notification of Probationer Status to Employers

Respondent shall notify all present and future employers (during the period of probation) of the reason for and the terms and conditions of the probation.

Prior to engaging in the practice of acupuncture, Respondent shall provide a true copy of the Initial Probationary License Decision and Order, Statement of Issues or Accusation, Decision and Order, or Stipulated Decision and Order as appropriate to his or her employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of acupuncture before accepting or continuing employment.

Respondent shall provide the probation monitor the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the probation monitor in writing of the facility or facilities at which Respondent will be engaging in the practice of acupuncture for purposes of allowing the probation monitor to communicate with the employer, supervisor, or contractor regarding Respondent's work status, performance and monitoring. The information will be provided in writing to the probation monitor within ten (10) days and will include written employer confirmation of receipt.

33. Notification of Probationer Status to Employees

If Respondent is an employer, Respondent shall notify all present or future employees of the reason for and terms and conditions of the probation. Respondent shall do so by providing a copy of the Initial Probationary License, Statement of Issues, Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within 10 days. The confirmation(s) provided to the Board shall include the name, address, and phone number of the employees.

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

<u>16</u>	<u>Obey All Laws</u>	<u>24</u>	<u>Violation of Probation</u>
<u>17</u>	<u>Quarterly Reports</u>	<u>25</u>	<u>Probation Monitoring Costs</u>
<u>18</u>	<u>Surveillance Monitoring Program</u>	<u>26</u>	<u>License Surrender</u>
<u>19</u>	<u>Interview with the Board or Its Designee</u>	<u>27</u>	<u>Severability Clause</u>
<u>20</u>	<u>Changes of Employment</u>	<u>28</u>	<u>Notification of Name, Address, Telephone Number or E-mail Address Changes</u>
<u>21</u>	<u>Tolling for Out-of-State Practice or Residence</u>	<u>29</u>	<u>Maintenance of Clear and Active License</u>
<u>22</u>	<u>Employment and Supervision of Trainees</u>	<u>30</u>	<u>Completion of Probation</u>
<u>23</u>	<u>Cost Recovery</u>		

16. 13 Obey All Laws

Respondent shall obey all federal, state and local laws, remain in full compliance with any court ordered criminal probation terms, payments, and/or other orders, and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the AC Board or its designee in writing within seventy-two (72) hours of occurrence. This condition applies to any jurisdiction with authority over the respondent, whether inside or outside California.

17. 14 Quarterly Reports

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

18. 15 Surveillance Monitoring Program

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

~~subject matter experts; and/or (4) persons who previously rendered expert opinions on behalf of the Board in Respondent's disciplinary proceeding unless the respondent obtains prior approval from his or her assigned Board probation monitor to allow for contact.~~

19.16 Interview with the AC Board or Its Designee

~~Respondent shall appear in person for interviews with the AC Board or its designee upon request at various intervals and with or without prior reasonable notice throughout the term of probation.~~

20.17 Changes of Employment

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

21.18 Tolling for Out-of-State Practice or Residence

~~In the event Respondent should leave California to reside, to vacation exceeding 30 days, or to practice outside the State, Respondent must notify the AC Board or its designee immediately in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.~~

~~For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be tolled. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.~~

22.19 Employment and Supervision of Trainees

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

23.20 Cost Recovery

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

~~At Respondent's request, if Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of~~

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

24.21 Violation of Probation

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

25. Probation Monitoring Costs

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

26. License Surrender

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

Voluntary surrender of Respondent's license shall be considered to be disciplinary

action and shall become a part of Respondent's license history with the Board. If Respondent reapplies for an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked or surrendered license.

27. Severability Clause

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

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

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

29. Maintenance of Clear and Active License

Respondent shall, at all times, maintain a clear and active current license with the Board, including any period of suspension or tolled probation.

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

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

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

30. 22 Completion of Probation

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

Special Terms and Conditions:

Standard Language to be included in every probationary order for substance-abusing licensee.

34	Clinical Diagnostic Evaluations and Reports
35	Notification of Employer or Supervisor Information
36	Biological Fluid Testing
37	Substance Abuse Support Group Meetings
38	Worksite Monitor for Substance-Abusing Licensees
39	Violation of Probation Condition For Substance Abusing Licensees

Pursuant to Section 315 of the Business and Professions Code, the Board is directed to use the standards developed by the Substance Abuse Coordination Committee (SACC) for substance abusing licensees. On April 11, 2011, the SACC developed standards to be used by all healing arts boards entitled "Uniform Standards Regarding Substance Abusing Healing Arts Licensees (4/2011) ("Uniform Standards"). Administrative Law Judges, parties, and staff are therefore required to use the language below, which is developed in accordance with those SACC standards.

To that end, the following probationary terms and conditions shall be used in every case where it has been determined that the individual is a substance-abusing licensee as provided in Section 1399.469 of Title 16 of the California Code of Regulations. For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board or its designee. These conditions shall be used in lieu of any similar standard or optional terms and conditions proposed in the Guidelines. However, the Board's standard and optional conditions should still be used in formulating the penalty and in considering additional terms and conditions of probation appropriate for greater public protection.

34. Clinical Diagnostic Evaluations and Reports

Within thirty (30) days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-approved health professional whose scope of practice includes conducting clinical diagnostic evaluations. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed health professional who

- holds a valid, unrestricted license,
- has three (3) years experience in providing evaluations of health

professionals with substance abuse disorders, and

- is pre-approved by the Board or its designee.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

The clinical diagnostic evaluation report shall:

- set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem,
- set forth, in the evaluator's opinion, whether Respondent is a threat to himself or herself or others, and
- set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely.

If the evaluator determines during the evaluation process that Respondent is a threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors:

- the license type;
- the Respondent's history;
- the documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);
- the scope and pattern of substance abuse;
- the treatment history;
- the Respondent's medical history and current medical condition;
- the nature, duration, and severity of substance abuse; and
- whether Respondent is a threat to himself/herself or the public.

For all clinical diagnostic 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. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the enumerated criteria relied upon by the evaluator and the evaluator's recommendations. Respondent shall not be returned to practice until he or she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited substance.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the Respondent.

Respondent shall not engage in the practice of acupuncture until notified by the Board or its designee that he or she is fit to practice acupuncture safely. The period of time that Respondent is not practicing acupuncture may not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he or she is fit to practice acupuncture safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) days after being notified by the Board or its designee.

Note: *This condition implements Uniform Standard numbers one, two and six.*

35. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring.

Note: *This condition implements Uniform Standard number three.*

36. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or

similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five (5) years, Respondent shall be subject to 36 to 104 random tests per year. Only if there have been no positive biological fluid tests in the previous five (5) consecutive years of probation or if Respondent is not practicing or working in any health care field, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing acupuncture, Respondent shall contract with a laboratory or service, assigned and approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all of the following standards:

- (a) 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 United States Department of Transportation.
- (b) Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
- (c) 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.
- (d) Collection of specimens shall be observed.
- (e) Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.
- (f) A collection site must submit a specimen to a 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 to the Board within seven (7) business days of receipt of the specimen. The 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.

- (g) Specimen collectors shall possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.
- (h) Specimen collectors shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) Specimen collectors must provide collection sites that are located in areas throughout California.
- (j) Specimen collectors must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.
- (k) Specimen collectors must have a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) Specimen collectors shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent tests positive for a banned substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing acupuncture or providing acupuncture services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that

Respondent may not practice acupuncture or provide acupuncture services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If the Board thereafter determines that the positive drug test does not evidence prohibited use, the Board shall immediately lift the cease-practice order, within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory; communicating with the licensee, and/or any treating physician(s); and other health care provider, including group facilitator/s, as applicable.

For purposes of this condition, the terms “biological fluid testing” and “testing” mean the acquisition and chemical analysis of a Respondent’s urine, blood, breath, or hair.

For purposes of this condition, the term “prohibited substance” means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in Standard # 10 of the Uniform Standards and the Board shall impose the consequences set forth in special term and condition number 39, and any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent’s rehabilitation.

Note: This condition implements Uniform Standards numbers four, eight, nine, ten, and thirteen.

37. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he or she shall attend for the first year of probation. Frequency and duration of group meeting attendance shall be determined by the Board. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meetings shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse and shall be licensed or certified by the state or nationally

certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent's name, the group name, the date and location of the meeting, Respondent's attendance, and Respondent's level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

Note: This condition implements Uniform Standard number five.

38. Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed acupuncturists, or other licensed health care professional if no licensed acupuncturist is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee; however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if applicable; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one (1) business day of

occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the start of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly, or as directed by the Board, or its designee, which shall include the following:

- (1) Respondent's name and Licensed Acupuncturist number;
- (2) the worksite monitor's name and signature;
- (3) the worksite monitor's license number, if applicable;
- (4) the location or location(s) of the worksite;
- (5) the dates Respondent had face-to-face contact with the worksite monitor;
- (6) the names of worksite staff interviewed, if applicable;
- (7) a report of Respondent's work attendance;
- (8) any change in Respondent's behavior and/or personal habits; and;
- (9) any indicators that can lead to suspected substance abuse by Respondent.

Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to communicate and exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within fifteen (15) 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 thirty (30) days. If Respondent fails to obtain approval of a replacement monitor within sixty (60) days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of acupuncture within three (3) days after being so notified. Respondent shall cease the practice of acupuncture until a replacement monitor is approved and assumes monitoring responsibility.

Note: This condition implements Uniform Standard number seven.

39. Violation of Probation Condition For Substance Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined in Standard # 10 of the Uniform Standards, the Board shall take the following actions:

(1) Issue an immediate cease-practice order and order the following:

a. Respondent must undergo a clinical diagnostic evaluation to be conducted in accordance with special term and condition number 34, at Respondent's expense.

b. Respondent must test negative for at least thirty (30) days of continuous biological fluid testing before being allowed to resume practice. Respondent may not resume the practice until notified in writing by the Board or its designee that he or she may do so.

(2) Terminate the contract/agreement.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined in Standard # 10 of the Uniform Standards, the Board shall take the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Require or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine or a warning letter;

(6) Require re-evaluation/testing;

(7) Take any other action as determined by the Board or its designee.

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he or she has violated any term or condition of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order 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.

Note: This condition implements Uniform Standard number ten.

Penalty Recommendations Guidelines

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

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

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

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

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

Note: Under conditions of probation, you will find the applicable numbered conditions are set out to include in a Decision and Order.

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

Section 480 –

Conviction of a Crime; Committed Any Act Involving Dishonesty, Fraud or Deceit

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#16, #24, #28, #29)

3. Special Terms and Condition, if Appropriate (#34 – # 39).

Section 490 –

Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 1 year of probation

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (????)

Section 651 –

Advertising

- Maximum Penalty: Revocation, stayed, 3 years of probation
- Minimum Penalty: Revocation, stayed, 1 year of probation

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#28, #29)

Section 726 –

Commission of Act of Sexual Abuse or Misconduct with Patient

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#16, #17, #20, #21, #28, #30)

Recommended Action by Violation of Acupuncture Licensure Act

~~A. SECURING A CERTIFICATE BY FRAUD OR DECEIT~~

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

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

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

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

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

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

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

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

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

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

~~E. IMPROPER ADVERTISING~~

~~Repeated infraction of statute regarding advertising.~~

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

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

~~No Guidelines drafted.~~

~~Refer to underlying statute or regulation.~~

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

~~*MAXIMUM:* Gross negligence resulting in substantial harm to patient(s).~~

~~Penalty: Revocation; denial of license.~~

~~*MINIMUM:* Gross negligence resulting in minimal harm to patient(s).~~

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

~~H. REPEATED NEGLIGENT ACTS~~

~~*MAXIMUM:* Repeated negligent acts resulting in substantial harm to patient(s).~~

~~Penalty: Revocation; denial of license.~~

~~*MINIMUM:* Repeated negligent acts resulting in minimal harm to patient(s).~~

~~Penalty: 5 years probation, minimum 90 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13–22].~~

~~I. INCOMPETENCE~~

~~*MAXIMUM:* Incompetence resulting in harm to patient(s).~~

~~Penalty: Revocation; denial of license.~~

~~*MINIMUM:* Incompetence resulting in minimal harm to patient(s).~~

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

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

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

~~*MAXIMUM:* Impersonation or use resulting in substantial harm to patient(s).~~

~~Penalty: Revocation; denial of license, or written and clinical examination application.~~

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

~~K. AIDING OR ABETTING UNLICENSED PRACTICE~~

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

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

Violation: Unprofessional Conduct

Section 4936 –

Usage of the title “Doctor” or the abbreviation “Dr.” in connection with the practice of acupuncture unless he or she possesses a license that authorizes the use or possesses an earned doctorate degree in a related field.

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#

Section 4955(a) –

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

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#16, #25, #26, #27, #28)

3. Special Terms and Condition, if Appropriate (#34 – # 39).

Section 4955 (b) –

Conviction of a Crime Substantially Related to the Practice of Acupuncture

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#16, #24, #28, #29)

3. Special Terms and Condition, if Appropriate (#34 – # 39).

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

Section 4955(c) –

False or Misleading Advertising

- Maximum Penalty: Revocation, stayed, 3 years of probation
- Minimum Penalty: Revocation, stayed, 1 year of probation

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#28, #29)

Section 4955 (d) –

Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Condition (#28)

Section 4955 (e) –

Failing to Follow Infection Control Guidelines

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#19, #28)

Section 4955 (f) –

The Use of Threats or Harassment Against a Licensee/Patient

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Condition (#28)

Section 4955 (h) –

Disciplinary Action Taken by Any Public Agency

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

Standard Terms and Conditions (#1 – #15)

Section 4955 (i) –

Action or Conduct that Warrants a Denial of License

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

1. Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Condition (#28)

Section 4955 (j) –

Violation of Any Law or Local Ordinance on Business Premises

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

1. All Standard Terms and Conditions (#1 – #15)

2. Optional Terms and Conditions (#28, #29)

Violation: Fraud

Section 4955.1 (a) –

Securing a License by Fraud or Deceit

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

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Terms and Conditions (#23, #28)

Section 4955.1 (b), (c), (d) –

Any Act Involving Fraud, Dishonesty, or Corruption as an Acupuncturist

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 60 days suspension with 3 years of probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Terms and Conditions (#16, #17, #19, #24, #28, #29)

Section 4955.1 (e) –

Repeated Acts of Failing to Maintain Adequate and Accurate Records

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 2 years' probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Terms and Conditions (#19, #28)

Violation: Negligence

Section 4955.2 (a) – **Gross Negligence**

- Maximum Penalty: Revocation or denial of license

- Minimum Penalty: Revocation, stayed, 60 days suspension with 3 years of probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Terms and Conditions (#16, #19, #21, #22, #28)

Section 4955.2 (b) –

Repeated Negligent Acts

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 90 days suspension with 3 years of probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Terms and Conditions (#16, #19, #21, #22, #13)

Section 4955.2 (c) –

Incompetence

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 90 days suspension with 3 years of probation
 1. Standard Terms and Conditions (#1 – #15)
 2. Optional Term and Conditions (#16, #19, #21, #22, #23, #28)

Accusations

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

Statements of Issues

The AG Board will file a Statement of Issues to deny an application of licensure under Business and Professions Code section 480 ~~a candidate~~ for the commission of an act which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

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

Language for Probation Orders

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

- **Licensees:** It is hereby ordered, Acupuncture license no. AC-_____, issued to Respondent _____, is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for _____ years on the following terms and conditions:
- **Applicants:** It is hereby ordered, the application of Respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent's license placed on probation for a period of _____ years on the following conditions:
- **Reinstatements with conditions of probation:** It is hereby ordered, the petition of _____ for reinstatement of his or her acupuncture license is hereby GRANTED, as follows.

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

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

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

Recommended Language for Cost Recovery for Surrenders

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

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

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

Demonstration of Rehabilitation

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

- In evaluating the rehabilitation of an applicant/licensee and to determine if action is necessary, the Board considers the following:
 1. The nature and severity of the crime(s) under consideration.
 2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license.
 3. The time that has elapsed since the commission of the crime(s).
 4. The extent to which the applicant/licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant/licensee.
 5. Evidence, if any, of rehabilitation by the applicant/licensee.
- The petitioner should provide details regarding rehabilitation that include:
 1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
 2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
 3. Letters of reference from professors or colleagues within the field of acupuncture.
 4. Letters of reference from past and/or current employers.
 5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
 6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of an acupuncture profession for the applicant.
 7. Letters of reference from other knowledgeable professionals, such as probation

or parole officers.

8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Evidence of Mitigation

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

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

1. Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, or ongoing therapy, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement and/or rehabilitation, 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 and surgeon, nurse practitioner, or physician assistant.
5. Certificates or transcripts of courses related to acupuncture which Respondent may have completed since the date of the violation.

Evidence of Aggravation

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

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc.).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

Proposed Decisions

The **AG Board** requests that Proposed Decisions include the following:

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

When a probation order is imposed, the AG Board requests that the order first list all of the Standard Terms and Conditions (1-15) followed by any combination of the Optional Terms and Conditions (16-33) as they may pertain to the case.

If the Respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default Decision to revoke licensure or deny application pursuant to Government Code section 11520.

Reinstatement/Penalty Relief Hearings

The primary concerns of the AG Board at reinstatement or penalty relief hearings are is that the evidence presented by the petitioner of his/her rehabilitation. The AG Board is not interested in retrying the original revocation or probation case. is not interested in re-litigating the facts of the original disciplinary case in determining whether or not to grant reinstatement.

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

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

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

6. A culpability or excludability statement.

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

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such action shall result in a default Decision to deny reinstatement of the license or reduction of penalty pursuant to Government Code section 11520.

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#22

SB 1441 (Ridley-Thomas) Uniform
Standards Regarding
Substance-Abusing Healing Arts
Licensees

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
April 2011



Substance Abuse Coordination Committee

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Virginia Herold
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Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
**Speech-Language Pathology & Audiology &
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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, 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 relationship, personal relationship, or business relationship with the licensee within the last five 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/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.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following standards shall govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at any time. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing

frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the licensee's board. Prior to returning to any health care employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

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

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

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

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

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.

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

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.

Collection of specimens shall be observed.

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

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.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to

appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversion Participant

Dates Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test

Dates Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels)

Date Contractor Notified Board of Questionable Test

Identify Substances Detected or Questionably Detected

Dates Failed to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing

Dates Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which)

Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have 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.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - 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:

1. Any suspected substance abuse must be verbally 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 verbal 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.
2. 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.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
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.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) years.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

- (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- (9) Must undergo training as specified in Uniform Standard #4(6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- (2) must be licensed or certified by the state or other nationally certified organization;
- (3) must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
- (4) shall report any unexcused absence within 24 hours to the board, and,
- (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

The worksite monitor must meet the following qualifications:

- (1) Shall not have 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.
- (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no

monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

- (3) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
 - (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
3. Any suspected substance abuse must be verbally reported to the contractor, 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 verbal 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.
4. 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.

(d) Treatment Providers

Treatment facility staff and services must have:

- (1) Licensure and/or accreditation by appropriate regulatory agencies;
- (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- (3) Professional staff who are competent and experienced members of the clinical staff;
- (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.