# California Acupuncture Board Meeting

March 28 – 29, 2019

Department of Consumer Affairs Hearing Room, Suite 186 1747 North Market Blvd Sacramento, CA 95834



#### **Board Members**

Dr. Amy Matecki, MD, L.Ac. – President Kitman Chan – Vice President, Public Member John Harabedian – Public Member Ruben Osorio – Public Member Bradley Cimino, L.Ac. – Licensed Member Hyun "Francisco" Kim, L.Ac. – Licensed Member Shu Dong Li, Ph.D. – Public Member

#### **Legal Counsel**

Salwa Bojack, JD

#### **Staff**

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





#### 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 Bradley Cimino, Licensed Member Hyun "Francisco" Kim, L.Ac., Licensed Member Shu Dong Li, Ph.D., Public Member

**BOARD MEETING** March 28 & 29, 2019

listed on the agenda.

Action may be taken on any item

#### LOCATION:

**Department of Consumer Affairs** Hearing Room, Suite 186 1747 North Market Blvd Sacramento, CA 95834

#### DAY ONE AGENDA – 9:30 a.m., Thursday, March 28, 2019

#### **FULL BOARD MEETING**

- 1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Amy Matecki, President)
- 2. President's Remarks (Dr. Matecki)
  - (A) Welcoming message and meeting information
  - (B) Introduction of new Board Members
- Public Comment on Items Not on the Agenda (Dr. Matecki) 3.

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. Update on the Board's Business Modernization Plan (Jason Piccione, **Deputy Director, Office of Information Services, DCA)**
- Update from the DCA (DCA Representative) 5.
- Presentation on the Administrative Procedure Act Affecting Administrative 6. Adjudication Process (John Gatschet, Deputy Attorney General, Office of the Attorney General)
- Review and Approval of the October 25-26, 2018 Board Meeting Minutes 7. (Dr. Matecki)
- 8. **Board Committees and Member Assignments**

9. Review and Discussion of the Board's Continuing Education Process (Herdt)

#### **EDUCATION COMMITTEE MEETING**

**Education Committee Members** 

John Harabedian, Chair Hyun "Francisco" Kim, L.Ac.

- 10. Discussion on Amending Title 16, CCR §§ 1399.483, 1399.489 (Continuing Education Ethics Requirements) (Herdt and Brothers)
- 11. Resume Full Board Meeting

**CLOSED SESSION** 

- 12. Pursuant to Government Code section 11126, subdivision (a)(1), the Board will convene to Consider the Evaluation of Performance of the Executive Officer
- 13. Executive Officer Evaluation

RECONVENE OPEN SESSION

14. Adjournment of Day One of Board Meeting

#### DAY TWO AGENDA - 9:00 a.m., Friday, March 29, 2019

- 1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Matecki, President)
- 2. President's Report (Dr. Matecki, President)
  - (A) Welcoming message and meeting information
- 3. Public Comment on Items Not on the Agenda (Dr. Matecki, President)

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. Report from Education Committee Chair on March 28<sup>th</sup> Committee Meeting (John Harabedian, Member) and Possible Action on any Recommendations
- 5. Executive Officer's Report (Ben Bodea, Executive Officer)

- (A) Staff Update
  - (i) Managers
  - (ii) Vacancies
- (B) Budget Update
  - (i) Fund Condition
  - (ii) Architecture Revolving Fund (ARF)
  - (iii) Fee Study Update
  - (iv) DCA-wide Budget Change Proposal (BCP)
- (C) Outreach Update
  - (i) 2019 Chinese Medicine Day
  - (ii) NCCAOM Certification for California Licensees
  - (iii) "Who We Are and What We Do" Brochure

#### 6. Legislative Update (Kristine Brothers, Policy Coordinator)

- (A) Items Introduced in 2019 Legislative Session Pertinent to Acupuncture
  - (i) AB 193
  - (ii) AB 613
  - (iii) AB 778
  - (iv) AB 779
  - (v) AB 1245
  - (vi) SB 425
- (B) Site Inspection Authority
- (C) AB 434, State Web Accessibility (2017 Baker)

#### 7. Regulation Update (Brothers)

(A) AB 2138 (2018 Chiu and Low)

Licensing Boards: Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction

(B) **SB 1448 (2018 Hill)** 

Healing arts licensees: probation status: disclosure

(C) SB 1246 (2014 Lieu)

Acupuncture

(D) AB 2190 (2016 Salas)

Acupuncture Board: executive officer: education

# (E) SB 1441 (2008 Ridley-Thomas) and Update of Acupuncture Board Disciplinary Guidelines

Healing arts practitioners: substance abuse

#### 8. Enforcement Report (Cricket Borges, Enforcement Coordinator)

- (A) Q2, FY 18-19 Enforcement Report
- (B) Acupuncture Board's Top Ten Violations Leading to Enforcement Actions
- 9. Education Report (Jay Herdt, Licensing Manager)
  - (A) Status of Curriculum Reviews
  - (B) Tutorial Program Report
  - (C) Continuing Education Report
  - (D) Continuing Education Audit Report
- 10. Update on Computer-Based Testing for the California Acupuncture Licensing Exam (Herdt)
- 11. Updates from Acupuncture Professions
- 12. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.4 Substantial Relationship Criteria Under Title 16, California Code of Regulations (Brothers and EO Bodea)
- 13. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.5 Criteria for Rehabilitation Denial of Licensure Under Title 16, California Code of Regulations (Brothers and EO Bodea)
- 14. Discussion and Possible Action to Initiate a Rulemaking to Adopt Section 1399.469.6 Criteria for Rehabilitation Suspensions or Revocations Under Title 16, California Code of Regulations (Brothers and EO Bodea)
- 15. Discussion and Possible Action to Initiate the Following Rulemaking Package (Brothers and EO Bodea)
  - (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 and the Incorporation of SB 1448);
- 16. Calendaring of 2019 Board Meetings (Dr. Matecki, President)
- 17. Election of Board Officers (Dr. Matecki, President)
  - (A) Election for President
  - (B) Election for Vice President
- 18. Future Agenda Items (Dr. Matecki, President)

#### 19. Adjournment (Dr. Matecki, President)

#### 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 website: <a href="www.acupuncture.ca.gov">www.acupuncture.ca.gov</a>. 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. The Board plans to webcast this meeting at: <a href="https://thedcapage.wordpress.com/webcasts/">https://thedcapage.wordpress.com/webcasts/</a>. Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

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. (Gov. Code §§ 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 Beck Untalasco, Licensing Analyst – Exam Desk at (916) 515-5205; 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.





#### 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 DRAFT Meeting Minutes October 25 & 26, 2018

#### LOCATION:

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

#### **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 (10/26 only)
Jay Herdt, Education Coordinator
Marc Johnson, Policy Coordinator
Tammy Stadley, Exam Coordinator (10/26 only)

#### **Guest List on File**

#### Full Board Meeting - Thursday, October 25, 2018

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

Board President Amy Matecki (Matecki) called the meeting to order at 9:40 a.m. Policy Coordinator Marc Johnson (Johnson) called the roll.

<u>Members Present</u>: 4 – Matecki, Chan, Harabedian, Osorio. *4-0 Quorum established with one licensed member present.* 





#### 2. President's Remarks (Dr. Amy Matecki)

President Matecki had nothing to report.

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

A commenter had several items asking for more transparency on exam results, more discussion about acupuncture colleges, and more discussion on the entry level acupuncture doctorate/post graduate training programs.

# 4. Petition for Reinstatement of a Surrendered Acupuncture License – Pill Han (AC# 14493) – 9:30 a.m.

The Board heard the petition for reinstatement of a surrendered acupuncture license for Pill Han.

### Petition for Reinstatement of a Revoked Acupuncture License -Steven Chen Jing Xia (AC# 8907) – 11:30 a.m.

The Board heard the petition for reinstatement of a revoked acupuncture license for Steven Chen Jing Xia.

### **CLOSED SESSION (Dr. Amy 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 2:05 p.m. to deliberate on the above petitions.

#### **RECONVENE OPEN SESSION**

The Board resumed open session at 4:15 p.m.

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

Policy Coordinator Marc Johnson (Johnson) opened on the item noting that in the past staff had provided the Board a list of existing regulations the Board has approved. At the direction of Executive Officer Ben Bodea (EO Bodea) and President Matecki, the Board will review approved regulations as an ongoing discussion at Board meetings.





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

### Treatment Procedures: Hand Hygiene Requirements

Johnson explained this proposed regulation was approved in 2014 but has not been acted upon. He referred to the memo in the Board packet which laid out various scenarios, including keeping the text as is; directing staff to research and update or abandoning the regulation. Johnson then read aloud the approved proposed text and noted the basic requirements set out in the text are current with standard practices. Staff recommended keeping the text as is and proceeding with the rulemaking. Board agrees. No motion was required as text was already approved by the Board.

Public Comment: None.

(B) To Amend Existing Section, Title 16, CCR § 1399.455 – Advertising Guidelines: Display of License Number in Advertising

Johnson noted this regulation was approved in 2013 and has not been acted upon since. He reviewed the existing text already approved by the Board and noted other Boards have similar regulations. Staff identified concerns with the text, including the unclear nature of it, the phrase name, and the license number of the establishment. Discussion commenced on the scope of the regulations and whether it should apply to large acupuncture groups, or if a specific name style for acupuncture licensee should be adopted, or if such a regulation was even needed. President Matecki proposed abandoning the regulation.

Public Comment: None.

#### **MOTION:**

Board Member John Harabedian (Harabedian) motioned to drop the regulatory package for 16 CCR § 1399.455 and to notify the public via the website. President Matecki seconded the motion.

Vote: Matecki – Yes; Chan – No; Harabedian – Yes; Osorio – Yes.

#### 3-1 motion passes.

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

#### Prohibited Sexual Acts

Johnson reviewed the history of the proposed regulation noting the language was approved by the Board in 2014. Originally, the Board desired to obtain more authority to





discipline licensees who allow their places of business to become places of prostitution, where the licensee is not directly engaging in sexual acts with patients. Staff was finding that many licensees were not subject to that authority and that criminal charges were being dismissed or plea bargained away. The text was also reviewed by the Office of the Attorney General who provided feedback on the proposed language. Johnson read aloud the text from the regulation and referred to Business and Professions Code Section (BPC) section 731 as the authority cited. Legal Counsel Salwa Bojack (Counsel Bojack) explained that the section sets out the violation of specified Penal Code provisions and penalties, such as sexual assault and pandering, as qualifying as unprofessional conduct.

Johnson explained that staff has concerns about citing Section 731 as a reference, that the Board would be required to have a conviction as basis for an action, and the Board would want the authority to take administrative action on the conduct itself. EO Bodea also pointed out that the Business and Professions Committee had asked why the Board does not pursue actions on cases evidencing prostitution, and he had responded that the Board's current authority would not allow for an administrative action without a criminal conviction. EO Bodea recommended having Counsel Bojack look further into the issue and bring back changes to the next meeting. Board agreed.

Public Comment: none.

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

Johnson provided a short history on the regulation, which was approved in 2012 and then updated in 2016 by the Education Committee, quickly reviewing language used by other regulatory Boards which have a similar requirement. Johnson discussed that the Physical Therapy Board of California requires two Continuing Education Units (CEUs) in Ethics every renewal cycle, and that the Board of Chiropractic Examiners requires two CEUs every year for a total of four CEUs per renewal cycle. Staff has made changes to the 2016 regulation by adding provisions to 16 CCR §§ 1399.483 and 1399.489. Johnson read aloud the proposed text.

Counsel Bojack explained that the new text was inserted into existing regulations to work within the framework of existing law. She explained that the self-assessment portion of 16 CCR § 1399.483 regulation was contained within existing law in Subsections C and D, and the language was just replicated for consistency purposes. She also explained that the new regulation was plugged into 16 CCR §1399.489, and licensees would find CE requirements there and note the regulation did not apply to inactive licensees. Johnson raised the issues cited by the Education Committee in





2016, including definition of ethics and designation as category 1 or 2 CEUs.

Discussion commenced on the Ethics requirement as category 1 or 2. Counsel Bojack explained that category 1 courses are those that are related to clinical matters or health care to patients, and the requirements depend on how you define ethics. EO Bodea felt more clarity was needed if each course in law and ethics applied to the practice of acupuncture and if that would make it a category 1 course; both felt the definition was open-ended. Dr. Matecki agreed and wondered what other Boards are doing with an ethics requirement; the Board directed staff to perform additional research and bring it back to a future meeting. EO Bodea also recommended defining the active and inactive status in part C of §1399.489; Board agrees.

President Matecki referred the item to the Education Committee.

Public Comment: None.

#### 9. Discussion on Current Legislation (Marc Johnson)

Johnson reported on legislative bills from the 2017-2018 legislative session that the Board had previously taken support, watch, or, oppose positions at the June 28, 2018 public meeting.

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

#### Master Business License Act

The Board had taken a watch position on this bill. Johnson reported it had been vetoed by the Governor.

#### (B) AB 1659 (Low)

#### Healing arts boards: inactive licenses

The Board had taken a support position on the bill, which was signed into law by the Governor. Johnson noted the bill would have little impact on the Board.

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

# <u>Licensing Boards: denial of application: revocation of licensure: criminal conviction</u>

The Board had taken an oppose position on the bill, due to it not being in line with the Board's primary mission of consumer protection. The bill was signed into law by the Governor. Johnson reported the bill would have an impact on the Board's enforcement operations and would require regulations to implement.





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

#### Acupuncture Licensure Act: Acupuncture Board

This bill is the Board's Sunset bill, on which the Board took a support position. The bill was signed into law by the Governor and extends Board operations for four years until 2023.

#### (E) SB 1448 (Hill)

Healing arts licensees: probation status: disclosure

The Board had taken a watch position on this bill, which was signed into law by the Governor.

Public Comment: None.

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

Johnson presented the June 28-29, 2018 meeting minutes. There were no changes made.

Public Comment: None.

#### **MOTION:**

Member Harabedian motioned to approve the June 28-29, 2018 Board Meeting Minutes as presented, and, to delegate authority to the Executive Officer to make technical, non-substantive changes. President Matecki seconded the motion.

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

#### 4-0 motion passes.

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

President called the meeting into recess at 5:35 p.m. 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)

President Matecki called the meeting to order at 9:02 a.m. Johnson conducted roll call.

<u>Members Present</u>: 4 – Matecki, Chan, Harabedian, Osorio. *4-0 Quorum established with one licensed member present*.

#### 12. President's Report (Dr. Amy Matecki)

A) Welcoming message and meeting information

President Matecki welcomed everyone to the meeting.

B) 2019 Meeting Calendar

The Board announced the following meeting dates and locations in 2019:

- February 28 and March 1, 2019, in Los Angeles.
- May 16 and 17, 2019, in Sacramento.
- August 15 and 16, 2019 in the Bay Area.
- November 7 and 8, 2019 in San Diego.

Public Comment: None.

## 13. Public Comment on Items Not on the Agenda (Dr. Amy Matecki)

The following comments were made for items not on the agenda:

- The first commenter wanted the Board to clarify designations of "Dr.", stating that consumers need to be informed. He also asked to see regulations enacted which would require licensees need to state their training, also asking for more clarification on transfer credit biology requirements for students.
- The second commenter was concerned about vacancies on the Board.
- The third commenter wanted discussion on the quality of CE courses and asked the Board to review the issue of dry needling performed by physical therapists.

111

## 14. Executive Officer's Report (Ben Bodea, Executive Officer)

(A) Staff Update





EO Bodea noted he was in the hiring process to fill two open positions for the Board.

#### (B) Budget Update

EO Bodea reported the Board's budget was in good shape with a budget surplus of \$300,000 and the Board was transitioning into a new financial recording system called Fi\$Cal. He also referred to the analysis of the fund condition, with reserves standing at 13.9 months, but with projected reserves decreasing in the coming fiscal years.

He recommended initiating a fee study to make sure the reserves stay healthy. Vice President Kitman Chan (Chan) agreed and pointed out the falling reserve levels in 2019 and 2020 and felt the Board needed to raise the revenue. EO Bodea pointed out that a fee increase would require a legislative change, recommending the Board authorize a fee study as the first step.

#### **MOTION:**

Vice President Chan motioned to initiate a fee study and grant authority to the Executive Officer to initiate the study. Member Harabedian seconded the motion.

Public Comment: None

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

#### 4-0 motion passes.

#### (C) Outreach Update

EO Bodea reported that the Board has been trying to reach out to all associations to register with the Board, so their information can be displayed on the website.

**Public Comment: None** 

### 15. Enforcement Report (Kristine Brothers, Enforcement Coordinator)

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

### (A) Q4 17-18 Enforcement Report

Brothers reported a total of 59 complaints received, 58 closed and sent to investigation, and the average intake time was six days. 136 investigations were pending, and 72 investigations were closed. Four cases were sent to the Office of the Attorney General and sixteen disciplinary cases were pending at the close of quarter four.

She also highlighted a significant decrease in unprofessional conduct complaints in quarter four. Brothers noted enforcement staff has been working on business process mapping during quarter four, which will affect the Board's case aging in future quarters,





but that staff have resumed their regular duties.

#### (B) Q1 18-19 Enforcement Report

Brothers reported 36 total complaints received in the quarter, with 37 closed and sent to investigation, with an average intake time of seven days. At the close of the quarter, 113 investigations were pending and 16 were closed. She noted the complaint volume was comparable to last year's quarter one.

#### **Public Comment:**

Two comments were made on the item:

- The first commenter wanted awareness and further clarification on the frivolous nature of some of the complaints.
- The second commenter agreed with the first comment and wanted to see a
  breakdown of substituted claims for enforcement resulting in injury. She also
  wanted to know how to file a complaint for unlicensed practice, and how that is
  shared between Boards.

### 16. Education Report (Jay Herdt, Education Coordinator)

Education Coordinator Jay Herdt (Herdt) gave his report to the Board.

### (A) Status of Curriculum Reviews

Herdt reported a total of 37 approved acupuncture training programs, with 25 of those in full compliance. He also reported three doctoral training programs which have met the Board's curriculum requirements, each with a different degree name. Herdt felt the naming conventions of each of these new programs are confusing, noting that ACAOM does not have a standard, allowing member training programs to name as the doctoral degrees. The Board has no jurisdiction over the naming of degrees.

Herdt then noted there were five applications for Board approval of curriculum and one with pending BPPE approval.

### (B) Continuing Education and Audit Report

Herdt reported the fiscal year 2015 and 2016 audits were continuing, with staff randomly selecting ten percent of renewing populations per month. CE course applications processed in quarter one of fiscal year 2018 totaled 831 with 547 current and valid CE providers.

EO Bodea also noted the Board has previously directed staff to look closely at CE applications and only approve hands-on instructional techniques for live courses. Herdt noted that staff has been denying hands-on courses for distance education courses. EO





Bodea noted that there has been push back from several CE Providers, but that staff are holding the line.

(C) Update on the Continued Collaboration with the Bureau for Private Postsecondary Education and the Accreditation Commission for Acupuncture and Oriental Medicine

Herdt noted the BPPE and ACAOM were continuing to work collaboratively.

#### **Public Comment:**

Several public comments were made on the item:

- A comment was made asking the Board to review school/CE courses, specifically seminars where a speaker will bring their own needles which could potentially cause damage.
- A commenter wanted the Board to ensure that patient vital signs were being taken as part of clinical training.
- A comment was made asking the Board to hold a stakeholder meeting for determining how courses would be categorized and how they would be taught.
- A commenter asked how the Board can continue to monitor provider quality and what the qualifications for a provider might be.
- A commenter commended the Board for helping to upgrade the quality of continuing education.
- A commenter raised the possibility of the Board limiting the amount of time instructors from outside the state can teach at CE courses.

# 17. Update on Transition to Computer-Based Testing for the California Acupuncture Licensing Exam (Tammy Stadley, Exam Analyst)

Exam Coordinator Tammy Stadley (Stadley) informed the Board about the computer based testing process which is now being used in lieu of a paper/pencil exam, which was only offered on a biannual basis. Stadley reported that the Board has activated its contract with PSI Testing Centers and that computer-based testing for the licensing exam has gone live. The exam content and number of questions has not changed, but the exam is now available continuously six days a week at 17 testing locations in California. She also reported the application process has not changed, and exam test statistics would be available within three to six months after the Board goes through an initial vetting period. Stadley further reported 278 new applications have been received and 197 have been fully approved for the exam; 17 people have already tested using the new process.





#### **Public Comment:**

- A commenter had concerns about exam security, and what measures could be taken to ensure security.
- A commenter appreciated the work the Board has done to put the exam online, but noted her membership wants to see the exam move toward NCCAOM reciprocity. She wondered when the pass rates from the exam would be broken down.
- A commenter asked how many languages the Board would offer for the exam and had concerns about the difficulty of foreign applicants applying for the exam.
- A commenter wondered about the item banks exam questions were drawn from.

# 18. Update from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) (Dr. Kory Ward-Cook, CEO of NCCAOM)

Dr. Kory Ward-Cook (Dr. Ward-Cook) opened by thanking the Board for the opportunity to speak and referred to the report contained within the Board packet for information. She included an overview of NCCAOM's governance structure and a review of the NCCAOM Job Analysis completed in 2017, which she noted was done on the same cycle as the Board's in 2016. She shared that the blueprints for NCCAOM's exam are online. The four exam modules, which she explained were offered in a linear format, are available in Chinese and Korean, but there have only been a small number of applicants for those languages. Dr. Ward-Cook noted that NCCAOM would be developing a new assessment product for compounding, based on industry demand. She also described the new reciprocal route, which was available for California licensees to obtain NCCAOM certification without passing the exam. Finally, she discussed the process NCCAOM used to come up with the reciprocity program and asked the Board to explore how each programs' continuing education programs align.

Dr. Matecki asked why acupuncturists licensed after 2016 cannot apply for the NCCAOM reciprocity based on the previous job analysis. Dr. Ward-Cook replied they were looking into that question and it was under consideration. EO Bodea asked about the cost of the NCCAOM certification route. Dr. Ward-Cook replied it was \$750 and \$260 for a four-year renewal. EO Bodea asked for any additional licensing requirements in addition to California's. Dr. Matecki inquired about other states and reciprocity with the reciprocal route for California's licensees. Dr. Ward-Cook noted requirements of other states varied and some require full certification, but it was changing all the time. Dr. Matecki followed up by asking if states requiring NCCAOM Certification would accept this route for California Licensees without having to take all four modules of the NCCAOM exams. Dr. Ward-Cook was unsure as she did not have exact numbers yet.





EO Bodea asked if there was any enforcement action that was applicable to licensees. Dr. Ward-Cook replied that NCCAOM has a strict code of ethics and two staff working in that area, and they work closely with all states with sanctions. EO Bodea raised concern about the use of 'board certified' and 'national board certified' by NCCAOM; Dr. Matecki agreed it could be considered misleading. Herdt asked about the costs of NCCAOM certification. By his calculations, the reciprocal route costs \$750 and \$1,795 to get full NCCAOM certification. Dr. Ward-Cook confirmed those costs and stated NCCAOM was working on the issue.

#### **Public Comment:**

- The first commenter wondered about the difference in education standards in California and felt the quality of education was important.
- The second commenter was concerned about the NCCAOM cost and the burden on the student. She also wondered about the difference in education hours and how NCCAOM would show that its exam is different from California.
- A third comment shared their organization's view that all acupuncture should be at the doctorate level.
- A fourth comment was made wondering if there would be one exam to pass and practice anywhere.
- A fifth comment wondered about the wording of NCCAOM's trademark for "nationally certified" acupuncturists.

Recess was taken from 11:07 a.m. until 11:28 a.m.

### 19. Updates from Acupuncture Professional Associations

Johnson called upon the invited acupuncture professional associations registered on the Board's website to present on their association's history, membership, services offered, and their views on acupuncture-related issues. He referred to a copy of the invitation letter in the packet which was sent to all professional associations registered with the Board and noted multiple associations had responded and would be presenting.

The following associations presented at the meeting:

- Michael McCulloch, California Association for Acupuncture Tutorials
- Victoria Tuan, American Society of Chinese Medicine
- Ra Adcock, California State Oriental Medical Association





- Francisco Kim, Association of Korean Asian Medicine and Acupuncture of California
- Wei Wei, American Association of Chinese Medicine and Acupuncture
- California Acupuncturist United Association
- Steven Stumpf, National Guild of Acupuncture and Oriental Medicine
- Cameron Blamey, American Acupuncture Council

Public Comment: None.

Lunch was taken at 12:15 p.m. Meeting resumed at 1:09 p.m.

# 20. Possible Approval of Amendments to the 2018-2022 Acupuncture Board Strategic Plan (Ben Bodea)

EO Bodea reviewed additional updates to the Board's Strategic Plan. Most of the updates were made for greater clarity and understanding. On page four, some abbreviation changes were made, and on page seven the goal area for licensing was revised for the Board to seek legislative or regulatory authority to require a passing test of English for a foreign applicant. Goal 1.3 was revised to strike through the note to 'educate licensees' as the Board is really seeking compliance from licensees. On page eight, capitalization changes were made, and more clarity was added to Goal 2.5 by specifying the regulations to which the Board was referring. On page nine, in the goal area of education, more specificity was made to refer to researching and developing transfer credit evaluation policies and procedures to ensure compliance with education requirements.

EO Bodea next reviewed page ten, which was revised to shorten the goal area to 'advocate'. Goal 4.2 was updated to specify feasibility of obtaining site inspection authority, not the feasibility of site inspection authority, with the goal of obtaining authority for site inspections. Goal 4.3 was revised for more legislative citation authority over curriculum violations or training programs to enforce existing curriculum requirements establishing regulations. A minor change was made to Goal 4.4 for specificity, and Goal 4.5 was changed to line up to current law and authority for penalties for BPC section 585. EO Bodea referred next to Goal 4.6, adding a reference to the correct BPC section, and minor technical changes to Goals 5.1 and 5.2. A technical change was made to Goal 6 at the top, and technical changes were made on page 13.

The Board agreed to the changes presented and EO Bodea recommended approval.





#### **MOTION:**

Member Harabedian motioned to approve the revised Strategic Plan for the Acupuncture Board. Member Osorio seconded the motion.

Public Comment: None.

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

#### 4-0 motion passes.

# 21. Discussion of Acupuncture Licensure Standards and Reciprocity Throughout the United States (EO Bodea and Johnson)

EO Bodea provided a short background on the item, which was prompted by discussion in the Board's Sunset Review background produced by the Business and Professions Committee. It discussed the Board's understanding of reciprocity and portability of the California acupuncture license to the rest of the United States. He noted the information provided was informational only. Johnson reviewed the information in the attachment, which lists statutory language and requirements of each state and if the state requires NCCAOM certification or both. He made several general observations:

- 46 states and the District of Columbia accept the NCCAOM exam or certification;
- Several states, such as New Jersey, New Mexico and Texas use a supplemental exam to the NCCAOM for their states' scope, laws, and regulations;
- Arizona, Alaska and Wyoming appear to allow either the CALE or NCCAOM as the licensing exam;
- Staff research identified 16 states that appear to allow their Board or Commission to review currently licensed applicants (in another state) for licensure equivalency in their state.

Johnson noted the Board may be able to enact a reciprocity or portability agreement with other states which have statutes authorizing as such, but that applicants who have been licensed in other states, with lower training requirements, would not be accepted in California.

Member Harabedian commented that the key was to figure out how the Board could allow reciprocity for licensees in this state and from other states without disrupting the Board's mission of protecting the health of consumers. He felt the Board was not concerned with whether licensees can go to another state and practice. President Matecki agreed and wondered how another state would accept the CALE and if there would be a process another state could accept. Further, she felt it was more of a





political issue. Member Harabedian agreed but wondered if other states had inquired about reciprocity with California. Johnson replied that his discussions with other states were informational only. EO Bodea raised the issue of framing; is it reciprocity or portability? He felt the issue really fell to the profession itself. Member Harabedian acknowledged that this discussion was a good starting point, but that the acupuncture profession had to take on the work from here on behalf of their licensees.

#### Public Comment:

- A commenter wondered why the California Acupuncture Board should have the burden to check out-of-state applicants' background to see if their education is equivalent to California. She felt it would create additional work for the Board.
- A second commenter pointed out there was an additional certification test used in Michigan, promising to email the Board with information.
- A third commenter raised the issue of other states lowering their standards from California's level.

# 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)

Johnson began with a brief history of the regulation and updates to the Disciplinary Guidelines (Guidelines), and noted staff was now proposing to integrate the Uniform Standards for Substance Abusing Licensees (Standards) into the overall document. He first reviewed the proposed regulatory text itself and pointed out changes, which include revision of the article headers and the reference to the Standards, which are now integrated into the Guidelines instead of a separate handbook. He highlighted the text change, which allows the licensee, who has been accused of substance abuse, to have a hearing to determine this. Counsel Bojack added that other boards have a Clinical Diagnostic Evaluation condition precedent as a trigger for the Standards to be applied, but was concerned the text does not define what a substance abusing licensee actually is. She also pointed out other boards have language which requires the licensee to rebut such evidence at the hearing as well; this shifts the burden of proof onto the





licensee charged with an act indicating possible substance abuse. EO Bodea was in favor of adding such language. Staff was directed to research both issues and bring back to the Board.

Johnson turned to the Guidelines handbook. He mentioned changes to page 4 in the introduction, including addition of text outlining special conditions; listing standard conditions first in front of optional conditions throughout the document; more clarity on page five with stipulated settlements and disciplinary orders. Brothers raised the deletion of a special condition applying to sex offenders which was deleted in the Guidelines because the only penalty for sex offenders is the revocation of a license, no exceptions. Counsel Bojack pointed out the special condition is only informational and that the reference would appear throughout the Guidelines. Staff was directed to reinsert the sex offender text appropriately elsewhere in the document.

On page 6, Johnson noted the general conditions were re-worked in a logical order. Counsel Bojack added that other Boards have used the language in their general conditions; she raised the issue on pages 50, 51, 52 and 53, which set out additional considerations. She was concerned which conditions would apply and the conditions at the end of the Guidelines would make the process burdensome; she recommended merging the section together cohesively. Board agreed. On page seven, Johnson listed the terms and conditions proposed for deletion; all terms and conditions were to be listed onto one page. He then referred to standard conditions numbered one through fifteen; in condition number three, the closing clause was moved to the intro for clarity; in condition number six, the words 'practicing within California' were added. Brothers raised concern about the changes to condition number six by pointing out that currently there is not a requirement for probationers to practice in the State of California.

Johnson noted that condition number seven added a restriction that a person cannot teach continuing education courses and there was addition of cost recovery language to condition number eight. He moved next to optional conditions by pointing out the term numbers were re-numbered as a global change. Optional condition 17 with a Board-requested change of 'approved'; addition of a psychiatrist to those who can perform an evaluation and a release that authorizes the evaluator to furnish to the Board the diagnosis. A note was added to the condition for clarity, and Johnson added that all numbers throughout the document would be written out as a global change. The billing monitor condition was added that only acupuncturists may be monitors, similar to other Boards.

Another global change was made to remove 'calendar' after a number of days listed. Optional condition 20 removed the first sentence, setting out that psychotherapy shall be conducted by a licensed psychologist with a clear and active license. Counsel Bojack stated the language for the condition was pulled from the Board of Psychology and





mirrors their condition since previously the condition did not specify a particular kind of health care professional. This allows for more specificity. Member Harabedian asked if this would apply to marriage and family therapists; there was some discussion over the different license types to perform psychotherapy. The Board opted to allow psychologists and psychiatrists.

Johnson mentioned the Board previously asked staff to research language for the no solo practice condition and staff recommended usage of language from the Medical Board. It prohibits a licensee from engaging in the solo practice of acupuncture when the respondent is sharing office space with another licensee or in sole practice; requires that if the Respondent fails to establish a practice within sixty days of the decision with another licensee, that the Board can issue a cease practice order within three days; and the condition also requires a five-day notice if the practice setting changes into a setting compliant with the decision. Board agrees with this addition. Condition number 24 was changed to require a licensee to pass the licensing examination within 18 months from effective date of the decision; Board agrees with this change. Minor wording changes were made to condition number 26. Johnson pointed out notes were added to condition numbers 26, 27, and 28, which are related to substance abuse, and how the conditions are to be used together. Counsel Bojack further explained those conditions are separate for the special conditions implementing the Uniform Standards, which would only apply if the licensee was determined to be a substance abusing licensee.

#### Recess was taken from 2:45 p.m. to 2:55 p.m.

On page 22, Johnson reviewed a new optional condition for the notification of probationer's status to employer, which the Board had requested using the Physical Therapy Board of California guidelines as a model. This condition requires respondent to notify all present and future employers during the probation of the reasons and terms and conditions of their probation. Board agreed with the addition. Discussion commenced on addition of a condition requiring notification to patients; it was noted that Senate Bill 1448 now requires such notification. The Board agreed to add this as standard condition number 16, which will also require renumbering of the conditions throughout the Guidelines as a global change. Brothers raised a concern about the notification of probationer's status to employer term. Specifically, Brothers raised a concern regarding the ten-day timeline that respondent is given to provide notification of their probation status to employer and to also provide evidence of this to the Board; she felt it should be 30 days. Board agreed.

Johnson reviewed optional condition 33, notification of probationer's status to employees, which was sourced from the Physical Therapy Board of California. Board





agrees with the addition, changing the timeline for notification to 30 days to match the previous condition.

Beginning on page 28, the special conditions implementing the 16 Uniform Standards were reviewed. Counsel Bojack explained the conditions were previously contained in a separate rulemaking but were now included in the Guidelines. She stated that since the Board already reviewed the 16 Uniform Standards at previous meetings all that was needed were the implementation sections. Standards number 14 and 15 are included, but not implemented administratively as the Board does not offer a diversion program, and, that such a program would be in lieu of probation.

Special Condition 34, referring to Clinical Diagnostic Evaluations, will be reviewed by staff to research what other Boards are doing using the condition as a 'gatekeeper' to the other Uniform Standards. Special Condition 35, notice of employer or supervisor information, is derived from Uniform Standard 3. Discussion commenced on the timeline for reporting for Special Condition 35. President Matecki proposed 14 days. Board agreed. Special Condition 36, relating to biological fluid testing, implements Uniform Standards 4, 8, 9 and aspects of 13. EO Bodea noted that DCA has convened the Substance Abuse Coordination Committee to review the testing requirements and that the condition may change. He will report back at the next Board meeting. Johnson next reviewed Special Condition 37, which implements Uniform Standard 5 and refers to substance abuse support group meetings. Special Condition 38 implements Uniform Standard 7 and relates to worksite monitoring requirements and standards. Special condition 39 implements Uniform Standard 10 and sets out what the Board must do if a substance abusing licensee condition is violated.

On page 37, the word 'recommendation' was substituted for 'recommendations' in the first sentence. On page 38, Johnson noted BPC sections 480 and 490 as listed violations were added at the request of the Board. Brothers recommended matching penalties from BPC section 490 up with BPC section 4955, subdivision (b), since they both pertain to substantially related convictions. Board agreed. Discussion commenced on adding of BPC section 4935 as a listed violation. Dr. Matecki asked if it would be feasible to tie this in with the unlawful practice of Acupuncture; EO Bodea stated it would. Brothers also noted the Board's Sunset Bill made the text from BPC section 4935 a little more actionable. Dr. Matecki asked staff to look into including it and recommend possible inclusions of the special conditions to all penalties and come back with a recommendation at a future Board meeting. It was noted the words 'if applicable' would be added to the special conditions listed as a global change.

Johnson next referred to page 45, fraud violation, and read aloud the change offering





revocation as the only penalty for committing fraud. Staff will bring back optional conditions for BPC section 4955, subdivision (h). He noted again several sections in the rear of the document – General Considerations, Evidence of Aggravation, language for Probation Orders – would be moved to the front of the document for clarity. Finally, the Index of Violations will have BPC sections 480, 490, and 4935 added.

No action was taken by the Board on the Guidelines. Staff will make changes and research additions as directed by the Board to bring back at a future meeting.

Public Comment: None.

#### 23. Future Agenda Items (Dr. Amy Matecki)

Board members had no future agenda items.

#### Public Comment:

- A comment was made asking what the Board would recommend for acupuncturists who want to work at VA hospitals.
- A comment was made asking for CEUs to be offered to licensees if they attend petition hearings.
- A comment was made wondering about license certificates for massage.

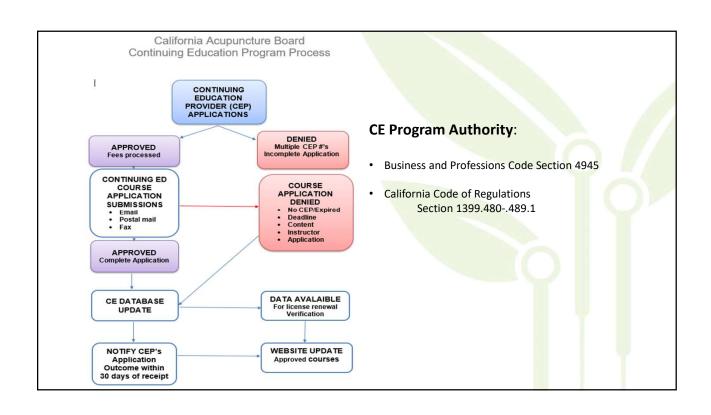
#### 24. Adjournment (Dr. Amy Matecki)

Meeting adjourned at 3:44 p.m.

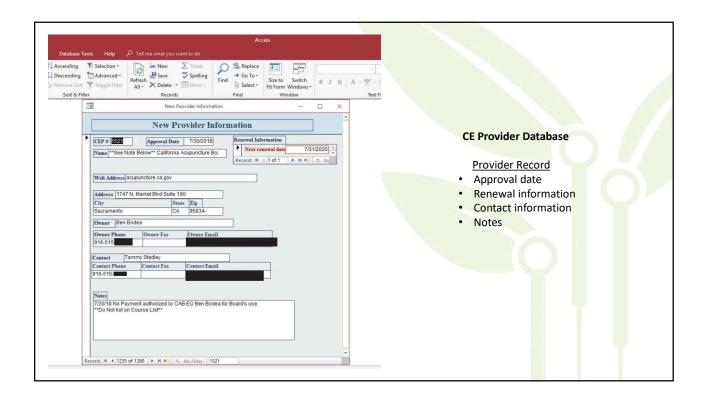
# The California Acupuncture Board Continuing Education (CE) Process

California Acupuncture Board Meeting
Sacramento, CA
March 28, 2019

Prepared by the Acupuncture Board Licensing Unit Staff



	rd, Suite 180, Sacramento, CA 95834 928-2294 www.announcture.ca.gov.	
CONTINUING EDUCATION PROVIDER APPLICATION CE Provider No.  [Please submit this form along with \$1500 to the Augustucher B in English (C.G. R.T. Bet B, Division 13,7, Section 1396 481)	Type of Application New Renewal Address Change Provider Name Change Coordinator Change Coordinator Change Coordinator Change	
PROVIDER	(4)	CE Provider (CEP) Application
Name of Individual or Organization	Web Address	, , , , ,
ADDRESS	100000000000000000000000000000000000000	
Number and Street	City State Zip	<ul> <li>CEP Application is required to process all:</li> </ul>
OWNERSHIP	CONTACT #	New Providers
Name of Owner or President	Telephone #	
E-mail address	Fax#	o Renewals
CONTACT PERSON	CONTACT#	<ul> <li>Address Change</li> </ul>
CE Coordinator	Telephone #	Provider Name Change
	-	
E-mail address	Fax#	<ul> <li>Coordinator Change</li> </ul>
by signing below, I affirm, under penalty of perjury under comply with the continuing education regulations, and t correct.	r the laws of the State of California, that I have read and will hat all statements contained in this application are true and	
Signature	Date	
Printed Name	Title	
	***************************************	
Approved Renewal Date	FOR BOARD USE ONLY AMOUNT 5	
Denied	AYS ID#	
Evaluator's initials	CHECK #	
	CHECK	

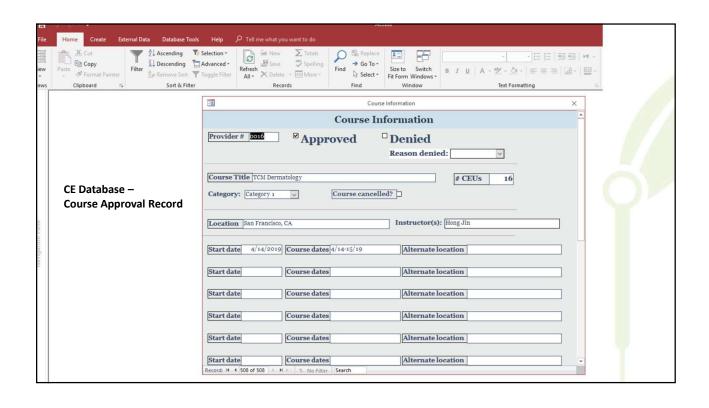


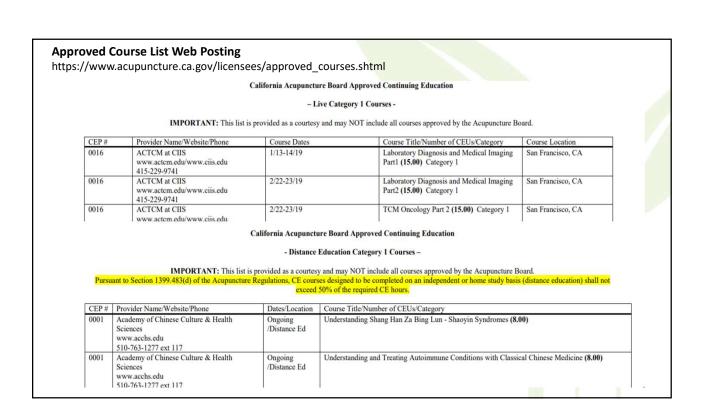
#### CALIFORNIA ACUPUNCTURE BOARD REQUEST FOR CONTINUING EDUCATION (CE) COURSE APPROVAL FORM [Must be in English (C.C.R., Title 16, Division 13.7, Section 1399.484)] - Please Print or Type **Application for CE Course Approval** Regulatory compliance attestations: CE Provider No. • CE Provider (CEP) name and number Name of CE Contact Phone **Contact Information** Course Title Course Title \_\_\_\_ Requested No. of CE Hours \_\_\_\_ Course Date and CE Hours Course Location Location Identify which category this course falls under: Distance Course? Category Has the Acupuncture Board previously approved the above course with identical course content, number of CE hours and instructor(s) for your organization? $\ \square$ Yes $\ \square$ No $\$ If YES, please provide the date last approved $\ \square$ Instructor Name Will there be any publicity or adventisement for these coarses? Yes No If YES, submit a copy of the publicity/adventisement (with refund policy clearly stated ) for the board's review. Will you provide interpreters or bilingual instruction when necessary? Yes No Prior Course Approval Advertising Is there any relationship, financial or otherwise, between the provider, individual speakers or moderators and any named brand products or services to be discussed? Yes No If YES, attach a detailed description of the relationship. Financial Relationship Do you administer a test at the completion of the course? Yes No If YES, attach the test criteria used. **Testing Criteria** By signing below, I affirm, under penalty of perjury, under the laws of the State of California, that I have read and will comply with the continuing education regulations and that all statements contained in this application are true and correct. Provider signature and date Title For Acupuncture Board's Use Only Application outcome, including signed New Course Request submitted within 45-day timeframe | Yes | No Repeat Course Request submitted within 30-day timeframe | Yes | No Course application complete | Yes | No ☐ APPROVE ☐ DENY staff decision of approval or denial. Authorized Signature Reporting of incomplete items Request for Continuing Education (CE) Course Approval Form (Rev. 5/08)

COURSE OBJECTIVES  NAME OF COURSE  Please provide the course objectives and include information on how this course relates to the scope of practice of acupaneture in California. Use additional sheets if necessary.	Course Objectives Page Provides the content descriptions for staff to review and validate the CE course:  Contains sufficient content for the hours of CE instruction requested Is in compliance with the Board's CE Regulations Course content must be within the scope of practice for CA Licensed Acupuncturists
Provider No Page of	

counting the nun	lease provide a breakdown of course content that will be covered during each day of the onsite course. When outling the number of CE hours, use the standard academic hour (50 minutes) for each CE hour (hunches may the considered for CE hours).		
Starting and end	ing times:	Course content to be covered during this time:	
			Course Schedule/Outline
			(Hour-by-Hour accounting)
			CE Providers are required to provide
			course content outlines with detail
			sufficient to account for instruction
			hours and modalities offered.

INSTRUCTOR INFORMATION [A separate 'Instructor Information' Sheet must be completed for each instructor]	
Instructor's Name	Instructor Qualifications
Section A:   If the instructor is an acquaraturative abstrates, so to Section TE:	<ul> <li>For Licensed Acupuncturist Instructors</li> <li>California</li> <li>Other</li> <li>Instructor Education</li> <li>Degrees Earned</li> <li>Five years of experience teaching on topic?</li> </ul>
Degrees Earned   Prom Diame of the Educational Institutional	<ul> <li>Two years experience in the specialized area being taught?</li> <li>For Non-Acupuncturist Instructors         <ul> <li>Licensure/Certification</li> <li>Written evidence of specialized training in subject area</li> <li>Documented evidence of teaching in subject area for two of the last five years</li> </ul> </li> </ul>
Provider No	





# **Certificate of Completion for Approved CE Hours**

### California Acupuncture Board

This certifies that

<F.Name> <L.Name>
License No. AC <Lic.Num>
Has earned a total of

<CE HOURS>

hours of continuing education for

the < Workshop Title>

on < Workshop Date > in Sacramento, CA

CEP # 1521 CATEGORY 1 DATE OF ISSUE: <ISSUE\_DATE> Tammy Stadley
Exam Coordinator

Per CCR section 1399.489(f) retain this certificate for at least four (#) years from the date of completion if used for license renewal

Providers shall issue, within 60 days of the conclusion of an approved course, to each participant who has completed the course, <u>a typewritten or printed</u> certificate of completion that contains the following information:

- (1) Provider's name and number.
- (2) Course title.
- (3) Participant's name and, if applicable,
- his or her acupuncture license number.
- (4) Date(s) and location of course(s).
- (5) Number of continuing education hours completed. For clarity, the Board recommends including the category #.
- (6) Statement directing the acupuncturist to retain the certificate for at least four years from the date of completion of the course.





DATE	March 28, 2019	
ТО	Education Committee	
FROM	Kristine Brothers, Policy Coordinator	
SUBJECT Discussion on the Initiation of a Rulemaking to Amend Title 16, California Code of Regulations (CCR) §§ 1399.483 and 1399.489 – Continuing Education Ethics Requirement		

#### Issue:

Review and discussion 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 on amending the text of Title 16, CCR §§ 1399.483 and 1399.489. (Attachment)

#### **History:**

For many years, Title 16, CCR, section 1399.489.2 allowed licensees to take up to four units of CEs in practice management or medical ethics to meet their biannual CE requirements for license renewal. However, in December 1999, this regulation was repealed. Historically, the Board's laws and regulations have not required that licensees take a minimum of CE in laws and ethics. In 2002, due to a Continuing Education Focus Group, there was discussion and desire to require a minimum number of CE in ethics, at least in the first few years of licensure. Resulting from this focus group and other legislative mandates, in 2008, the Board promulgated CE regulations to address inadequacies, but a minimum CE ethics requirement was not implemented.

At the November 11, 2012 Board Meeting, the Board reviewed text for a new CE ethics requirement and delegated further refinement to the Education Committee. The following text was approved in 2012 (which is not the current text being proposed):

§ 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 and requested additional changes to be made by staff and to be brought back to the full Board for consideration and possible approval.

At the October 25, 2018 Board Meeting, the Board reviewed proposed text. There was discussion on the issue of whether the ethics requirement was Category 1 or 2. The Board requested staff research other examples of ethics requirements, define active and inactive status in Part C of Title 16, CCR, section 1399.489, and referred this item for further discussion to the Education Committee.

#### Discussion:

Several other boards have a similar requirement. The Board of Behavioral Sciences requires six hours of laws and ethics every two years for all four license types. The Physical Therapy Board of California 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.

Staff proposes to place the requirements into Title 16, CCR, sections 1399.483 and 1399.489. The new text contains the following additions and 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 subdivision (d) only requires tests for courses taken for independent or home study.
- Renumbering of Section 1399.483 subdivisions to accommodate the addition of subdivision (d), as described above.
- § 1399.489(a): Clarifies that all licensees in active status shall complete 50 hours of CE units (CEUs) every two years as a condition of renewal. This change, requested by the Committee, helps 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. This Section also waives the requirement for licensees who are within their initial renewal period (typically 12 to 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 Section 1399.483, subdivision (d) is sufficient. Additionally, staff does not recommend requiring the course as either Category 1 or 2, since that will already occur during the course approval process. Finally, the Committee requested adding the words "laws related to the acupuncture profession" in the definition of ethics. Staff feels this is not needed as CE staff conducts analysis and exercises discretion over approval to ensure course content relates to the profession of acupuncture when reviewing course applications. If a CE ethics and law course is received that covers law unrelated to healthcare or acupuncture, then the Board has the authority to deny these courses. Per the request of the Board, a clarification and definition of inactive status within Section 1399.489, subdivision (c) was included by adding "pursuant to Section 1399.489.1," referencing the definition of "inactive status."
- Renumbering Sections 1399.489 subdivisions to accommodate the addition of subdivision (c), as described above.

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

Board changes at the December 14, 2016 Education Committee Meeting are highlighted in pink and <u>underlined</u>, and deleted text is highlighted in purple and <u>strikethrough.</u>

Proposed text reviewed at the October 25, 2018 Board Meeting is highlighted in yellow and underlined, and deleted text is highlighted in yellow and strikethrough.

Proposed text added after the October 25, 2018 Board Meeting is highlighted in light blue and <u>underlined</u>.

# 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 participant's 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-on 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 on inactive status, pursuant to Section 1399.489.1.
- (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.

### 1155 - Acupuncture Board Item 1111-001-0108 BUDGET SUMMARY

	CY 2018-19	Governor's Proposed Budget BY 2019-20		
	<u>C1 2016-19</u>	B1 2019-20		
2018 Governor's Budget	3,354,000			
Change Book / Governor's Veto: Leg Action - OCM Positions for Prorata Analysis 1111-300-BCP-2018-A1 CCSD Technical Reduction SB 173	1,000 -4,000			
2018 Budget Act	3,351,000	3,351,000		
One-Time Costs / Full Year Cost Adj: 1111-300-BCP-2018-A1 CCSD Technical Reduction SB 173 Leg Action - OCM Positions for Prorata Analysis OTECH Costs Redistribution		-2,000 -8,000 2,000		
Baseline Adjustments:  Employer Retirement Rate (BL 18-24)  Employee Compensation (BL 18-27)  Other Post Employment Benefits (BL 18-27)  Equipment Adjustment (net)  DCA/BCSHA Inter-Agency Agreement Distribution	10,000 57,000 14,000	10,000 58,000 14,000 12,000		
Department Distributed Costs:  Office of Information Services [-27,000]  Administrative/Executive [-3,000]  Division of Investigation - Special Operations Unit [+7  Communications Division [-1,000]  Program Policy and Regulations Division [-37,000]	7,000]	-61,000		
Budget Change Proposals (BCPs):				
Department-wide: 1111-005-BCP-2019-GB (Consumer Affairs Administration Wor	kload)	44,000		
REVISED APPROPRIATION Reimbursements Revised Net Appropriation (from fund)	3,432,000 -23,000 3,409,000	3,420,000 -23,000 3,397,000	Net Char -12,000	nge -0.3%
POSITIONS* Authorized Positions	10.5 12.0	10.5 12.0	0.0	0.0%

<sup>\*</sup>Budget Transparency for Display Only (3-year average)

### Prepared 3/28/2019

### 0108 - Acupuncture Analysis of Fund Condition

(Dollars in Thousands)

2019-20 Governor's Budget with Prior Year (PY) and Current Year (CY) Estimates
\*Includes 2018-19 Architecture Revolving Fund Deposit and
Department of General Services Data Conversion Project

Department of General Services Data Conversion Project	rojected PY 017-18	rojected CY 018-19	2	BY 019-20	BY+1 020-21	BY+2 021-22	BY+3 022-23
BEGINNING BALANCE	\$ 4,858	\$ 4,201	\$	3,277	\$ 3,299	\$ 2,203	\$ 998
Prior Year Adjustment	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 4,858	\$ 4,201	\$	3,277	\$ 3,299	\$ 2,203	\$ 998
REVENUES AND TRANSFERS							
Revenues:							
4129200 Other regulatory fees	\$ 53	\$ 55	\$	55	\$ 55	\$ 55	\$ 55
4129400 Other regulatory licenses and permits	\$ 397	\$ 610	\$	645	\$ 645	\$ 645	\$ 645
4127400 Renewal fees	\$ 1,891	\$ 1,946	\$	1,909	\$ 1,909	\$ 1,909	\$ 1,909
4121200 Delinquent fees	\$ 14	\$ 15	\$	15	\$ 15	\$ 15	\$ 15
4163000 Income from surplus money investments	\$ 1	\$ 1	\$	1	\$ 7	\$ 3	\$ -
4163000 Interest Income From Interfund Loans	\$ 44	\$ 39	\$	21	\$ _	\$ _	\$ _
160400 Sale of fixed assets	\$ 	\$ -	\$		\$ _	\$ _	\$ _
4171400 Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$	1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 2,401	\$ 2,667	\$	2,647	\$ 2,632	\$ 2,628	\$ 2,625
Transfers from Other Funds							
Proposed General Fund 2011-12 Loan Repayment, Item 1110-011-0108 Budget Act 2011-12	\$ -	\$ -	\$	1,000	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 2,401	\$ 2,667	\$	3,647	\$ 2,632	\$ 2,628	\$ 2,625
Totals, Resources	\$ 7,259	\$ 6,868	\$	6,924	\$ 5,931	\$ 4,831	\$ 3,623
EXPENDITURES							
Disbursements:							
1111 - Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,814	\$ 3,312	\$	3,397	\$ 3,499	\$ 3,604	\$ 3,712
8880 - Financial Information System for California	\$ 6	\$ -	\$	(1)	\$ -	\$ -	\$ -
9892 - Supplemental Pension Payment	\$ -	\$ 20	\$	43	\$ 43	\$ 43	\$ 43
9900 - Statewide General Administrative Expenditures (Pro Rata)	\$ 238	\$ 259	\$	186	\$ 186	\$ 186	\$ 186
Total Disbursements	\$ 3,058	\$ 3,591	\$	3,625	\$ 3,728	\$ 3,833	\$ 3,941
FUND BALANCE	 						
Reserve for economic uncertainties	\$ 4,201	\$ 3,277	\$	3,299	\$ 2,203	\$ 998	\$ -318
Months in Reserve	14.0	10.8		10.6	7.1	3.1	-1.0

### CALIFORNIA ACUPUNCTURE BOARD - 0108 BUDGET REPORT

### FY 2018-19 EXPENDITURE PROJECTION Preliminary FISCAL MONTH 07 - Activity Log 03/06/2019

Updated 3/15/2019

		<u> </u>	Jpdated 3/15/2019					
	FY 2015-16	FY 2016-17	FY 2017-18			FY 2	018-19	
	ACTUAL	ACTUAL	ACTUAL	BUDGET	CURRENT YEAR			
	EXPENDITURES	EXPENDITURES	EXPENDITURES	STONE	EXPENDITURES	PERCENT	PROJECTIONS	UNENCUMBERED
OBJECT DESCRIPTION	FM 13	FM 13	(Pre-FM12)	2018-19	(Pre-FM07)	SPENT	TO YEAR END	BALANCE
PERSONNEL SERVICES								
Salary & Wages (Staff)	508,346	487,887	518,774	660,000	307,716	47%	569,552	90,448
Statutory Exempt (EO)	72,205	65,868	87,168	80,000	52,885	66%	90,660	(10,660)
Temp Help Reg (Seasonals)	59,993	59,236	66,880	19,000	34,205	180%	54,639	(35,639)
Board Member Per Diem	14,100	9,800	3,600	7,000	100	1%	7,000	(55,655)
Overtime	1,615	161	0,000	5,000	0	0%	7,000	5,000
Staff Benefits	290,739	286,026	323,932	444,000	190,721	43%	326,950	117,050
TOTALS, PERSONNEL SVC	946,998	908,978	1,000,354	1,215,000	585,627	43%	1,048,801	166,199
TOTALO, I ENGONNEL GVO	340,330	300,370	1,000,004	1,213,000	303,021	4070	1,040,001	100,133
OPERATING EXPENSE AND EQUIPMENT								
General Expense	44,611	54,854	12,450	59,000	6,842	12%	37,000	22,000
Fingerprint Reports	613	1,029	882	20,000	490	2%	900	19,100
Minor Equipment	85	2,016	0	15,000	4,185	28%	15,000	0
Printing	15,391	17,998	12,345	18,000	883	5%	15,000	3,000
Communication	11,208	9,060	2,723	18,000	353	2%	1,200	16,800
Postage	25,802	24,925	23,397	28,000	0	0%	25,000	3,000
Insurance	25,502	15	3,243	20,000	0	N/A	25,000	0,000
Travel In State	38,866	34,315	17,188	34,000	2,588	8%	30,000	4,000
			0	34,000	2,366	N/A	,	,
Travel, Out-of-State	2,861	2,073	-	4 000	-		4,000	(4,000)
Training	0	469	420	4,000	165	4%	1,000	3,000
Facilities Operations	109,458	112,769	119,832	65,000	70,953	109%	120,008	(55,008)
Architecture Revolving Fund (ARF)	0	0	0	0	0	0%	250,000	(250,000)
C & P Services - Interdept.	0	0	43	9,000	0	0%	9,000	0
C & P Services - External	3	18	675	4,000	0	0%	4,000	0
DEPARTMENTAL SERVICES (Pro Rata):								
Office of Information Services	107,890	144,573	169,000	151,000	88,083	58%	151,000	0
Administation	133,859	187,272	159,000	188,000	109,667	58%	188,000	0
DOI - ISU	3,933	4,600	4,000	5,000	2,917	58%	5,000	0
Communications Div.	161,000	80,897	13,000	12,000	7,000	58%	12,000	0
Program Policy and Regulations Div.	0	1,308	83,000	82,000	47,833	58%	82,000	0
INTERAGENCY (IA) SERVICES:								
Data Conversion DGS Project	0	0	0	0	0	0%	250,000	(250,000)
IA w/ OPES	305,652	272,208	298,828	334,000	89,199	27%	225,867	108,133
Consolidated Data Center	934	890	4,635	4,000	253	6%	1,000	3,000
DP Maintenance & Supply	449	3,973	2,076	5,000	62	1%	1,000	4,000
EXAM EXPENSES:		-,	_,	-,			0	,,,,,,
C/P Svcs-External Expert Administrative	279,186	305,491	315,767	287,000	13,719	5%	365,051	(78,051)
C/P Svcs-External Expert Examiners	51,286	39,530	19,694	84,000	10,470	N/A	21,566	62,434
C/P Svcs-External Subject Matter	0	1,459	1,872	04,000	0	0%	1,872	02,434
ENFORCEMENT:	U	1,433	1,072	Ū	U	076	1,072	U
Attorney General	307,042	214,240	117,691	386,000	102,029	26%	186,000	200,000
							,	,
Office Admin. Hearings	77,938	26,504	14,745	107,000	13,840	13%	24,000	83,000
Court Reporters	3,210	1,054	1,949	11,000	888	8% N/A	1,500	(04.040)
Evidence/Witness Fees	69,285	13,614	69,580	070.000	12,453	N/A	21,348	(21,348)
DOI - Investigations	500,566	772,549	414,000	278,000	162,167	58%	278,000	0
MISC:			00.400	0.000	0.500	N1/0	2 222	_
Major Equipment	0	0	20,408	6,000	3,500	N/A	6,000	0
Other (Vehicle Operations)	0	0	0	3,000	0	0%	0	3,000
TOTALS, OE&E	2,389,858	2,329,703	1,902,443	2,217,000	750,539	34%	2,333,312	(123,940)
TOTAL EXPENSE	3,336,856	3,238,681	2,902,797	3,432,000	1,336,166	82%	3,382,113	42,259
Sched. Reimb External/Private	(1,410)	(1,410)	(294)	(1,000)	(1,234)		(2,115)	1,115
Sched. Reimb Fingerprints	(441)	(441)	(470)	(22,000)	(137)		(235)	(21,765)
Unsched. Reimb Other	(130,413)	(130,413)	(88,022)	0	(40,275)		(69,043)	69,043
NET APPROPRIATION	3,204,592	3,106,417	2,814,011	3,409,000	1,294,520	38%	3,310,720	90,652
						SURPL	US/(DEFICIT):	2.7%

### STATE OF CALIFORNIA

Budget Cha DF-46 (REV 0	nge Proposal - ( 98/17)	Cover Sheet			
Fiscal Year	Business Unit	Department			Priority No.
2019-20	1111	Department of Consum	ner Affairs		5
Budget Reques 1111-005-BCP-		Program  1425 – CONSUMER A ADMINISTRAT  1426 – DISTRIBUTED CONSUMER A ADMINISTRAT	TION S AFFAIRS	Subprogram VARIOUS	
Budget Reques Consumer Affa	t Description irs Administration V	Vorkload			
Budget Reques	st Summary				
21, \$3.6 million Business Servi Human Resour is funded by D0	in 2021-22 and \$2 ces Office, Fiscal C ces, and the Office CA's Boards and B	airs requests \$5.2 million 2.1 million ongoing to ad Operations Office, Office of Professional Examir ureaus via prorata while by Board and Bureau b	dress increased of Legal Affairs nation Services. costs for the C	d workload in the De s, Division of Investion Of the amount requifice of Examination	partment's gation, Office of uested, \$2.9 million
Requires Legis	lation No		Code Section	(s) to be Added/Ame	ended/Repealed
	contain information		Department C	io	Date

Requires Legislation		Code Section(3) to be Added/Ame	nacan repealed
☐ Yes ☐ No			
Does this BCP contain information components? ☐ Yes ☐ No		Department CIO	Date
If yes, departmental Chief Informa	tion Officer must sign.		
For IT requests, specify the project S2AA, S3SD, S4PRA), and the ap		ent project approval document (FSF	R, SPR, S1BA,
Project No. Pro	ject Approval Documer	nt: A <sub>l</sub>	pproval Date:
If proposal affects another departr Attach comments of affected depart		ment concur with proposal?	Yes 🗌 No signee.
Prepared By	Date	Reviewed By	Date
Department Director	Date	Agency Secretary	Date
AND WATER	Department of Fi	nance Use Only	
Additional Review:  Capital Out	lay 🗌 ITCU 🗌 FSCU	J □ OSAE □ CALSTARS □ D	Dept. of Technology
PPBA Original Signe Tiffany Gar	-	Date submitted to the Legislature	

BR Name: 1111-005-BCP-2019-GB

Budget Request Summary			FY19	)		
100) 01 1000 I	CY	BY	BY+1	BY+2	BY+3	BY+4
Personal Services Positions - Permanent	0.0	24.5	24.5	24.5	04.5	24.5
Total Positions	0.0	24.5	24.5	24.5 24.5	24.5 24.5	24.5
Salaries and Wages						
Earnings - Permanent	0	1,889	1,889	1,426	518	518
Earnings - Temporary Help	0	1,180	1,180	1,180	1,180	1,180
Total Salaries and Wages	\$0	\$3,069	\$3,069	\$2,606	\$1,698	\$1,698
Total Staff Benefits	0	1,169	1,169	863	360	360
Total Personal Services	\$0	\$4,238	\$4,238	\$3,469	\$2,058	\$2,058
Operating Expenses and Equipment						
5301 - General Expense	0	46	46	31	15	15
5302 - Printing	0	14	14	10	6	6
5304 - Communications	0	32	32	24	13	13
5306 - Postage	0	14	14	10	6	6
5320 - Travel: In-State 5322 - Training	0	3 14	3 14	2 10	1 6	1
5324 - Facilities Operation	0	148	11	11	1	6
5340 - Consulting and Professional Services -	0	335	135	0	0	o
5344 - Consolidated Data Centers	0	12	12	. 9	5	5
5368 - Non-Capital Asset Purchases - Equipment	0	326	0	0	0	0
Total Operating Expenses and Equipment	\$0	\$944	\$281	\$107	\$53	\$53
Total Budget Request	\$0	\$5,182	\$4,519	\$3,576	\$2,111	\$2,111
Fund Summary						
Fund Source - State Operations	0	447	00			-
0069 - Barbering and Cosmetology Contingent 0108 - Acupuncture Fund	0	117 44	98 35	63 30	8 23	8 23
0152 - State Board of Chiropractic Examiners Fund	0	31	25	18	7	7
0166 - Certification Account, Consumer Affairs	0	9	8	5	0	0
0175 - Dispensing Opticians Fund	0	2	2	1	0	0
0239 - Private Security Services Fund 0264 - Osteopathic Medical Board of California	0	84 14	70 11	47 7	12	12
0280 - Physician Assistant Fund	0	5	5	3	0	0
0295 - Board of Podiatric Medicine Fund	0	6	5	3	ō	0
0305 - Private Postsecondary Education	0	124	105	65	2	2
0310 - Psychology Fund	0	27	23	14	0	0
0319 - Respiratory Care Fund 0325 - Electronic and Appliance Repair Fund	0	20 22	17 18	. 10 11	0	0
0326 - Athletic Commission Fund	0	13	11	7	1	0
0376 - Speech-Language Pathology and Audiology	0	25	20	16	9	9
0400 - Real Estate Appraisers Regulation Fund	0	40	34	21	1	1
0421 - Vehicle Inspection and Repair Fund	0	624	527	327	15	15
0582 - High Polluter Repair or Removal Account 0704 - Accountancy Fund, Professions and	0	64 107	54 91	33 57	1 4	1 4
0706 - California Architects Board Fund	0	29	24	15	0	0
0717 - Cemetery and Funeral Fund	0	27	23	14	0	0
0735 - Contractors License Fund	0	485	404	248	8	8
0741 - State Dentistry Fund 0752 - Home Furnishings and Thermal Insulation	0	80 34	67 29	41 18	1 1	1
0757 - California Board of Architectural Examiners -	ő	7	5	3	0	1
0758 - Contingent Fund of the Medical Board of	. 0	1,384	1,352	1,286	1,183	1,183
0759 - Physical Therapy Fund	0	80	63	55	42	42
<ul> <li>0761 - Board of Registered Nursing Fund,</li> <li>0763 - State Optometry Fund, Professions and</li> </ul>	0	516	410	341	234	234
0767 - Pharmacy Board Contingent Fund,	0	31 129	24 108	20 66	14 2	14 2
0769 - Private Investigator Fund	0	5	5	3	0	0
0770 - Professional Engineer's, Land Surveyor's,	0	106	87	62	23	23
0771 - Court Reporters Fund	0	5	5	3	0	0
<ul> <li>0773 - Behavioral Science Examiners Fund,</li> <li>0775 - Structural Pest Control Fund</li> </ul>	0	113 42	92 36	69	34	34
0777 - Veterinary Medical Board Contingent Fund	0	62	50	25 42	7 29	7 29
0779 - Vocational Nursing and Psychiatric	0	302	236	210	170	170
0995 - Reimbursements	0	287	271	271	271	271
3017 - Occupational Therapy Fund	0	21	18	12	3	3
3069 - Naturopathic Doctors Fund 3108 - Professional Fiduciary Fund	0	10 3	8	7 2	6 0	6
3122 - Enhanced Fleet Modernization Subaccount,	0	10	8	5	0	0
3140 - State Dental Hygiene Fund	0	12	10	6	0	0
3142 - State Dental Assistant Fund	0	12	11	7	0	0
3315 - Household Movers Fund, Professions and Total State Operations Expenditures	0 \$0	12	11	7 \$2.576	0	0
_		\$5,182	\$4,519	\$3,576	\$2,111	\$2,111
Total All Funds	\$0	\$5,182	\$4,519	\$3,576	\$2,111	\$2,111

### Program Summary

Program	Funding

Program Fund	ding						
	California Board of Accountancy	0 -	107	91	57	4	4
1115 -	Board of Behavioral Sciences	0	113	92	69	34	34
1120 -	Board of Chiropractic Examiners	0	31	25	18	7	7
1125 -	Board of Barbering and Cosmetology	0	117	98	. 63	8	8
	- Dental Hygiene Board of California	0	12	10	6	0	0
	- Acupuncture Board	0	44	35	30	23	23
1160	Physical Therapy Board of California	0	80	63	55	42	42
1165	- Physician Assistant Board	0	5	5	3	0	0
1170 -	Podiatric Medical Board of California	0	6	5	3	0	0
1175	- Board of Psychology	0	27	23	14	0	0
1180 -	- Respiratory Care Board of California	0	20	17	10	0	0
1185	Speech-Language Pathology and Audiology	0	25	20	16	9	9
	- California Board of Occupational Therapy	0	21	18	12	3	3
1205	Naturopathic Medicine Committee	0	10	8	7	6	6
1210	- California State Board of Pharmacy	0	129	108	66	2	2
1220	- Board of Registered Nursing	0	516	410	341	234	234
	- Veterinary Medical Board	0	62	50	42	29	29
1400	- Arbitration Certification Program	0	9	8	5	0	0
1450	- Professional Fiduciaries Bureau	0	3	3	2	0	0
1105019	- California Architects Board	0	29	24	15	0	0
1105020	- Landscape Architects Technical Committee	0	7	5	3	0	0
1110010	- State Athletic Commission - Support	0	13	11	7	1	1
1130010	- Contractors' State License Board	0	485	404	248	8	8
1135010	- Dental Board of California	0	80	67	41	1	1
1135019	- State Dental Assistant Program	0	12	11	7	0	0
1150019	- Medical Board of California - Support	0	1,384	1,352	1,286	1,183	1,183
1196010	- State Board of Optometry - Support	0	31	24	20	14	14
1196020	- Registered Dispensing Opticians	0	2	2	1	0	0
1200010	<ul> <li>Osteopathic Medical Board of California</li> </ul>	0	14	11	7	0	0
1215014	<ul> <li>Board of Professional Engineers, Land</li> </ul>	0	106	87	62	23	23
1225010	<ul> <li>Court Reporters Board of California -</li> </ul>	0	5	5	3	0	0
1230010	- Structural Pest Control Board	0	42	36	25	7	7
1240019	- Board of Vocational Nursing and Psychiatric	0	302	236	210	170	170
1405019	- Bureau of Security and Investigative	0	84	70	47	12	12
1405020	- Private Investigators Program	0	5	5	3	0	0
1410013	<ul> <li>Bureau for Private Postsecondary Education</li> </ul>	0	124	105	65	2	2
1415014	- Electronic and Appliance Repair	0	22	18	11	0	0
1415023	<ul> <li>Home Furnishings and Thermal Insulation</li> </ul>	0	34	29	18	1	1
1415031	- Division of Household Movers	0	12	11	7	0	0
1420025	- Automotive Repair and Smog Check	0	624	527	327	15	15
1420041	- HPRRA - Program Administration	0	64	54	33	1	1
1420057	- EFMP - Program Administration	0	10	8	5	0	0
1425041	- Division of Investigation	0	1,984	1,794	1,794	1,794	1,794
1425049	<ul> <li>Consumer and Client Services Division</li> </ul>	0	3,198	2,725	1,782	317	317
1426041	- Distributed Division of Investigation	0	-1,984	-1,794	-1,794	-1,794	-1,794
1426049	<ul> <li>Distributed Consumer and Client Services</li> </ul>	0	-2,911	-2,454	-1,511	-46	-46
1435019	- Cemetery and Funeral Bureau	0	. 27	23	14	0	0
1441010	- Bureau of Real Estate Appraisers - Support	0	40	34	21	11	1
Total All Pro	ograms	\$0	\$5,182	\$4,519	\$3,576	\$2,111	\$2,111
	** <u>4</u>						

### Personal Services Details

	Sa	lary Information							
Positions	Min	Mid	Max	CY	BY	BY+1	BY+2	BY+3	BY+4
1441 - Office Asst (Gen) (Eff. 07-01-2019)				0.0	3.0	3.0	3.0	3.0	3.0
4546 - Accounting Officer (Spec) (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
4588 - Assoc Accounting Analyst (Eff. 07-01-2019)				0.0	3.0	3.0	3.0	3.0	3.0
5333 - Sr Legal Analyst (Eff. 07-01-2019)				0.0	1.0	1.0	1.0	1.0	1.0
5393 - Assoc Govtl Program Analyst (Eff. 07-01-2019)				0.0	2.0	2.0	2.0	2.0	2.0
5758 - Research Data Spec II (Eff. 07-01-2019)				0.0	3.0	3.0	3.0	3.0	3.0
5795 - Atty III (Eff. 07-01-2019)				0.0	6.0	6.0	6.0	6.0	6.0
8610 - Investigator (Eff. 07-01-2019)				0.0	4.5	4.5	4.5	4.5	4.5
TH00 - Temporary Help (Eff. 07-01-2019)				0.0	0.0	0.0	0.0	0.0	0.0
Total Positions			): —	0.0	24.5	24.5	24.5	24.5	24.5
Salaries and Wages	CY	ву	BY+1	BY	<b>⊦</b> 2	BY	+3	BY	+4
1441 - Office Asst (Gen) (Eff. 07-01-2019)	0	29	29		29		29		29
4546 - Accounting Officer (Spec) (Eff. 07-01-2019)	0	117	117		0		0		0
4588 - Assoc Accounting Analyst (Eff. 07-01-2019)	0	212	212		0		0		0
5333 - Sr Legal Analyst (Eff. 07-01-2019)	0	70	. 70		70		0		0
5393 - Assoc Govti Program Analyst (Eff. 07-01-2019)	0	134	134		0		0		0
5758 - Research Data Spec II (Eff. 07-01-2019)	0	243	. 243		243		162		162
5795 - Atty III (Eff. 07-01-2019)	0	757	757		757		0		0
8610 - Investigator (Eff. 07-01-2019)	0	327	327		327		327		327
TH00 - Temporary Help (Eff. 07-01-2019)	0	1,180	1,180		1,180		1,180		1,180
Total Salaries and Wages	\$0	\$3,069	\$3,069		\$2,606		\$1,698		\$1,698
Staff Benefits									
5150350 - Health Insurance	0	368	368		248		111		111
5150500 - OASDI	0	142	142		107		37		37
5150600 - Retirement - General	0	599	599		463		196		196
5150800 - Workers' Compensation	0	60	60		45		16		16
Total Staff Benefits	\$0	\$1,169	\$1,169		\$863		\$360		\$360
Total Personal Services	\$0	\$4,238	\$4,238		\$3,469		\$2,058		\$2,058

### A. Budget Request Summary

The Department of Consumer Affairs (DCA) requests \$5.2 million in 2019-20 and 24.5 positions, \$4.5 million in 2020-21, \$3.6 million in 2021-22 and \$2.1 million ongoing to address increased workload in the Department's Business Services Office, Fiscal Operations Office, Legal Affairs Division, Division of Investigation, Office of Human Resources, and the Office of Professional Examination Services. Of the amount requested, \$2.9 million is funded by DCA's Boards and Bureaus via prorata while costs for the Office of Examination Services and Division of Investigation is funded by Board and Bureau based on workload.

### B. Background/History

DCA protects Californians by providing administrative oversight to 37 Boards and Bureaus, which regulate and provide licensure to over 100 business types, 200 professional categories, and 3 million licensees in the state. DCA Boards and Bureaus fill an important role in state government and protecting Californians by ensuring licensees adhere to established professional standards and educational requirements.

Beginning in 2017, DCA convened a prorata workgroup comprised of board executive officers, bureau chiefs and DCA executive staff. This workgroup serves to provide a direct interface with client boards and bureaus with the focus of addressing issues and concerns regarding the administrative services provided by DCA. Based on these workgroup meetings DCA has looked to streamline administrative functions and find efficiencies as well as identify areas of critical need. Feedback received at the workgroups informed DCA of specific areas of frustration and need which cannot be addressed with existing resources. As a result, DCA has submitted the following proposals:

### Business Services and Fiscal Operations

 Requests \$1.2 million in 2019-20 and \$943,000 in 2020-21 to fund seven positions to support the Business Services Office and Fiscal Operations Office to address significant workload increases, enhanced audit requirements, and exceedingly complex accounting processes.

### 2. Legal Affairs Division:

 Requests three-year limited term funding of \$1.67 million in 2019-20, and \$1.47 million in 2020-21 to fund six Attorney IIIs, one Senior Legal Analyst, and one Research Program Specialist II to create a Regulations Unit.

### Division of Investigation:

• Requests \$1.98 million in 2019-20 and \$1.79 million ongoing to fund 4.5 positions and medical consultant costs to address investigator case workload and aging cases.

### 4. Office of Human Resources:

 Requests \$46,000 in 2019-20 and ongoing to fund the conversion of three permanent intermittent Office Technician (OT) positions into permanent full-time positions to address recruitment and return to work workload.

### 5. Office of Professional Examination Services:

Requests \$287,000 in 2019-20 and \$271,000 ongoing to fund two Research Data Specialist II
(RDS II) positions to meet the increased workload for developing, maintaining, and validating
occupational licensing examinations.

Each individual proposal includes the BCP narrative and workload metrics.

### SECTION 1: BUSINESS SERVICES AND FISCAL OPERATIONS

### A. Budget Request Summary

DCA requests seven positions and \$1.2 million in 2019-20 and \$943,000 in 2020-21 to support the Business Services Office and Fiscal Operations Office to address significant workload increases, enhanced audit requirements, and exceedingly complex accounting processes. This request includes \$135,000 in contract funds in 2019-20 and 2020-21 to utilize student assistants and \$200,000 in external contract funds in 2019-20 only, to leverage skilled independent contractors.

The positions being requested will be allocated to these various sections:

OFFICE (UNIT)	CLASSIFICATIONS	STUDENTS
<b>Business Services Office</b>	2 - Associate Governmental Program Analyst	1
Fiscal Operations Office:		
Accounting Systems (ASU)	1 - Associate Accounting Analyst	3
Accounts Payable (AP)	2 - Accounting Officer	1
General Ledger (GL)	2- Associate Accounting Analyst	1
TOTAL	7	6

### B. Background/History

DCA is the umbrella agency for 37 business and professional licensing entities (collectively referred to as boards and bureaus) that regulate over three million businesses and professionals in over 250 license categories including, but not limited to, healthcare, automotive repair, residential and business construction, barbering and cosmetology, security services, and real estate.

To fulfill its statutory responsibility to protect and serve California consumers, ensure a competent and fair marketplace, and protect professionals from unfair competition by unlicensed practitioners, the DCA's boards and bureaus license businesses and professionals, enforce professional standards, and collect payments. Each board and bureau must license and regulate businesses and professionals in accordance with its individual statutory authority under the Business and Professions Code, the California Code of Regulations, or other enabling legislation. The DCA's Consumer and Client Services Division, which includes Business Services Office and Fiscal Operations, provides the full array of administrative support services to the boards and bureaus.

DCA has experienced significant changes to their processes, workloads, and audit requirements in all areas including but not limited to procurement, accounting, budgeting, and cash management which has resulted in the need for additional resources. The ever-growing changes have presented DCA staff with many unforeseen challenges and has contributed to significant delays in the processing of several fiscal driven items including but not limited to monthly and annual reconciled financial statements, late payments to vendors, delayed utility payments, and timely reimbursements to Subject Matter Experts (SME's) who are critical to DCA's mission. In addition, DCA is unique from other state entities with regards to its basic organizational structure which lends to an extraordinarily high volume of invoices, transactions, and complex workloads.

The organizational composition which includes the 37 boards, bureaus, and programs under DCA presents a unique challenge in that they all have their own individual appropriations and specific funding sources. While many of the transactions that occur within the 70 special fund sources in DCA's portfolio are similar in nature, such as payroll transactions and various operating purchases, the mere volume exacerbates the issues regarding transactional processing timelines and back office reconciliations. For example, the processing of SME transactions has increased from approximately 27 hours per month to over 400 hours per month under the new process.

The <u>California State Auditor released Letter Report 2017-039.1</u> covers many of the issues, complexities, and challenges DCA will continue to face. The findings in the Letter also state "most of the entities surveyed reported concerns with inadequate staff resources and the increase in workload to which they plan to mitigate by requesting additional funding for new positions through the state budget process."

### BSO & Fiscal Operations - Resource History

(Dollars in thousands)

Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18
Actual Expenditures	12,178	13,607	13,924	15,059	16,744
Authorized Positions	160.7	161.1	160.1	160.1	165.1
Filled Positions	141.9	149.6	146.6	144.8	164.1
Vacancies	18.8	11.5	13.5	15.3	1.0*

<sup>\*</sup>Vacancies in 2017-18 are based on DCA/HR Vacancy report for June 2018.

### C. State Level Considerations

DCA was established by the California Business and Professions Code Section 100 et al. "ensures that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated to protect the people of California." To facilitate effective decision-making DCA must be able to provide current and accurate financial management information including but not limited to the boards, bureaus, public, Legislature/Legislative Analyst's Office, Department of Finance, State Controllers Office (SCO), DCA executive staff and management along with other customers and stakeholders.

DCA provides the full array of administrative functions to all the various boards, bureaus, and programs under its purview and as such it is imperative to have accurate and timely processes in place. DCA's clients rely on this administrative and fiscal support in performing all their accounting and administrative processes. Furthermore, many of DCA's vendors are small businesses which have been negatively impacted with late payments and delayed processing of invoices. The arise of more stringent auditing requirements from SCO coupled with the increase in process complexity and workload amongst all Business Services and Fiscal Operations units has contributed to significant delays in the processing of payments to vendors.

The delays in processing accurate and timely financial statements, which DCA is experiencing, poses a significant risk to the State's ability to complete the Comprehensive Annual Financial Report (CAFR). If the CAFR is produced significantly late that "could negatively affect credibility among investors, the public, and credit reporting agencies, and potentially result in a lower credit rating for the State" as cited in the California State Auditor's Letter 2017-039.1.

### D. Justification

In July 2017, DCA was onboarded and began transacting in the new system. This transitional year posed significant process changes which created many challenges and hurdles to overcome. As an interim solution, DCA hired student assistants and retried annuitants as well as having experienced staff including managers work large amounts of overtime. While this approach has provided some relief, it pales in comparison to the needed level of hours on an ongoing permanent basis.

The increased time commitments in workload processes has led to the delay in producing monthly and year-end financial statements. DCA must be able to provide accurate and current financial management information while maintaining timely processing of all fiscal related transactions. Accurate monthly financial reports are a necessary and vital tool for the outward facing boards and bureaus in making sound fiduciary decision on their operations. The resources requested in this

proposal will allow DCA to address the significant delays and challenges brought about by the expanding audit requirements, increased workloads, and process complexities.

Business Services Office (BSO) must now adhere to the many additional steps that have arisen with regards to the processes and procedures required for procuring goods and services. The additional workload has resulted in delays and longer timeframes for executing purchase orders, service contracts, SME contracts, and the use of state payment card for procurement of goods. BSO cannot redirect other staff to assist with the procurement workload without creating additional backlogs in other areas and as such hired student assistants and required procurement staff to work overtime but that has not been successful in achieving the procurement of goods and services within the required timeframes. Due to the sheer volume of SME's, approximately 2,500, and other BSO items that now require much longer timeframes to process, it is not anticipated that this workload will decline even with the future onboarding of the SCO and the State Treasurers Office.

Accounting Systems Unit (ASU) is experiencing delays in financial and budget reporting processes which prevent accurate and timely reporting to accounting and budget office analysts, the DCA's program administrative staff, board and bureau members, and the Department of Finance. There has been a significant increase in the number of steps that must be completed before accounting staff can review, analyze, and make corrections to financial data. Delayed reports create reduced efficiencies in the preparation of financial reconciliations and negatively impacts timely analysis of fund conditions and fiscal analyses of legislative bills and regulatory packages. ASU is utilizing contracted student assistants to help with routine duties, primarily matching records within the cash management module associated with bank statement reconciliations. ASU staff are working overtime to try and maintain a level of acceptable performance and the section manager has been deviating from their usual duties to assist with staff work to reduce current delays in monthly reporting.

Accounting Payable (AP) workload associated with the new complex processes and audit requirements has created multiple challenges with regards to timely payments and processing of invoices that are resulting in late payments to vendors including small businesses. Previously, only one approval signature was required per claim schedule which could include up to 12 vendors and multiple invoices per vendor. The current process now requires each invoice to be individually opened within the system and electronically approved twice by separate first and second level authorized approvers. In addition, direct transfer invoices now need to be reversed from the clearing account and moved to the direct funds. Furthermore, vendor payments were previously batched into claim schedules, allowing multiple invoices to be paid with a single warrant. Invoices are now paid individually, and a warrant is required to be produced for every invoice received in DCA. Also, each invoice first needs to be scanned and saved on a hard drive prior to attaching it to the voucher in the system with each entry now requiring 20 additional keystrokes. AP staff continue to work overtime while the managers are also deviating from their usual tasks to help with daily processing to reduce workload and backlogs.

General Ledger (GL) prepares monthly fund reconciliations, processes program and legal claims, posts and approves SCO and system generated journals and tracks cash availability. The complexity of the processes and additional auditing requirements for reconciling the funds has resulted in significant additional workload as well as increasing the amount of research time and effort to conduct the reconciliations. Staff also prepare the year-end financial statements for all the funds associated with the programs under DCA. The new work processes double the timeframe required to do these tasks which prevents timely reconciliation that hinders the accuracy of reporting accounting and fiscal information. There has also been a significant increase in the number of steps that must be completed before accounting staff can review, analyze, and make corrections to financial data. These processes and workload have required staff to incur a substantial amount of overtime along with the manager deviating from usual tasks to help addresses this situation.

For all the Fiscal Operations units additional time is needed to download financial data, create pivot tables, and arrange the data into usable report formats. Reporting tools within the system are varied and often contain limited information so staff must utilize additional queries within the system. In

addition, the clearing account reconciliation has increased the amount of time needed to review and reconcile because the system extracts raw data for review and the amount of entries that must be reviewed has increased threefold. There were also more robust legacy reports that provided quick matching of anomalous entries automatically that is lacking with the new processes and requirements.

The transitional challenges are impacting the ability to timely close out month and year-end processes which ultimately have a wide ranging ripple effect on many of DCA's fiscal driven items and decisions. For example, without accurately reconciled year-end financial statements and monthly expenditure/revenue/cashflow reports the boards and bureaus fund condition statements may be overstated by using estimates which could hinder their ability to obtain necessary resources, assess fee levels, and make sound financial decisions.

### E. Outcomes and Accountability

Improvements in the processing times and workload levels for all areas impacted will be achieved utilizing these additional resources. In addition to leveraging independent skilled contractors to assist with programming and other more complex system processes, the student assistants will ensure DCA is able to address growing backlogs as well as facilitate more timely completion of lower level workloads.

**BSO** requires two Associate Governmental Program Analyst positions to process and maintain the workload more efficiently and effectively. The quality of the work product associated with the processing of documents and entering data into the system by permanent staff will meet the requirements and expectations set forth by mandate, rules, policies, and procedures and allow DCA to maintain its procurement authority and delegations authorized by various control agencies. DCA clients will continue to rely on BSO to process and execute procurements for goods and services on their behalf in an efficient and effective manner.

**ASU** is requiring an additional Associate Accounting Analyst to provide the current monthly reports needed to reduce the delay to DCA staff responsible for financial and budgetary analysis. DCA's executives, program executives, and board members will receive timely financial reports that can be used for program management, fund condition reviews, and legislative responses.

AP is requiring two additional Accounting Officer (Specialist) positions to ensure control agencies, DCA executives, and board members will have up-to-date expenditure information and timely payments to vendors will keep DCA in compliance with the prompt payment act and with SCO audit requirements. These additional resources will allow DCA to adequately process, approve, and research the high volume of transactions we have at DCA.

**GL** is requiring two additional Associate Accounting Analysts for timely account reconciliation and to keep the current monthly corrections to a minimum. This will reduce the delay in financial and budgetary analysis, to meet monthly and annual financial reporting timelines, and to ensure adherence to the State Administrative Manual guidelines.

The denial of this request will have wide ranging implications to DCA as well as the boards, bureaus, and programs. Without up-to-date, accurate, and reconciled financial reports fiduciary decisions will be delayed or not pursued. These decisions include but are not limited to the hiring of staff, pursing fee increases, facilities, purchasing, and executing contracts. In addition, the inability to provide the requisite financial reports on a timely basis poses a hindrance in gauging if a program will be projected to exceed their legislative appropriated budget authority. As DCA continues to experience delays in the payment of invoices it is at risk of losing valuable vendors and SME's, incurring late payment penalties, and overall conveys a lack of transparency to critical stakeholders. Staff moral will remain low, employee burnout will continue to increase, and the inevitable rise of worker's compensation claims will come to fruition if additional permanent resources are not granted.

### F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve a two-year limited term funding of \$1.2 million in 2019-20 and \$943,000 to support 7.0 positions, contract funds to utilize student assistants, and external contract funds to leverage skilled independent contractors.

Pro: Will provide DCA with the adequate resources needed to address the permanent ongoing workload due to the implementation of the new system over the next two years. This alternative will also help with the backlog that was generated with the system implementation.

Con: Increased pro-rata costs to the boards and bureaus within DCA.

Alternative 2: Approve the two-year limited term funding of \$864,000 to support 7.0 positions.

Pro: Will provide DCA with resources that will include higher level subject matter classifications to address the permanent ongoing workload load due to the implementation of the new system.

Con: Increased pro-rata costs to the boards and bureaus within DCA. This alternative will not provide the student assistants and contract resources necessary to help alleviate the current backlog that was generated with the system implementation and provide critical programming development.

Alternative 3: Approve a two-year limited term funding of \$450,000 to utilize 20 student assistants.

Pro: Will provide the DCA with lower level resources to help alleviate the additional workload associated with the implementation of the new system.

Con: Increased pro-rata costs to the boards and bureaus within DCA. This is does not provide the necessary subject matter expertise gained with higher level permanent position classifications to address the more complex workloads.

### Alternative 4: Status Quo

Pro: No additional pro-rata costs to the boards and bureaus.

Con: Will not provide DCA with the adequate resources to address the permanent ongoing workload that has become prevalent. This alternative will create further backlogs and disservice to vendors, control agencies, and the boards and bureaus that DCA provides services.

### G. Implementation Plan

Upon approval, DCA will initiate the recruitment and hiring process so that effective July 1, 2019 DCA will be able hire the approved positions and execute the student assistant and external contracts.

### H. Supplemental Information

### Workload Attachments

### Attachment A - BSO and FO Workload Analysis Graph

This sheet summaries position needs based on data from Attachments B-E. The BSO workload assumptions utilized are based on 2017-18 data derived from the Business Services database. The FO workload assumptions are based on staff experience with both the old and new accounting systems. Staff tracked the time required to complete tasks that are new to the updated system as well as existing processes that significantly changed due to the number of steps or reports required.

### Attachment B - BSO Subject Matter Expert Worksheet

This sheet describes the responsibilities related to subject matter expert contracts workload.

### Attachment C - FO ASU Worksheet

This sheet describes the responsibilities related to accounting systems reporting and workloads.

### Attachment D – FO AP Worksheet

This sheet describes the responsibilities related to payment processing workloads.

### Attachment E - FO GL Worksheet

This sheet describes the responsibilities related to fund reconciliations and financial reporting workloads.

### 2. BSO Old and New Process Flowcharts

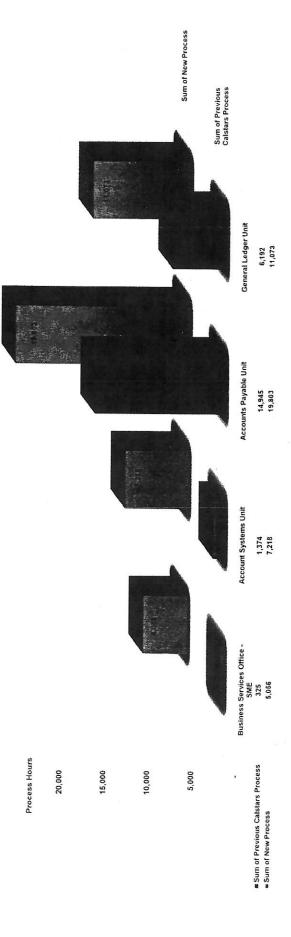
(Note: These charts describe processes and do not isolate BSO work hours. Also, FO flowcharts are much more complex and are still under development.)

Attachment O1 – BSO Subject Matter Experts Current Process Attachment O2 – BSO Subject Matter Experts Previous Process

### I. Recommendation

Approve two-year limited term funding of \$1.2 million in 2019-20 and \$943,000 in 2020-21 to support 7.0 positions, contract funds to utilize student assistants, and external contract funds to leverage skilled independent contractors as identified in alternative #1.

ATTACHMENT A - Business Services Operations and Fiscal Operations Workload Process Change Analysis



ence in Process Hours	A721 DO	E 944	000	
	COTTO	2,044	4,858	4.881
on Need	2.7	6.6		

ATTACHMENT B - Business Services Office Workload Process Change Analysis Subject Matter Expert

ı	7.	4	5	8.1	5.	.3	2.7	1.0
Hours	21.7	43.4	262.5	93.8	421.3 5,055.5	4,730.3	2	0 F
Quantity	542	542	1,875	1,875				
New Process	Receiving Acquisition Requests Verify information and email acknowledgement to client Login database	Creating Contracts Analyst performs review and verification of acquisition package Validate supplier in FI\$Cal If not in FI\$Cal, submit STD 204 and supplier info in FI\$Cal for approval If unsuccessful add, request client for corrected STD 204 or supporting docs input contract in FI\$Cal	Creating PO Releases (based off of involces) Analyst creates POs in FI\$Cal based on each invoice received Analyst submits for manager approval	<u>Dispatching PO Releases</u> Analyst dispatches PO in FI\$Cal	Hours per Month Hours Per Year	Total Difference (Hours)	Staff Needed	Staff Requested Associate Governmental Program Analyst Student Assistant
Hours	27.1				27.1 325.2			
Quantity	542							
					Hours Per Month Hours Per Year			
Previous Calstars Process	SME Contract Process Client prepares contract and obtains all signatures required Fully executed contract received from client for BSO records	BSO files contract		· ·				

## ATTACHMENT C - Fiscal Operations Workload Process Change Analysis Accounting Systems Unit

Previous Calstars Process	Quantity Hours	N		
General Cash and Office Revolving Fund Bank Reconciliation	2	43.5	Quantity	Hours
Export Calstans raports to Excel Leg all checks in Excel Reconcile physical check with STO outstanding check report Reconcile physical check with Calstans report for reconciling tlams Perform revolving fund and cash reconciliation File		Run Bank Statement Register, CL, Ledged-Activity. Trial Balance Reports Run Cluery for GL Activity Report Perform cross reference analysis between GL Activity Report and Query Recordic physical check with F15cal Report for Recordicing Items Recordicile physical deposit with STO attraction of Recordicile physical deposit with STO Recordicile physical deposit with STO attraction. Recordicile physical deposit with RSCal report for Recordicile physical deposit with RSCal report RSCal	O C	298.0
		reconcile Constitute C		
Labor Distribution Reconciliation Download of Grmat 23 payroll files Down law Downson	4,500	8.0 Labor Distribution Reconciliation Redineve and resolve Payrol Adjustment Records issues with OHR	4,500	151.5
nan Laudar (1945) sabor reconciliation - By ENV & CLO SCO ve CALSTARS later entries Prepare and record adjustiment entries		Review and enler Payroll Adjustment Records on log sheet Greate Employee ID and update Employee ID Master File Enter Payroll Adjustment Records information in Employee Option Table Run and cownload information to Employee Option Table Run and cownload information for expertsqueries Review SCO payroll file for 4,500 employees, identify and correct labor problems by entering Activity Sheet or creating journal adjustments in GL Module		
		Four hand download labor reports/queries Review Distribution Payroll Query and identify errors Open FSC ticket for budget errors and undistributed payroll corrections and track FISCal tickets Revun and download labor reports/queries SCO vs FISCal labor reconciliation - By ENV & CLO (about 75,000 accounting entries)		
		SCO vs F1SCal FundiProgram level distribution reconditiation by ENY (PPY, PY, CY) and Payroll Reporting Unit Prepare and record distribution thereings. Run queries to record clearing account entries. Run queries to record clearing account entries Analyze query data and prepare addishing entries by ENY		
Run Budget Reports	70	8.0 Run Budget Reports	02	40.0
Run CalStars H09, Q24, Q16, and D13 reports detailing expenditures, revenue, and encumbrances. CalStars provided an overnight monthly report ordering process. Received approximately 300 monthly reports.		Manually run Activity Log and create 100 pivot tables by fund		
		Run FISCal Budget Act, expenditure, revenue, and encumbrances reports by individual fund. Each fund requires running multiple ledgers and manually consolidating into one report per fund.		
Pro Rata Distribution Allocation	-	12.0 Pre Rata Distribution Allocation	-	48.0
Analysis and create ProRata Allocation Plan Create ProRata Allocation worksheet		System Allocation - Run initial monthly Activity Log to analyze 0702 account entries and post corrections prior to Cost Allocation process. Run system allocation, a 10-step process		
Enter ProRata adjustments in CALSTARS Download Q16 to verify if allocation transactions are posted correctly		Run Activity Log after the system allocation process to verify if allocation cost is zero out, Support and Distributed cost is to zero but, Support and Distributed Manual Allocation - Analyze Activity Log data Wanual Allocation - Analyze Activity Log data Create and plosed pournet worksheet for manual allocation Run Activity Log after manual allocation process to verify if allocation cost pool is zero out and support and distributed oots are matched.		
Print Office Revolvina fund Check Review & Approve OFF Check Bactles Fartin all OFF checks at one time Fartin all OFF checks at one time Separate the "Bluc" and "White" fold from checks Complete the OFF Check Distribution Log Sheet for each batch Deliver check to Psyrolt Unit	320	Print Office Revolving fund Chack Vouchers by Approver 1 requiring a 16-step review Review & approve ORF Chack Vouchers by Approver 2 requiring a 16-step review Review & approve ORF Chack Vouchers by Approver 2 requiring a 16-step review Create POF chack III. Requiring 18 steps in FISCal to complete Developed and best POFIch and print each chack separated symplete Complete the ORF Chack Distribution Log Sheet for each chack Make 2 copies of each ORF and deliveren to Payroll Unit daily	320	64.0
Hours Per Month Hours Per Year	+ 1,3	114.5 Hours per Month Hours Per Year		601.5 7,218.0
		Total Difference (Hours)		5,844.0
		Staff Needed		3.3
		Staff Requested Associate Accounting Analyst Student Assistants		1.0 3.0

# ATTACHMENT D - Fiscal Operations Workload Process Change Analysis Accounts Payable Unit

Previous Calstars Process	Quantity	Hours	New Process	Quantity	Hours
Processing Invoices - Direct Pay. Route Invoices to Program for Approval Process invoices in Calstars Assemble Claim Schedule and route to Supervisor for Approval	2.400	00 420.0	Processing Invoices - Direct Pay. Route invoices to Program for Approval Scan invoices for upload into FI\$Cal Process vouchers in FI\$Cal attached scanned invoices Process Manual Schedule for expedites Process in FI\$Cal using secondary ID for catchup transaction.	2,400	360.0
Processing Invoices - Contracts & POs. Route invoices to Program for Approval Process invoices in Calstars Assemble Claim Schedule and route to Supervisor for Approval	3.600	00 630.0	Processing Invoices - Contracts & POs Route invoices to Program for Approval Route invoices to BSO for PO Scan invoices for upload into F1\$Cal Process vouchers in F1\$Cal attached scanned invoices Process Manual Schedule for expedites Process in F1\$Cal using secondary ID for catchup transaction.	3,600	720.0
Vendor/Supplier Add Prepare vendor ADD spreadsheet in excel Process vendor ADD in CALSTARS Route to Systems unit for Approval	90	500 25.0	Vendor/Supplier Add Scan documents for upload into FI\$Cal Process supplier ADDs in FI\$Cal	200	100.0
Office Revolving Fund Process ORF request Identify cashed warrants and print	37	375 93.8	Office Revolving Fund Process ORF request Identify cashed warrants and print Scan documents for upload into FI\$Cal Process ORF replenishment	375	168.8
<u>Direct Transfers</u> Review and Post Direct Transfers into CALSTARS	20	200 26.7	<u>Direct Transfers</u> Scan documents for upload into FI\$Cal Review and Process Direct transfer into FI\$Cal to record SCO JE in GL Module Scan documents for upload into FI\$Cal Review and Process Direct transfer into FI\$Cal	40	151.5
			(PIA)Scan documents for upload into FI\$Cal (PIA)Scan documents for upload into FI\$Cal (PIA)Process in AP Module as Voucher to liquidate PO (DGS)Retrieve invoices from DGS Website (DGS)Prepare excel spreadsheet & Docs for upload into FI\$Cal (DGS)Process in GL Module post to utlimate fund only		
Claim Schedule Approvals Verify and Sign manual Claim Schedules for SCO Processing	3,000	00 50.0	<u>Voucher Approvals (New Process)</u> Review Vouchers in Fl\$Cal and Approver 2	000'9	150.0
	Hours Per Month Hours Per Year	1,245.4 14,945.0	Hours per Month Hours Per Year		1,650.3 19,803.0
			Total Difference (Hours)		4,858.0

2.0

Staff Requested Accounting Officer Student Assistants

2.7

Staff Needed

### ATTACHMENT E - Fiscal Operations Workload Process Change Analysis General Ledger Unit

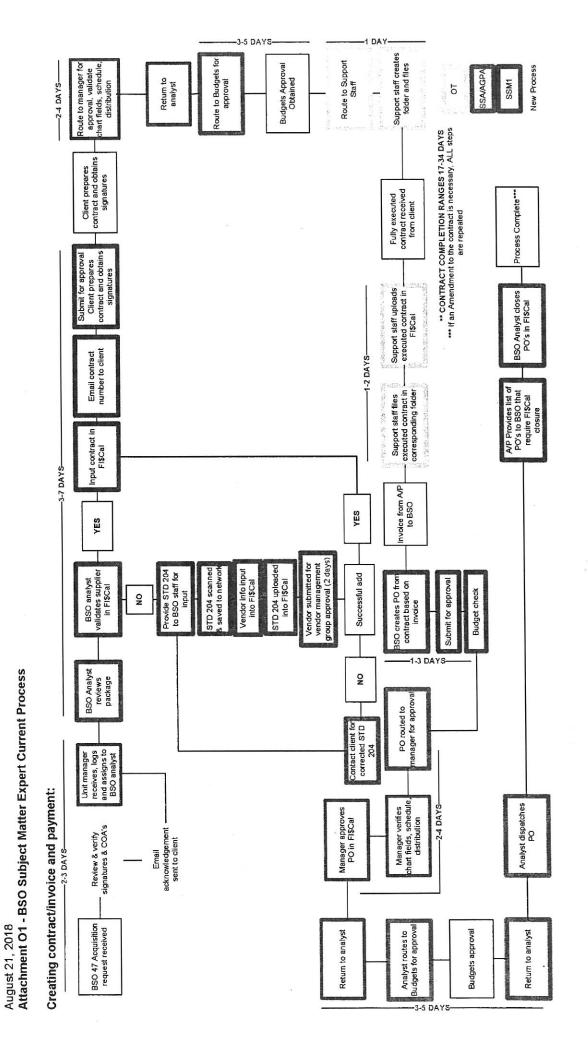
Previous Process	Stifference	-			
		2	New Process	Quantity	Hours
<u>vourials</u> SCO journals Input amounts from various types of SCO document to identify activities in a particular fund Manual keying into system, inputting chart field information Create an upload file - manually create chart field information (keeping it standardized format for a particular type of journal)	20	104.2	Journals SCD journals SCD journals from various types of SCD document to identify activities in a particular fund Manual Reying into system, inputting chart field information Create an upload file - manually create chart field information (Reeping it standardized format for a particular type of journal)	20	125.0
Approving Batch		•	Approving Batch (new process) CL journal reviews and approval (new process) CL journal reviews and approval (new process) Approval (2 part process) - approval o'journal and then posting of journal Print out header pages as well as line tem pages for backup	100	100.0
Manual Claim Voucher Manual claims	4	10.3	Manual Claim Voucher Manual claims	4	14.0
Boxer pension, CSLB, legal settlements Post into system and would generate auto facesheet			Need to enter into system with secondary ID and list coding and manually produce facesheet and RA's		
All other funds; General Ledger Reconciliation - Revenue & Reimbursement Accounts 69 Special Funds of varying complexity Reports were system generated	69	337.0	All other funds: General Ledger Reconciliation - Revenue & Reimbursement Accounts 69 Special Funds of varying complexity Queries and raw data needs to be converted into usable format	69	556.1
H02 report helped identify no match items between system and SCO			Manually create comparable report to old system's H02 which helped ID variances by document numbers		
Use history query by document numbers (uses a standardized numbering convention for posting into system) can also search by dollar or program			The extract of data and converting the data prior for use in comparison of system and SCO data, run pivot tables		
			Research allows only queries by program and dollars and the submodules are not readily relatable to each system module be performed by the fund, there can be anywhere from 5 to 20 reconciling items found for each recon, the amount of research will depend on the type of transaction and how it is read across the modules		
PFA Recon 3 FY PFA recon H02 report system generated	၈	14.7	<u>PFA Recon</u> 3 FY PFA recon Indudes outeries and raw data to be converted into usable format	m	28.0
Find 0702 GI Recordilistion - Americation Classics Brimbuscasses 9 December 4 - 4-1-	,				
Reports were system generated  Total report pages were roughly 30	-	48.8	Fund 0702 GL Reconciliation - Appropriation. Clearing. Reimbursement & Revenue Accts includes queries and raw data to be converted into usable format Conversion of raw data roughly equaled 300 - 400 pages. for instance, for period 2, there was roughly 35000 line items to convert into reviewable manes.	-	7.86
H02 report helped identify no match items between system and SCO			Manually create comparable report to old system's H02 which helped ID variances by document numbers		
Use history query by document numbers (uses a standardized numbering convention for posting into system) can also search by dollar or program			The extract of data and converting the data prior for use in comparison of system and SCO data		
		3	Research allows only queries by program and dollars and the submodules are not readily relatable to each system module 99 clearing account review to help net to zero		
Hours Per Month Hours Per Year		516.0 6,192.0	Hours per Month Hours Per Year		922.7 11,072.5
			Total Difference (Hours)		4,880.5

2.7

Staff Needed

2.0

Staff Requested Associate Accounting Analyst Student Assistants



Department of Consumer Affairs - Office of Administrative Services

**Business Services Office** 

\*\*COMPLETION RANGES: N/A

Department of Consumer Affairs - Office of Administrative Services Business Services Office April 2, 2018

Attachment O2 - BSO Subject Matter Expert Previous Process



### **SECTION 2: LEGAL AFFAIRS DIVISION**

### A. Budget Request Summary

The Legal Affairs Division (LAD) within DCA requests position authority for six Attorney IIIs, one Senior Legal Analyst, one Research Program Specialist II and three-year limited term budget authority of \$1.67 million in 2019-20 and \$1.47 million in 2020-21 and 2021-22 to create a Regulations Unit. A dedicated regulations unit is needed to: minimize the length of time it currently takes to review regulatory packages; allow board and bureau attorneys to focus on the increased workload of non-regulatory work; respond to the demand of regulation packages under review and the increase of regulation packages from Chapter 995, Statutes of 2018 (AB 2138); avoid the habitual carry-over of regulation packages; and, enhance the level of regulation training provided to boards and bureaus to improve the quality of regulations and create efficiencies by having better quality packages submitted for review.

### B. Background/History

DCA is the umbrella agency for 37 business and professional licensing programs (collectively referred to as boards and bureaus) that regulate over 3.5 million businesses and professionals in over 250 license categories from healthcare, automotive repair, residential and business construction, barbering and cosmetology, and security services. DCA protects California consumers by investigating and prosecuting complaints, and helping consumers learn how to protect themselves from scams and unqualified individuals.

LAD provides in-house legal services to DCA, and its boards and bureaus. Attorneys in LAD review public meeting materials to ensure compliance with state open meeting laws, and appear at scores of public meetings annually to provide legal guidance to client boards and bureaus. The attorneys also provide oral and written advice to staff on a wide spectrum of legal matters (i.e., advice regarding board- and bureau-specific practice acts, personnel matters, conflicts of interest, contracts, and litigation support). They review all manner of DCA, board, and bureau documents for legal sufficiency, including correspondence, forms, newsletters, policies, press releases, and website content. They prepare and assist in responding to Public Records Act requests and subpoenas, provide small claims advice, and defend clients in depositions.

DCA attorneys identify when regulations are needed, draft and modify proposed text and other rulemaking materials, and review rulemaking files to ensure that they are legally sufficient. Specifically, regarding drafting regulation text, some boards and bureaus require more drafting support because their internal staffing structure does not support a dedicated and trained regulations staff person. Attorneys also provide assistance with proposed legislative text, and they analyze pending legislation.

DCA attorneys participate in administrative licensing and disciplinary actions. The attorneys attend and assist in informal citation conferences, appear in closed session to advise boards regarding disciplinary matters, draft decisions, and advise the Director of DCA regarding hundreds of bureau disciplinary matters annually.

The attorneys also provide ethics and conflicts of interest advice to staff, and board and bureau members; and they review DCA public contracts for legal sufficiency. The attorneys advise DCA, board and bureau managers and human resources personnel regarding labor and employment matters, including drafting employment actions and providing advice on disciplinary matters, reasonable accommodations, workplace violence, harassment and discrimination claims, and workers compensation.

The attorneys provide litigation support and act as liaison with the Attorney General's Office in litigation, including reviewing briefs and assisting with discovery. They also serve as a liaison with other key entities, such as the Governor's Office, Business, Consumer Services and Housing Agency (BCSHA), Office of Administrative Hearings, Office of Administrative Law (OAL), State Personnel Board, and other state and local government agencies.

DCA attorneys offer training to staff, board and bureau members in the following subject matter areas: the Bagley-Keene Open Meeting Act, the Administrative Procedures Act regulation process, ethics and conflicts of interest, subpoena issuance and enforcement, administrative enforcement and adjudication, and the Public Records Act.

### Regulation Review Process

Each of the boards and bureaus within DCA promulgate regulations, which undergo an internal prenotice review process followed by a post-notice review process. The regulation pre-notice review process was modified in 2016 to improve the quality of DCA regulatory packages. In September 2016, BCSHA rescinded a longstanding waiver of the requirement in State Administrative Manual section 6614 that Form Std. 399 (Economic and Fiscal Impact Statement) must be reviewed and approved at an agency level before being forwarded to the Department of Finance (DOF), when a notice of proposed action is submitted for publication in the California Regulatory Notice Register. In response, DCA restructured its review process to ensure that DCA and the BCSHA reviewed prenotice rulemaking files before and after publication in the Notice Register. Pre-notice rulemaking files did not receive the same level of scrutiny before the process changes. The goal of the process changes and the additional review was to reduce the percentage of regulatory packages receiving disapprovals from the OAL, and it is succeeding. But it has also increased the timeframe required for review.

The regulatory review process includes the following five phases:

Phase 1 - The stage where the idea/need for a regulation is born, whether it comes from the board/bureau, staff, stakeholders, or the public. Board/bureau staff researches and brings information to the board or its advisory committee for discussion. This may also include informational hearings where the board/advisory committee and board/bureau staff gather input from stakeholders. After board/bureau staff more fully develop the regulation, the staff works with DCA attorneys on proposed text that is subject to the board or bureau chief's approval. At this stage, the regulation is often primarily in the hands of the board/bureau, and the DCA attorney is responding to the board/bureau's questions. The attorney is not always heavily involved in drafting the proposed regulation but depending on the client and the complexity of the issue, attorneys at this stage may take a lead role in drafting regulatory text.

During this phase, DCA attorney tasks typically include:

- Communicating with board/bureau staff;
- Communicating with stakeholders;
- Researching similar rulemakings;
- Reviewing regulatory language developed by staff and suggesting changes;
- Appear at public meetings and assist in preparing meeting materials necessary to initiate the rulemaking process; and,
- · Responding to board/bureau staff questions regarding regulatory drafting.

<u>Phase 2</u> - After the board/bureau approves language and directs staff to proceed with the rulemaking, the staff provides legal counsel with copies of the proposed rulemaking file, including the proposed text, initial statement of reasons, and notice of proposed action.<sup>1</sup> DCA attorneys review and edit the documents, sometimes multiple times, until they are legally sufficient and complete. After DCA

<sup>&</sup>lt;sup>1</sup> In some cases, depending on the structure of the board/bureau, legal counsel may be responsible for substantially drafting the proposed regulation documents.

attorneys approve the proposed file, three copies of the regulation package are provided to DCA for a comprehensive review in the DCA's legal, budget, and executive offices, and BCSHA. During this phase, DCA attorney tasks include:

- Reviewing the proposed rulemaking file from board staff;
- Researching for compliance with law;
- Drafting changes to the regulatory documents; and
- Coordinating with staff to make changes to file.

Phase 3 – At this stage, the DCA Regulations Coordinator reviews and prepares the rulemaking file for dissemination to the DCA Budget Office and legal counsel. The Budget Office conducts fiscal and economic impact reviews, and legal counsel conducts a cursory review to ensure the documents are the same as previously approved. DCA attorneys may also be involved in discussions with other supervisory reviewers. Most reviewers communicate with the program and, if necessary, provide edits on the rulemaking file, which are then reviewed and incorporated by program staff. The reviewers include: DCA Assistant Chief Counsel, Deputy Director/Chief Counsel, Deputy Director/Legislation, Director, and BCSHA. Reviewers may edit the rulemaking file based on what has transpired with new legislation, or new findings brought to light since the first legal review. Once BSCHA approves the rulemaking, it is returned to DCA and the program to file with OAL for publication in the Notice Register. The 45-Day comment period begins at this point.

Phase 4 – Public Comment Period (rulemaking at this point resides largely with the program). At this stage, staff may hold an optional public hearing on the rulemaking. At times, the public hearings are administered by DCA attorneys. Public comment may expose the need to modify the original proposed text, add documents to the file, or revise the proposed documents. Changes to the rulemaking file are typically brought before the Board for discussion, to address comments, and to authorize submission of the final rulemaking file to OAL. Any changes to the proposed action are usually noticed for public comment for at least 15 days. Board/bureau staff respond to comments and prepare final rulemaking records. DCA attorneys are involved in these steps to review and edit new and amended rulemaking materials, appear at the rulemaking hearings, appear and advise boards at their public meetings where the final materials are presented, and to generally ensure that proper administrative procedures are followed in compliance with the Administrative Procedures Act.

<u>Phase 5</u> – This stage largely emulates the third stage. The final rulemaking file is reviewed by DCA attorneys to ensure that it is legally sufficient. The final rulemaking file is also reviewed by the Assistant Chief Counsel, Deputy Director/Chief Counsel, Deputy Director/Legislation, Director, and BCSHA. The reviewers may edit the new materials in the final rulemaking file, and once BSCHA approves the rulemaking, it is returned to DCA and the program to file with OAL.

In 2017, OAL considered a total of 55<sup>2</sup> regulatory packages submitted by DCA entities. OAL disapproved 16 percent of those packages, an unacceptably high disapproval rate. Since the process modifications in late 2016, however, there was steady improvement in the disapproval rate, going from a 21.8 percent disapproval rate in the first half of 2017, to only 7.6 percent being disapproved between July 2017 and February 2018. To date in 2018 (through early December), the disapproval rate is 4.5 percent.

The quality of review improved, but the enhanced regulatory review process impacted the timeliness of the reviews. At the Joint Legislative Sunset Review Oversight Hearing on March 5, 2018, DCA was asked to address issues highlighted by the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions. The Background Paper prepared for the hearing stated in part:

<sup>&</sup>lt;sup>2</sup> This number represents DCA packages reviewed by the Office of Administrative Law in 2017, not the number of packages submitted to OAL. Note, some packages were submitted in 2016.

"The ability for boards to promulgate regulations has come to a virtual standstill ..."

Further, in a letter dated July 2, 2018, from Senator Jerry Hill to Hon. Al Muratsuchi, Chair of the Joint Legislative Audit Committee, Senator Hill wrote the following:

"[B]oards have recently expressed frustration at their inability to access the legal services they need in a timely manner. Attorney are burdened with regulations. . . and boards have expressed frustration getting assistance with personnel matters, legal opinions, and other routine legal services."

Additionally, in recent working group meetings facilitated by LAD, programs expressed a desire to complete regulations in as little as a couple of weeks to within a few months after submitting it to DCA and BCSHA. Under the current structure of LAD, it is not feasible to accommodate expectations.

DCA is working to streamline the internal regulatory tracking process to include a software-based system that will allow programs and DCA to identify where in the process a regulation package resides. This will provide greater transparency to boards and bureaus that have regulatory packages awaiting DCA review and approval. Currently, one person maintains the status of where a regulation package is within DCA and is called upon to answer calls or emails about the status of a package. The electronic system would allow all users (this would include programs and DCA) to simply log in and determine at any time where a package resides. This information would be in real-time. DCA also consolidated its policy-level review of regulations and eliminated other steps in the review process that caused confusion about the process.

### Organizational Structure of Regulation Review

At present, some boards and bureaus have an identified staff person who begins the preparation of regulatory packages. Staff often have no legal experience or training and require substantial training on the regulatory process. LAD recently started providing regular enhanced training to staff on the rulemaking process, and the requirements for developing legally-sufficient rulemaking files. Such staff may also obtain training from OAL, but because OAL training is infrequently offered and in high-demand, there is perpetually a waitlist. Even after staff are trained, many promote on and new staff are tasked with drafting rulemaking materials. As a result, there is a significant amount of time expended by DCA attorneys to assure the regulation packages—primarily in the pre-notice review stage, but also in the post-notice stage—are well-written and legally sufficient. The DCA attorneys who are assigned as counsel to the various board and bureau clients complete this laborious work—writing, editing, and re-writing proposed regulation text and other key rulemaking documents.

For boards, the regulation process is initiated at a board meeting, where the board votes to approve regulation text and begin the rulemaking process. For bureaus, there is often an advisory committee that advises the bureau on proposed regulatory text. Thereafter, changes to the proposed regulations and public comments may be considered by the board and advisory bodies to determine how to proceed with a rulemaking. These activities occur at public meetings. Between January 1, 2018 and June 30, 2018, there were 120 board and bureau meetings. At this rate, there will be approximately 240 meetings this year. Between January 1, 2018 and June 30, 2018, there were 16 board and bureau committee and related meetings, or about 32 per year.<sup>3</sup>

Government Code section 11017.6 requires DCA boards and bureaus to prepare a rulemaking calendar each year that includes all proposed rulemaking activities anticipated for the year. This annual filing assists OAL with its staffing needs. Historically, there are always more regulations anticipated than are completed. Because of workload constraints, DCA attorneys are unable to timely review all the regulatory packages that are identified on rulemaking calendars each year. Consequently, boards and bureaus are forced to prioritize regulations. All regulations are important

<sup>&</sup>lt;sup>3</sup> Board meetings require, on average: five hours preparation time; four hours travel to the meetings; eight hours per meeting; four hours travel from the meetings; and, five hours meeting follow up work. The total estimated hours for away meetings is 26 hours, and the total for local meetings is 18 hours.

for consumer protection, but because of the lack of resources, boards and bureaus must pick and choose which laws to implement timely, thus prioritizing the importance of laws passed by legislature.

Below is a chart that identifies the number of proposed regulatory packages anticipated each year as filed with OAL by the boards and bureaus, the number submitted to DCA for review and finally the number of actual regulations that proceed to filing with OAL.

Years	2013	2014	2015	2016	2017	2018
# of Regs. Proposed <sup>4</sup>	116	113	133	107	164	173
Actual # of Regs. submitted to DCA	52	64	84	59	46	49 (as of 12/14/18)
Actual # of Regs. filed with OAL	56	50	53	69	46	26 (as of 12/14/18)

The length of time it takes to complete a regulations package is highly dependent on the complexity of the regulation, which varies from boards and bureaus. The length of time is also highly dependent on workload capacity of DCA attorneys. At times, a board or bureau may be ready to keep a package progressing, but it may have to wait several weeks or, at times, months before it can be reviewed by DCA attorneys. LAD took a sampling of boards and bureaus and, on average, it takes 14.15 months to complete phases 3-5 of a regulation package. As such, some packages that were initiated in one year invariably carry over to the next year. For illustrative purposes, below are the average months for each of the following boards/bureaus to complete a regulations package:

Name of Board/Bureau	Average length of time (month)
Board of Accountancy	11.7
Bureau of Automotive Repair	18.75
Dental Board	10.28
Pharmacy Board	12.69
Physical Therapy Board	17.25

Proposals Carried over Per Year	2015	2016	2017	2018
Carried Over from previous year	14	26	17	7
Carried Over from previous two years	1	2	6	1
Carried over from previous three years	0	0	1	0

<sup>&</sup>lt;sup>4</sup> The number of regulations proposed to be submitted are based on the filings of each board and bureau to OAL. These numbers include regular, emergency and Section 100 rulemakings.

Workload Measure	2016	2017	2018
Authorized LAD Attorney Positions	16	16	16
Annual Attorney Hours for Board/Bureau Meetings (Aggregate)	5,576	5,576	5,576
Annual Attorney Hours for Board/Bureau Meetings (Per Attorney)	348.5	348.5	348.5
Number of Regulatory Packages filed with OAL	69	46	26 (as of 12/14/18)
Attorney Hours per Regulation Package for Phase 1	36.14	36.14	36.14
Attorney Hours per Regulation Package for Phase 2	20.64	20.64	20.64
Attorney Hours Per Regulation Package for Phase 3	4.57	4.57	4.57
Attorney Hours Per Regulation Package for Phase 4	3.12	3.12	3.12
Attorney Hours Per Regulation Package for Phase 5	12.15	12.15	12.15
Attorney Hours Per Full Regulation Package (Phases 1-5) <sup>5</sup>	76.62	76.62	76.62
Attorney Hours Per Regulation Package Per Year (Added the number of hrs. per each phase and multiplied by the number of packages filed) <sup>6</sup>	5,286.78	3,524.52	1,992.12 (as of 12/14/18)
Support Team Hours for Regulation Processing	1,311	1,311	1,311

LAD - Resource History (Dollars in thousands)

Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18
Actual Expenditures	2,977	3,522	3,586	3,947	4,794
Authorized Positions	20.5	21.5	21.5	22.0	22.0
Filled Positions	18.3	21.3	19.7	21.5	21.3
Vacancies	2.2	0.2	1.8	0.5	0.7*

<sup>\*</sup>Vacancies in 2017-18 are based on DCA/HR Vacancy report for June 2018.

### C. State Level Considerations

This proposal is consistent with the Administration's current policies, priorities and initiatives for consumer protection, in that it will reduce the overall time it takes to prepare rulemaking files without sacrificing the quality of the files and will decrease the backlog of rulemaking packages which have yet to begin the rulemaking process. This proposal is consistent with DCA's mission to serve the interests of California consumers by providing a safe and fair marketplace through oversight, enforcement and licensure of professions. This proposal will minimize the need of boards and bureaus to prioritize regulations that should go into effect.

AB 2138 will become operative July 1, 2020 and will dramatically change the laws governing the boards' and bureaus' denial of licensure applications. The Legislature's "clear intent" in enacting AB 2138 was "to reduce licensing and employment barriers for people who are rehabilitated." (Moustafa v. Board of Registered Nursing, (Dec. 10, 2018, A150266) \_\_ Cal.App.5th \_\_ [2018 WL 6444019, p. 8].) AB 2138 will require the boards and bureaus to amend and adopt regulations, and the DCA anticipates approximately 40 rulemaking actions department-wide in the following areas to conform to the new law:

<sup>6</sup> This assumes that each package went through all five phases of development and review, but some 2016 and 2017 rulemaking files were already substantially developed as the 2016 process changes were implemented.

<sup>&</sup>lt;sup>5</sup> The number of hours per each phase was obtained by tracking regulatory hours for a period of 2 months in combination with extrapolating the data for each attorney based on the phase of the regulatory package and extensive one-on-one interviews of each attorney to provide his/her educated estimates on how long it would take for him/her to complete a package. The actual hours of the 2 months coupled with the averages of times provided by each of the attorneys during their interviews, resulted in the hours estimated per regulation package for each phase.

- License application form amendments and updates
- Substantially-related criteria regulation amendments
- Rehabilitation criteria regulation amendments
- New directly and adversely related regulations

### D. Justification

DCA, as part of its 2017-2020 Strategic Plan, identified the following three goals with respect to improving the regulatory process:

- 3.1 Partner with boards and bureaus to assess the DCA regulatory review process and reduce timelines.
- 3.2 Implement a regulation tracking system to facilitate concurrent reviews and help keep boards and bureaus better informed during the regulatory review process.
- 3.3 Create and implement a more detailed board regulation training to enhance board staff's knowledge about the regulatory process.

This proposal will help DCA meet these strategic goals. The facilitation of these goals is being coordinated through DCA's Strategic, Organization, Leadership, & Individual Development (SOLID) unit. To meet the reduced timelines goal, LAD has identified the need for improved training. LAD is currently planning to staff such revised training with existing staff, which will further impact DCA attorney demands on time. The plan is to develop form materials and robust training for board and bureau staff along with DCA attorneys. By creating uniformity in expectations and skillsets, over time regulatory packages will improve and timelines for review will consequently be reduced. However, without a dedicated Unit to take on such tasks, the on-going problem of timeliness will continue because DCA attorney resources will be pulled now not only to address the day-to-day legal matters and existing regulatory packages, but also tasked with preparing the training materials and conducting regular training. Further, tracking of regulations is maintained by one individual at DCA, and boards and bureaus do not have transparency as to the status of the packages. The electronic system will allow for real-time status as to where a regulation package resides. Users will simply be able to log onto the system and will no longer have to spend time emailing or calling the one dedicated regulatory personnel who tracks such packages. There will naturally be questions about the electronic process and how to use it. This task will also be absorbed by existed staff with limitedtime constraints if the Regulations Unit is not implemented.

To more effectively meet the needs of DCA's board and bureau clients, DCA proposes to create a Regulations Unit within the LAD. The proposed Regulations Unit would have attorneys dedicated solely to the development and review of regulatory packages. This will eliminate the need of boards and bureaus to wait indefinite periods of time before their assigned DCA attorney can turn his/her attention to the proposed regulatory package because he or she is prioritizing the needs of its various boards and bureaus to address non-regulatory work. The proposed Regulations Unit would identify expectations and anticipated review times. DCA attorneys within this unit would be able to devote 100 percent of his or her time purely on regulations. A dedicated unit will also allow other DCA attorneys not within the unit to address the non-regulatory needs of its clients more timely. Currently, the legal work is completed, but because of limited resources, work is constantly prioritized, and projects without hard deadlines are delayed, including regulations and personnel matters.

Following a review of several other State entities, which is presented below, a dedicated unit is more efficient than DCA's current model, and it will allow DCA to timely review the proposed regulations desired to be implemented by DCA entities. To evaluate the proposed model, DCA conferred with regulations staff at five different agencies, including the Department of Health Care Services, the Department of Motor Vehicles, CalRecycle, the Department of Public Health, and the Air Resources Board.

Below is a table which briefly summarizes the organizational structure for regulations development in these other agencies. The comments reflect statements made during staff interviews at the various agencies.

AGENCY	2017 REG PACKAGES TO OAL <sup>6</sup>	NUMBER OF POSITIONS/CLASSIFICATIONS OF STAFF WORKING ON REGULATIONS	STRUCTURE/COMMENTS
Department of Health Care Services	57	9 Positions: SSM II (1); SSM I Specialists (5); AGPA (2); MST (1). An SSM III reports directly to the Chief Counsel/DD and is responsible for the Reg Unit as well as the Legal Division's administrative staff.	Office of Regulations within the Legal Office A centralized office processes all regulations and works with Budgets, the Director and Agency for approvals.
Department of Motor Vehicles	11	4 Positions: AGPA (2); SSM II (1); Chief Counsel (1).	Regulations Unit within the Legal Affairs Office - Suggested that an agency with 55 regulatory packages last year should have its own regulations unit.
CalRecycle	25	19 Positions: Attorneys	There is not a separate regulations unit. Chief Counsel recommended against having program-level staff who took just one regulation class writing regulations, or assigning attorneys who only occasionally work on regulations.
Department of Public Health	25	14 Positions: ACC (1); Attorneys (5); SSM II (1)serves as the Chief of Regulations; SSM I (3); AGPA (4).	Regulations Team as part of the Office of Legal Services The Department used to have house counsel working on regulations, plus house counsel work, but it created a regulations unit three years ago to segregate these workloads.
Air Resources Board	20	Legal/SSM I (1); AGPA (2);  1 AGPA (Clerk of the Board) (assists)  1 SSA (BARCU Assistant) (assists)  1 Staff Air Resources Specialist (CEQA) Attorneys Support Staff Air Pollution Specialists (Economists) Air Pollution Specialists and Air Resources Engineers (Program Staff)	Regulation Coordination Unit known as Board Administration and Regulatory Affairs Unit (BARCU) within Legal Office The program staff focuses on the substance and drafts regulations with the assistance of an assigned lawyer.

The preferred structure for these other State legal offices is to locate a regulations unit within the legal office, staffed by a manager and professional staff, such as program or staff analysts and legal analysts, and working closely with assigned attorneys. The attorney responsibilities are to assure that regulatory packages are legally sufficient. The professional staff members handle the procedural matters such as notice, arranging for hearings, stakeholder notifications, review status, and tracking. Four out of the five legal offices surveyed have a regulations unit and of those four with a separate regulations unit, none have the volume of regulations proposed by DCA programs.

Creating a Regulations Unit with attorneys and professional staff at DCA would benefit the board and bureau clients in several ways, including:

- Ability to promulgate regulations in a more timely manner;
- Dedicated assistance with the development of regulation packages;
- Assigned house counsel and their supervisors would be freed up to focus on providing legal counsel to the boards and bureaus on other pressing legal matters;
- More capacity to attend client meetings;
- A single point of contact to make inquiry with respect to the status of regulatory review;

<sup>&</sup>lt;sup>6</sup> This represents the number of regulatory packages the entity identified in the 2017 Rulemaking Calendar provided to the Office of Administrative Law. Note that the volume of proposed regulatory packages is significantly lower than the historic 100+ regulations proposed by DCA.

- Improved training for DCA staff that prepare regulations; and,
- Greater consistency and quality to the final regulatory packages prepared by DCA.

Additionally, existing attorneys can focus more time on other legal matters such as personnel actions, training, and more timely review of board/bureau issues. The freed-up time would naturally decrease the longer timeframes associated with those matters.<sup>7</sup>

The regulations prepared by DCA's boards and bureaus have varied complexity. Some packages involve minor rule changes, but many involve comprehensive and detailed changes to the law, and can consist of 300 – 400 pages, or more. A dedicated Regulations Unit within DCA, led by legal staff, can more succinctly address the issues presented by the more complex regulation packages, and it can be done in a timelier manner.

Though not all regulatory packages are complex, each regulatory package requires significant attorney review time prior to approval. Additionally, there are other staff who play a role in the review and processing of regulatory packages such as the ACCs and Deputy Director. It is anticipated that the Unit's attorneys would be assigned a portfolio of clients for regulation development and review, developing subject matter expertise in dedicated practice areas. A lead attorney will be designated to review all regulatory files, thereby reducing workload on the already limited time resources of the existing ACCs and eliminating or significantly reducing the need for the Deputy Director's review.

Each regulation package includes a review of the Std. 399 form to identify economic and fiscal impact. With the proposed workload increase of 173 regulation packages a year, an additional position will be needed to review the economic and fiscal impact of each regulation proposal. Therefore, DCA is requesting one position to coordinate this process to meet the goal of reviewing 173 proposals each year.

### E. Outcomes and Accountability

The proposed Regulations Unit will be dedicated to assisting DCA boards and bureaus with regulation development and shepherding the proposed regulations through both the internal and external review processes. In the initial year, there will be a transition from the board and bureau attorneys to the dedicated Regulations Unit staff. On average, it currently takes 76.62 hours to complete one regulation package. It is assumed that although efficiencies will be gained over time, there will be a "learning-curve" and transition period from the current board or bureau attorney to the dedicated regulations attorney. Thus, it is reasonable to continue to use the 76.62 figure. Not all regulatory packages commence and are completed in the same calendar year, but since boards like accountancy (11.7 months), dental (10.2 months) and pharmacy (12.69) do approximately take about one year on average to complete, it is reasonable to use the 76.62 figure on an annual basis going forward.

Creating the proposed Regulations Unit would benefit the board and bureau clients in several ways, including:

- · Ability to promulgate more regulations in a timelier manner;
- Dedicated assistance with the development of regulation packages;
- Assigned house counsel and their supervisors would be freed up to focus on providing legal counsel to the boards and bureaus on more pressing legal matters;
- Greater capacity to attend more board and bureau meetings;
- One singular point of contact to make inquiry with respect to the status of regulatory review;

<sup>&</sup>lt;sup>7</sup> For example, adverse actions typically take 173 days to complete due to workload constraints. With the relief from the regulatory unit, attorneys assigned to such personnel actions will be able to turn to such actions more quickly. Additionally, legal research, if not urgent, is often delayed and programs wait several weeks for a response. In general, DCA attorneys can respond more timely to such requests and all other legal matters.

- Improved training for DCA staff that prepare regulations; and,
- Greater consistency and quality to the final regulatory packages prepared by DCA.
- Ability to manage the workload increase to implement the provision of Chapter 995, Statutes of 2018 (AB 2138).

### F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve the budget augmentation of \$1.67 million in 2019-20, and \$1.47 million in 2020-21 to fund six Attorney IIIs, one Senior Legal Analyst, and one Research Program Specialist II to create a Regulations Unit.

Pro: Will provide LAD with the adequate resources needed to address the ongoing workload in a timely manner to support the board and bureau clients.

Con: This alternative will require an augmentation to LAD's budget.

Alternative 2: Relax the level of scrutiny given to rulemaking packages.

Pro: This option may eventually address some of the rulemaking backlog issues, but not all of them. Even before the new review process was implemented, DCA did not complete and submit all of the rulemakings that were listed on rulemaking calendars each year.

Con: This option will likely result in more disapproved rulemaking files and further delays, particularly with respect to disapproved files, due to the need to address OAL's disapproval decisions. This option will not address the continued back-log and failure to address the desired number of proposed regulations each year.

**Alternative 3**: Place dedicated and trained regulations analysts in each board or bureau office to handle the initial analytical work associated with developing rulemaking ideas.

Pro: This will relieve some of the attorney workload during the pre-review process.

Con: It will not address the backlog and the timeframe for attorney review. Additionally, there is an ongoing challenge to recruit and retain highly-trained and experienced regulations analysts, since their skillset is in high demand. Further, for some boards and bureaus new positions would need to be created to have a team of dedicated regulation analysts.

### Alternative 4: Maintain the status quo.

Pro: No additional positions requested, and no additional expenditures required.

Con: This option will not address the problem of delayed rulemaking packages, nor will it address the existing backlog of rulemaking packages not yet begun (packages which have not begun Phase 1). Continued bureau and board dissatisfaction will continue with concerns raised to the legislature.

### G. Implementation Plan

DCA would begin recruitment for the eight new staff positions by May 2019 to assure that the requested positions are filled by July 1, 2019. Further, DCA would require an office build out to accommodate the additional positions. LAD has office space for two attorneys but would need three additional offices. The cost would be approximately \$125,000. There would also be a need for two additional cubicles, which are estimated to cost \$6,000 each or \$12,000. DCA legal would require the conversion of an existing conference room outside its current space. This would add \$10,000 (rent increase) in 2019-20 and ongoing. The total build-out cost would be approximately \$147,000.

### H. Supplemental Information

Attachment 1: Workload Justification

### I. Recommendation

Approve the proposal to establish eight positions and three-year limited term budget authority of \$1.67 million in 2019-20 and \$1.47 million in 2020-21 and 2021-22 to create a Regulations Unit.

Program:	Legal Affairs Division		
Classification:	Attorney III		
			Total
		Average	Average
		Duration	Time
Quantity/Year*	Explanation of Task	(mins/task)	(hours)
	Work with board and bureau members and staff to review		
	policy objectives and provide oversight for the development of		
	regulatory packages for pre-notice review. Review regulatory		
	packages for both pre-notice review and post-notice review to		
	assure compliance with board or bureau policy and assure		
	legal sufficiency. Conduct staff training on the regulatory		
153	process.	4,597	11,722
		Total Hours	11,722
	Total Positions (Total Ho	ours / 1,776)	6.6

<sup>\*</sup>While the total estimated regulatory workload was 173 in 2018, that figure includes proposed regulations which may not be pursued due to varying circumstances. Therefore, the estimated workload is a conservative estimate to account for those circumstances.

Program:	Legal Affairs Division		
Classification:	Senior Legal Analyst		
		Average Duration	Total Average Time
Quantity/Year*	Explanation of Task	(mins/task)	(hours)
	Work with board and bureau staff to review policy objectives and assist with the development of regulatory packages for pre-notice review, including assisting with drafting language. Oversee the movement of regulatory packages throughout both the pre-notice review and post-notice review to assure the timely processing of regulatory packages. Provide legal and analytical support to Attorney IIIs and Deputy Director.	1.054	0.450
153		1,354	3,453
		Total Hours	3,453
	Total Positions Required (Total H	ours / 1,776)	1.9
	Authoriz	ed Positions	1.0
	Total P	osition Need	0.9

<sup>\*</sup>While the total estimated regulatory workload was 173 in 2018, that figure includes proposed regulations which may not be pursued due to varying circumstances. Therefore, the estimated workload is a conservative estimate to account for those circumstances.

Program:	Legal Affairs Division		
Classification:	Research Data Specialist II		
			Total
		Average	Average
		Duration	Time
Quantity/Year*	Explanation of Task	(mins/task)	(hours)
	Work with board and bureau staff to review Economic Impact		
	Statement to identify all costs and/or benefits to individuals		
	and business located or conducting business in California.		
153		264	673
	Work with board and bureau staff to review the Fiscal Impact		
	statement to identify all fiscal impacts to government entities,		
	including federal funding of such entities.		
153	Control of	264	673
		Total Hours	1,346
Total Positions (Total Hours / 1,776)			0.8

<sup>\*</sup>While the total estimated regulatory workload was 173 in 2018, that figure includes proposed regulations which may not be pursued due to varying circumstances. Therefore, the estimated workload is a conservative estimate to account for those circumstances.

## **SECTION 3: DIVISION OF INVESTIGATION**

## A. Budget Request Summary

The DCA's Division of Investigation (Division):

- Investigation and Enforcement Unit (IEU) requests \$804,000 in 2019-20 and \$614,000 ongoing to fund 4.5 positions to address investigator case workload and aging cases. The Division will be unable to address investigator workload and effectively reduce case aging without the additional positions.
- Health Quality Investigation Unit (HQIU) requests \$1.18 million in 2019-20 and ongoing to fund the medical consultant positions who provide the Division with an objective medical review of investigations and evaluate the professional conduct of licensees under investigation. The Division will be unable to evaluate the professional competence of physicians and surgeons and allied health professional without an objective expert opinion from a medical consultant.

## B. Background/History

The Division was established in 1961 to provide the various DCA programs with competent criminal investigators, reduce costs by use of a centralized enforcement organization and ensure that investigations are conducted with independence and impartiality. IEU provides sworn law enforcement investigative services for the various regulatory boards, bureaus, programs, committees, and commissions within DCA, with the exception of the Medical Board of California and several healing arts boards.

## **Health Quality Enforcement Unit:**

The Division's Health Quality Enforcement Unit (HQIU) was established in July 2014 per Senate Bill 304, which transferred all investigative staff from the Medical Board of California (MBC) to the Division. HQIU is responsible for law enforcement investigative services for the Medical Board and related healing arts boards.

## HQIU - Resource History (Dollars in thousands)

	1					
Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18***	
Authorized Expenditures	N/A	16,320	16,817	18,395	19,528	
Actual Expenditures	N/A	16,314	16,336	17,219	19,375	
Revenues	N/A	N/A	N/A	N/A	N/A	
Authorized Positions	N/A	117.0	116.4	116.4	116.4	
Filled Positions	N/A	97.0	88.4	78.4	104.4	
Vacancies	N/A	20.0	28.0	38.0	12.0	

#### Workload History

THOUGHT AND						
Workload Measure	PY - 4*	PY - 3	PY - 2	PY - 1	PY	CY**
Number of Medical Consultants	N/A	21	24	26	24	23
Hours Worked	N/A	15,385	16,865	14,763	19,483	20,184
Cost of Medical Consultants	N/A	\$1,058,718	\$1,191,121	\$1,046,20 3	\$1,491,481	\$1,567,374

<sup>\*</sup> Prior to July 2014, HQIU was housed under the Medical Board of California.

## **Investigation and Enforcement Unit:**

In 2010, DCA launched the Consumer Protection Enforcement Initiative (CPEI), which was aimed at reducing the time it took to complete investigations for the 18 healing arts boards within DCA. The goal of this initiative is to reduce the average enforcement completion timeline for these boards from

<sup>\*\*</sup> Projection based on July and August's reported medical consultant hours.

<sup>\*\*\*</sup> Projection based on FM 12.

36 months to between 12 and 18 months. This timeframe includes the time spent by the boards and bureaus to review cases, the time the Division spends on an investigation, and the prosecution time spent by the Attorney General's office. To stay within the 12 to 18-month timeframe, DCA created and implemented "CPEI Case Acceptance Guidelines," which divided investigative case types into three categories, identified as Category 1 "Urgent," Category 2 "High" and Category 3 "Routine." These complaint prioritization guidelines are used to determine which cases are referred to IEU and which can be investigated internally by the board and bureau staff. The guidelines ensure the less-complex administrative cases (minor violations) are assigned to board and bureau staff and the criminal and complex administrative cases are assigned to IEU. The cases that remain at the boards and bureaus are considered administrative and usually result in a citation and/or fine, thus requiring a significantly less amount of case hours to complete.

In January 2016, these guidelines were renamed the "Complaint Prioritization Guidelines" pursuant to Chapter 656, Statues of 2015 (Senate Bill (SB) 467) and use of the guidelines by the healing arts boards became mandatory for all programs within DCA.

The majority of the Division's workload now consists of complex, urgent, and high priority cases that require many hours to investigate. Investigative cases carry a significantly different workload than a routine administrative case at a board. The cases under investigation can take anywhere from months to years to compete due to the severity of the crime and case complexity. Some investigations require several hundred working hours to compete. Each investigation is unique and can vary greatly in the methodology and the techniques required to bring the case to a successful conclusion. These techniques include such things as; interviews, search warrants, sting operations, surveillance, undercover operations, evidence collection/record review, subpoena issuance, computer forensics, etc. Many of these techniques are time intensive and require multiple investigators. Travel time and report writing also contribute to the length of the investigation. Based on the number of authorized Division investigators (39 positions), each investigator can work approximately 26 cases at a time (1,000 cases / 39 investigators = 26 cases).

CPEI's goals and the Division's effectiveness has been a constant topic during DCA's legislative hearings. Since the start of CPEI, the Division's case closure rate has continued to climb due to the workload of complex investigative cases and an aging caseload at the Division. According to DCA's Sunset Background Paper for an Oversite Hearing (2017), "Enforcement timelines and delays in enforcement have consistently been a source of significant frustration to the public and Legislature. Entities that regulate health professions have been the focus of much of the concern, however, other non-health programs under DCA face significant delays in swift outcomes against licensees that could serve to further protect the public from harm."

(<u>http://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/hearings/SunsetBackgroundPaper2017DCA.pdf</u>, p. 3)

CPEI aimed at reducing the average length of time it takes to close a case; however, DCA's boards and bureaus are not meeting the goal of 12 to 18-month case closure; and in turn, the Division continues to not meet the 180-day average case closure. In 2018, the case closing timeframes were addressed again in DCA's Background Paper for an Oversite Hearing (2018) "It appears that Division timeframes are incredibly extensive for IEU investigations. Boards have reported being advised to not request status updates on what those boards consider high profile cases, or cases with the potential for consumer and public harm, for at least six months."

(http://abp.assembly.ca.gov/sites/abp.assembly.ca.gov/files/hearings/2018%20DCA%20Background %20Paper.pdf, p. 12)

The Division will continue to aim for a 180-day case closure time, but without proper resources, case closure time will remain stagnant.

## IEU - Resource History

(Dollars in thousands)

Program Budget	2013-14	2014-15	2015-16	2016-17	2017-18
Authorized Expenditures	8,618	9,058	9,534	10,846	11,001
Actual Expenditures	8,606	8,816	9,086	9,887	10,639*
Authorized Positions	68.2	68.2	68.2	68.2	68.2
Filled Positions	65.1	61.7	61.7	64.7	60.7
Vacancies	3.1	6.5	6.5	3.5	7.5

<sup>\*</sup>Vacancies in 2017-18 are based on DCA/HR Vacancy report for June 2018.

## **Workload History**

Workload Measure 1	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19*
Cases Opened in the Field	995	913	941	1,053	1,102	1,002
Cases Closed in the Field	985	852	841	990	927	903
Average Days to Close a Case	255	277	261	305	300	286
Average Cases Closed by Investigators Each Year	25	22	22	25	24	23

<sup>\*</sup>Based on an average of prior years.

The direct impact of CPEI and case complexity has been further compounded by cases that are not closed at the end of the year. These cases remain open and "roll" to the next fiscal year as an open case. Open cases that are not closed within the goal of 180 days continue to impact the average case closure time. There is a high risk to consumers every day a case ages and is not closed timely by an investigator. There are many reasons a case can age due to the non-linear nature of investigative casework. There are often delays in evidence gathering, obtaining documents, locating and interviewing witnesses, etc., however, extended case closure times should not be one of the reasons a consumer is harmed.

Since the boards and bureaus do not have the authority to perform law enforcement duties, it is the Division's responsibility to investigate these cases in a timely manner and refer them to the appropriate District Attorney's office (DA) for prosecution. For example, in 2017, the Division investigated a person impersonating a nurse in Santa Clara County and arrested them in June of 2017. The news coverage of the Division's arrest resulted in additional complaints from two hospitals and enabled the DA to file 11 new felony charges. The DA may not have been able to file these additional charges if the Division had not investigated this case in a timely manner and referred it to the DA within the statute of limitations for prosecution.

## C. State Level Considerations

DCA's mission is to protect and serve consumers while ensuring a competent and fair marketplace. The success and effectiveness of DCA to carry out its mission depends on providing prompt, fair investigations, and adjudication of violations of law. The Division is the law enforcement agency that protects California consumers and licensees by investigating violations of California's laws, regulations, and professional standards.

#### D. Justification

Health Quality Enforcement Unit: The Division's medical consultants are licensed and board-certified physicians who work side-by-side with HQIU investigators to assist and provide technical medical advice throughout an investigation. The Division's medical consultants are assigned to one of HQIU's 13 field offices throughout California. The medical consultants are permanent intermittent employees and can work up to 1,500 hours in any calendar year providing essential medical advice on investigative cases. The invaluable and typical duties of the HQIU Medical Consultant include, but are not limited to:

- Providing medical expertise in the review of medical investigations and consulting with the investigator and prosecutor to assist them with understanding of the medical issues involved.
- Identifying potential medical issues and/or need for additional records/investigation.
- Actively participating in interviews with subjects who are medical professionals to elicit critical information relative to medical procedures and other medical related issues.
- Assist with evaluating professional competency and/or potential impairment of medical professionals.
- Selection of appropriate medical experts who can provide medical opinions.
- Assist the investigator and prosecutor with analyzing medical expert opinions.
- Testify in court.

The Division is heavily reliant on the Medical Consultant's expertise on investigations which often revolve around high priority complex medical issues which can directly affect public safety. Many of the investigations concern high priority and/or high public harm cases such as impaired physicians and surgeons, sexual misconduct with patients, illegal prescribing, the unlicensed practice of medicine and gross negligence; which makes it imperative that the field office investigators have access to medical consultants with sufficient hours to timely participate in the investigation of these cases.

An average HQIU field office typically has six investigator positions working an average caseload of 15-25 cases. With a few exceptions, each of these cases requires timely review and investigative participation by a medical consultant. Most HQIU field offices have two medical consultants who can potentially work up to 1,500 allotted hours. A minimum of 20 hours per week up to 30 hours for medical consultants is desirable to maintain a reasonable flow of cases. An appropriate number of hours to review cases would be 40 hours per week per office which has been deemed as the minimum estimated hours needed. This would allow the investigators to access the medical consultants without hourly restrictions and keep the flow of cases moving to complete investigations. In the past and currently, the Division has imposed caps to keep the hours and overall costs low restricting the amount of cases they can review. If the Division continues to cap the medical consultants, this will cause delays in investigations, and inadequate review of medical cases.

Due to the rise in prescribing cases related to the opioid abuse crisis; the Division has a greater need of hours for the medical consultants to address this workload. Opioid cases are defined under the Business and Professions Code (B&P) sections 2234 (referring to gross negligence, repeated negligent acts and incompetence), B&P Code section 2242, prescribing dangerous drugs without an appropriate prior examination and a medical indication, and B&P Code section 2241, prescribing prescription drugs to an addict for a purpose other than addiction treatment.

As of August 31, 2018, HQIU has a reported total caseload of 2,031 cases, of those cases approximately 25 percent are opioid drug related cases. The opioid cases can often involve 5 to 20 victims, extensive case work in obtaining records, search warrants, and undercover drug buy operations. When these cases are referred to the medical consultants they are required to review extensive case files, Controlled Substance Utilization Review and Evaluation Reports (CURES) and participate in multiple interviews, etc., as there are multiple patients involved in each investigation. A CURES report includes all Schedule II, III and IV controlled substance prescription information as reported as dispensed in California. An opioid case can have multiple patients and extensive CURES reports for all patients reported over a minimum of a three years for the medical consultants to review. The Division has seen a rise in the hours the medical consultants are using that directly relates to the increase of opioid drug abuse cases in relation to a more routine investigative case.

The MBC's creation of the Complaint Investigation Unit (CIO) has also had an additional impact on the medical consultants; along with the MBC's Death Certificate Project which was established in 2017 in response to the rise of opioid and prescribing abuse cases to review coroner cases. The Division was able to move some of the lower priority cases to retired annuitants and non-sworn staff. However, all these cases, whether worked by CIO, MBC Death Certificate Project staff, or temporary help still need review by the medical consultants. This has caused a slow rise in hours needed by the

medical consultants to adequately review cases. The Division fully expects to use more hours on these cases in the upcoming fiscal years to address this high priority, sensitive workload.

The Division currently has a temporary help budget of \$1,044,000 to support all the temporary, limited term, and seasonal help. HQIU uses retired annuitants, part-time intermittent office technicians, special investigators and medical consultants to support the investigation of cases. All these positions are paid out of the Divisions temporary help budget. Historically, the Division has used salary savings from vacant investigative positions to supplement the blanket positions, but HQIU has aggressively recruited investigators and no longer has the salary savings to supplement the temporary help costs. The Division will be fully staffed with investigators in 2018-19 and will no longer need the RAs and special investigators. If the Division could work the medical consultants at 40 hours per week per office (40 hours x 13 offices x 52 weeks is a yearly total of 27,040 hours), at an average hourly rate of \$77.65, the total approximate cost would be \$2,099,656 each year (27,040 x \$77.65). The Division is requesting \$1,180,000 in additional appropriation for the medical consultants. The Division anticipates spending approximately \$124,000 on office technicians which leaves \$920,000 for the medical consultants; a deficit of \$1,180,000 to meet operational needs in 2019-20 and ongoing.

Investigation and Enforcement Unit: IEU opens approximately 1,000 cases each fiscal year, which is distributed to 39 full-time investigators to carry a caseload of approximately 26 cases each year. However, the actual amount of cases an investigator can close each year is 23. That leaves approximately three cases per investigator for a total of 117 (3 x 39) new cases that are not closed in a year. Those cases continue to age over the 180-day goal, into the next year up to 365 days. To address the 117 cases that are aging, the Division is requesting 4.5 additional investigators to close these cases annually. The 4.5 investigators, when combined with our 0.5 part time authorized investigator, will equate to 5.0 full time investigators actively working these cases (117 cases / 5.0 investigators = 23 cases per investigator). These additional investigators will be able to work a caseload of 23 cases a year and close them within the 180-day goal. This would in turn, result in a decrease in the average days to close a case bringing the Division within the goal of CPEI.

Historically, IEU does not have a problem retaining investigators. The majority of IEU's vacancies have been due to retirements and promotions. Due to the specific sworn peace officer classification requirements, and extensive criminal background checks, it can take up to eight months to fill these vacancies. Therefore, the Division has recently decided to continually advertise and recruit investigators. At the start of 2017-18, IEU had 38 filled positions, by the end of the fiscal year due to promotions and attrition, there were 32 filled positions. As of June 1, 2018, IEU has seven (7) candidates in various stages of the background process slated to start at the beginning of 2018-19, which will fill IEU's vacancies.

## E. Outcomes and Accountability

The intent of this proposal is to provide the necessary resources and funding to the Division to provide California consumer protection by providing prompt and fair investigations to the Division's various clients.

## **Health Quality Enforcement Unit:**

With the approval of the additional temporary help appropriation, the Division's medical consultants will be able to work up to 1,500 hours without budget constraints or imposed hourly caps which cause a slow down and backlog of investigative work. If 26 medical consultants (2 per office) work the max of 40 hours per week at each office, they could work a total of 27,040 hours each year (26 medical consultants x 40 hours x 52 weeks).

## **Projected Outcomes**

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Number of Medical Consultants	23	26	26	26	26	26
Projected Hours Worked	20,184	*25,230	27,040	27,040	27,040	27,040

<sup>\*</sup>Projection based on a 25% increase in hours worked with the addition of 3 medical consultants.

## Investigation and Enforcement Unit:

With the additional investigators, the average caseload per investigator would decrease from 26 cases to 23 cases. Since investigators close 23 cases per year on average, the Division would no longer have cases rolling over from year to year and directly adding to the average case age. The workload would be distributed appropriately to achieve the goal of 180-day case closure.

Since it takes up to eight months to recruit and hire an investigator, the Division estimates that approximately 30 of the 117 (25%) cases would be distributed to the new staff in the middle to late months of 2019-20. In 2020-21, all the new staff would be working at full capacity. By 2021-22, the Division is projected to close approximately 1,012 cases per year (44 investigators x 23 cases a year). If the Division is closing 100 more cases per year that would, in turn, drop the average days to close a case.

While this staffing augmentation will ultimately result in additional cost to DOI's client boards and bureaus, they will receive the benefit of shorter investigation times and increased consumer protection.

By 2021-22, DOI is projected to close 1,012 cases each year within the 180-day CPEI goal.

#### Workload Measure 2018-19 2019-20 2020-21 2021-22 2022-23 2023-24 Authorized Full-Time Investigators 39 44 44 44 44 44 Cases Opened in the Field 1.002 1,002 1,002 1,002 1,002 1,002 Cases Closed in the Field 903 920 1.012 1.012 1,012 1.012 Average Days to Close a Case 286 277 222 180 180 180 Average Cases Closed Per 23 23 23 23 23 23 Investigator

## **Projected Outcomes**

## F. Analysis of All Feasible Alternatives

**Alternative 1**: Approve a budget augmentation of \$1.9 million in 2019-20 and \$1.79 million in 2020-21 and ongoing to fund 4.5 investigator positions to address the amount of case closures each year and help reduce case aging times to CPEI goals and to augment blanket funds for the medical consultants.

Pro: This alternative will allow the Division to provide prompt and fair investigations to better serve DCA's clients while following CPEI guidelines and provide adequate expert review

Con: This alternative will require an augmentation of HQIU and IEU's budget.

Alternative 2: Approve limited 2-year funding.

Pro: This alternative will allow the Division to address the amount of case closures each year and help reduce case aging times to CPEI goals while providing prompt and fair investigations to better serve DCA's clients while following CPEI guidelines and provide adequate expert review.

Con: This alternative would only provide limited-term funding making it hard to recruit and fill positions with permanent sworn staff. In addition, this alternative does not offer consumer protection long-term.

**Alternative 3**: Approve 0.5 investigator and funding and a budget augmentation of \$650,000 in 2019-20 and ongoing to augment blanket funds for medical consultants.

Pro: This alternative would allow the Division to fill the ongoing vacant 0.5 authorized investigator with a full-time permanent position and will allow the Division to address part of the immediate need of funds and sustain the current usage of medical consultants..

Con: This alternative would subject the medical consultants to restraints and caps based on available funding each year causing a reduction in reviewed cases and could potentially put the public at risk by not providing prompt and fair investigations of California's laws, regulations and professional

standards in a timely manner. And unassigned cases will continue to age going against DCA's and the Division's mission of consumer protection and prompt investigations.

Alternative 4: Status quo, do nothing. Without augmenting the medical consultants funding, the Division will not be able to provide the investigators with resources of medical expertise. The medical consultants will be subject to restraints and caps based on available funding each year. Additionally, failure to approve this proposal could potentially put the public at risk by not providing prompt and fair investigations of California's laws, regulations and professional standards in a timely manner. Without resources or funding, the Division would not be able to address case aging. Additionally, failure to approve this proposal could potentially put the public at risk by not providing prompt and fair investigations of California's laws, regulations, and professional standards in a timely manner.

## G. Implementation Plan

2018-19: Closely monitor medical consultant accrued time to keep HQIU within the 2018-19 allocated budget while initiating cost savings in the OE&E.

Early 2019: Begin recruitment to fill the five full-time investigator positions.

July 2019: Assuming the 2019-20 position authority and funding is approved, the Division will remove any restrictions to the medical consultant's hours, add medical consultants as needed and monitor the amount of cases for review and fill the positions, assign cases, and begin investigations.

## H. Supplemental Information

Please see the attached workload analysis.

### I. Recommendation

Approve Alternative 1. This option is the only alternative that will provide the medical consultants adequate funds to provide the investigators with an objective medical review of investigations and evaluate the professional conduct of licensees under investigation. Approval of the funding is necessary to deliver the appropriate California consumer protection by providing prompt and fair investigations to the MBC and related healing arts boards within the Department. This option will provide IEU with the resources to address the case aging times and meet CPEI goals of 180-day case closure, in turn, Alternative 1 will provide prompt and fair investigations for the various regulatory boards, bureaus, programs, committees, and commissions within DCA.

# Department of Consumer Affairs Division of Investigation Investigation and Enforcement Unit

Workload for 1 Invest	igator - 23 Cases		
	# OF TASK PERFORMED	TIME TO PERFORM (HOURS)	TOTAL HOURS
Investigators			
Examines a variety of records to secure or verify information concerning suspected violations and violators. Identifies, gathers, assembles, and preserves statements, affidavits, and other evidence for use in legal action	198	1.00	198
Locates accused persons and witnesses, routinely conducts face-to-face interviews, and analyzes and evaluates testimony. Contacts and interviews individuals and representatives of business or governmental organizations	100	1.75	175
Files criminal complaints, serves search warrants, subpoenas, and other legal papers.	47	3.00	141
Makes physical arrests, participates in carrying out search warrants. Transports those in custody; conducts surveillance and undercover operations.  Issues citations; logs evidence when seized; cooperates with federal, state, and	. 80	3.00	240
local law enforcement agencies on investigations  Assists prosecutors in preparing and presenting cases, and testifies in court or administrative hearings.	150	2.00	300
Prepares detailed reports of the events of the investigation, which include documented evidence, statements from witnesses, and general synopsis	150	1.25	300
Participates in mandatory meetings and travels when necessary	44	1.50	66
Prepares and performs internal month-end paperwork such as monthly activity reporting, mileage logs and Timesheets.	12	1.00	12
Participates in firearms qualifications, hand-to-hand defensive tactics training, and specialized law enforcement technical training	24	6.50	156
		Hours/year/PY	1,776
	Average Hours Pe	er Case (78,144 hours (44 positions)/1,012 cases)	77.2
	Total Case Hours	(117 cases x 77.2 hours)	. 9,032
	Total Positions (9	,032 hours / 1,776 hours)	5.1
		Existing Positions	0.5
		Position Need	4.5

## **SECTION 4: OFFICE OF HUMAN RESOURCES**

## A. Budget Request Summary

The Department of Consumer Affairs (DCA) is requesting position authority and funding for the conversion of three permanent intermittent positions into permanent full-time positions. These positions are essential for increasing and sustaining internal administrative support to Office of Human Resources (OHR) staff.

## B. Background/History

DCA has 37 different bureaus and boards under its purview, each with their unique set of challenges. The goal of OHR is to provide full-service personnel support for employees within DCA. OHR staff interpret laws, rules, regulations, policies, and procedures to provide its clients with the necessary information to make well-informed decisions with personnel-related issues. Aside from processing day-to-day transactions and fulfilling all legal requirements, OHR is a strategic partner that works in a consultative capacity with all 37 programs.

OHR has seen a significant increase in workload due to the implementation of the Examination and Certification Online System (ECOS). Before the implementation of the ECOS system, the Vacancy Position Online System (VPOS) was utilized and allowed programs to post their own job postings and process all applications for each recruitment. The new system is designed to receive applications more efficiently and retain all recruitment information for control agencies such as the California Department of Human Resources (CalHR) and the State Personnel Board, enabling them to perform online audits.

ECOS stores all personal and confidential information of applicants. Security parameters are established by CalHR to secure sensitive data stored in the system, which resulted in programs no longer having the level of control over recruitments that they had with the VPOS system. Posting vacancies and receiving applications has now become an internal HR function. In addition, ECOS allows applicants to submit their application electronically, which has resulted in a large increase in applications received for some classifications, which at times is in excess of 300 applications per recruitment. In addition, applicants are still provided the option to use U.S. mail to submit their applications. OHR staff are required to scan and upload all hard copy applications received to ECOS. These additional duties have created a strain on OHR staff and resources.

As a result, OHR does not have the resources to redirect to address the Office Assistants/Clerical Work. OHR has been relying on three blanket positions to complete clerical and administrative work. Prior to the hiring of the positions, documents were not filed timely which led to missed deadlines on subpoenas and Public Records Act (PRA) requests. In addition, prospective employers were waiting several days, up to a week, to review the Official Personnel File (OPF) of potential candidates, which sometimes led to losing candidates to competing departments. The work performed by these positions is permanent and essential to OHR's operation.

OHR - Resource History (Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Actual Expenditures	5,415	6,298	6,280	6,368	6,446
Authorized Positions	58.0	64.6	64.6	65.6	66.1
Filled Positions	56.5	61.0	58.1	57.2	65.0
Vacancies	1.5	3.6	6.5	8.4	1.1*

<sup>\*</sup>Vacancies in 2017-18 are based on DCA/HR Vacancy report for June 2018

## C. State Level Considerations

This proposal is consistent with the OHR's goal to provide excellent customer service to the programs. The requested positions will allow OHR to ensure there is adequate administrative and clerical support for OHR.

### D. Justification

OHR is requesting position authority for three Office Assistant positions. Without the approval of permanent position authority, OHR will have a difficult time in supporting its programs. Individuals that serve in permanent intermittent positions tend leave between six to nine months due to the temporary nature of the position which results in a significant increase in recruitment workload for mangers. OHR has kept current with filing which has allowed DCA to respond timely to subpoenas and PRA requests and provide the requested documents. OPF reviews are now scheduled within one business day, which assists hiring managers in making a quick hiring selection. In addition, there are several clerical duties within OHR units that have been redirected to the blanket positions to allow more time for analysts to focus on their analytical duties.

## E. Outcomes and Accountability

Converting these positions to permanent full-time will allow an increase in the hours they are allowed to work, and would provide the additional time needed to perform ongoing clerical duties for other units, such as filing, copying, mailing letters, calculating FMLA hours, scheduling training classes, etc. Overall, these new positions will allow OHR to continue operations without losing delegation, and adds value to the programs DCA serves.

## F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve the permanent position authority for three positions that are currently in the blanket.

Pro: This will allow OHR to continue operations to ensure compliance and adds value to the programs OHR serves.

Con: This alternative will require a budget augmentation, increasing costs to boards and bureaus.

Alternative 2: Approve two-year limited term funding and position authority for positions that are currently in the blanket.

Pro: This will allow OHR to continue operations on a limited term basis to ensure compliance and adds value to the programs OHR serves.

Con: Limited term funding will require OHR to revisit resource needs.

## Alternative 3: Retain the status quo.

Pro: This alternative will not require an augmentation to DCA's budget.

Con: Failing to provide adequate staff to assist the programs could cause a delay to employee's pay and benefits, quality of candidates will continue to deteriorate, and recruitment, turnover and vacancy rates, and performance management timelines will increase. Delays in HR services could potentially result in a loss of delegation which will mean HR work timelines will be significantly increased.

## G. Implementation Plan

July 1, 2019 - Redirect employees in the blanket to permanent full-time positions.

## H. Supplemental Information

Workload Justifications - Office Assistants

## I. Recommendation

Approve Alternative 1. This is the only alternative that would be a feasible solution to address the OHR workload concerns.

## SECTION 5: OFFICE OF PROFESSIONAL EXAMINATION SERVICES

## A. Budget Request Summary

The Department of Consumer Affairs' (DCA) Office of Professional Examination Services (OPES) requests two Research Data Specialist II (RDS II) positions and \$287,000 in 2019-20 and \$271,000 ongoing, to meet the increased workload for developing, maintaining, and validating occupational licensing examinations.

OPES currently lacks sufficient staffing to meet ongoing and projected increases in the demand for such services, which support mission-critical public protection functions mandated by existing law.

## B. Background/History

OPES is a technical consulting division that works with DCA's licensing examination programs to ensure that licensing examinations are fair, valid, and legally defensible. The purpose of licensing examinations is to identify persons who possess the minimum knowledge and experience necessary to perform tasks on the job safely and competently.

Business and Professions (B&P) Code section 139 declares that occupational analysis (OA) and examination validation studies are fundamental components of licensure programs. This legislation mandates that the policy and an appropriate schedule for examination validation and OAs that is consistent with technical standards and professional guidelines. DCA programs that use licensure examinations (either state-specific or national) must conduct an OA every 5-7 years, as well as either ongoing or periodic evaluation of the licensure examination (per Departmental Licensure Examination Validation Policy OPES 12-01).

In addition, OPES examination validation policy states that all national examinations must be reviewed to ensure they are developed in accordance with testing standards; and to ensure they assess California practice.

OPES is mandated to ensure that all DCA licensing examinations meet legal and professional standards, and OPES test specialists provide the required licensing examination-related services to the programs. OPES test specialists use a wide range of analytical skills, research methods, statistical techniques, and facilitation skills. The majority of OPES test specialists have master's degrees in Industrial and Organizational Psychology, or a closely related field, in addition to experience or training in measurement principles (psychometrics). OPES is the only division in DCA that has the technical staff who are qualified to provide examination-related research and evaluation services.

## Nature of Workload

OPES performs three core functions for the programs. First, for programs that have California-specific examinations, OPES provides the mandated function of ongoing written examination development (WED) services. OPES WED services include writing and reviewing test questions, constructing examinations, determining examination passing scores, and performing statistical analysis of examination performance. These core ongoing examination development projects take up a large number of OPES workload hours. Examinations must be continuously monitored through statistical analysis to ensure that test items are functioning; and examination forms must be updated to stay current with laws and practice, and to prevent test item overexposure. Licensing examination development requires the participation of licensees serving as subject matter experts (SMEs), who write and review test questions and set the passing score for examinations. Test specialists facilitate multiple focus groups with SMEs to complete examination development projects.

Second, for programs that have either California-specific examinations, or national examinations, or both, OPES performs mandated OAs. The content of every examination must be based upon an OA of practice, to ensure that the examination assesses the most critical competencies of the job. As mandated by B&P Code section 139, OAs must be performed every 5-7 years to ensure that examinations test current skills and knowledge. OAs take 9 to 12 months to complete. As part of each

OA, OPES collects data from licensees through focus groups and an extensive survey. The OA results include a detailed outline for developing examinations, including the number of questions to assign to each content area of the examination.

Third, for programs that have national examinations, OPES conducts cyclical projects related to examination program review. National examination review is also performed on a 5-7-year cycle. When a program uses a national licensing examination, OPES evaluates whether the national examination addresses competencies required for California practice, and assists the agency in its decision to use (or continue to use) either a national examination, or a California-specific examination, or both. OPES makes sure that the content of the examination assesses the most critical competencies of the profession in California. This requires OPES to first perform a California OA. The OA results include a detailed description of California practice that is then used to compare to the content of the national examination. In addition, OPES performs the mandated function of evaluating the process used to develop and administer the national examination to ensure that it meets legal and psychometric standards. OPES also performs periodic examination-related special projects such as responding to examinations that have been compromised, evaluating licensure requirements, responding to legislative changes, and making recommendations for reducing barriers to licensure.

OPES - Resource History (Dollars in millions)

		()			
Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Actual Expenditures	1.46	1.32	1.6	1.8	1.9
Authorized Positions	20.5	20.5	20.5	20.5	20.5
Filled Positions	19.0	18.7	19.0	20.0	20.0
Vacancies	1.5	1.8	1.5	0.5	0.5

<sup>\*</sup>Vacancies in 2017-18 are based on DCA/HR Vacancy report for June 2018

Cost and Quality Considerations: OPES provides high quality services at reasonable costs to programs compared to outside consulting firms. OPES offers the advantage of expertise in DCA-specific policy, laws, and regulations and, as an integral part of DCA, provides extra assurance that public protection goals will not be compromised.

OPES is nationally recognized as an expert in OA for licensing examinations, and it performs this service for approximately half the cost of an outside consultant. For example, a program recently received a bid from an outside consultant for an OA of \$100,000, whereas OPES estimated \$53,000 for the same work. In addition, programs have received inferior results from consultants many times, and then asked OPES for assistance. The inconsistent quality of services provided by outside consultants is one reason OPES is mandated to review national examinations used by the programs.

OPES currently has intra-agency agreements (IACs) with 23 of DCA's 37 programs. As displayed in the table below, over the past five fiscal years, OPES has made commitments to an increased number of IAC hours. To schedule the ongoing workload, OPES makes IAC commitments 1-2 years in advance.

OPES Test Specialist† Hours				
Fiscal Year	WED	OA	National Review	TOTAL
2018-19	10,105	6,365*	692	17,162
2017-18	11,198	4,570	976	16,744
2016-17	9,493	5,272	508	15,273
2015-16	10,005	3,348	642	13,995
2014-15	11,549	4,232	588	16,369

<sup>†</sup> NOTE: Test Specialist refers to staff in Research Data Analyst I, Research Data Analyst II, Research Data Specialist II, and Research Data Supervisor II positions.

OPES test specialists spend 85 percent of their time performing IAC-contracted work. Therefore, 1,510 hours of IAC-related work equals one test specialist. For 2018-19, OPES has committed to performing 17,162 hours of test specialist IAC work, totaling 11.4 test specialists. OPES currently has nine test specialists performing 13,590 IAC hours. The excess of 3,572 IAC hours is currently being performed by OPES research managers and the OPES Chief.

OPES has a current capacity of 14,297 hours (85% test specialist and 20% manager hours) for IAC-contracted work. As shown in the summary table below, OPES' projected test specialist IAC workload exceeds OPES capacity for each of the next five years. More detail is provided in Attachment B.

	Total Estimated IAC Hours	Total Excess IAC Hours	Number of Test Specialists Needed
2019-20	20,017	5,720	3.79
2020-21	19,099	4,802	3.18
2021-22	18,263	3,966	2.63
2022-23	18,210	3,913	2.59
2023-24	20,012	5,715	3.78

**NOTE:** 85% of test specialists (1509.6 hours) X 9 + 20% of managers (355.2) X 2 = 14,296.8 hours

## C. State Level Considerations

OPES services translate directly to the public by increasing the validity of licensure examinations; improving the quality and fairness of licensure examinations; improving the security of the testing environment; increasing the frequency with which candidates can examine; and removing and avoiding artificial barriers to licensure.

DCA's Strategic Plan Goal 5 (Services) states, "[The Department of Consumer Affairs] provides services to support its boards and bureaus while ensuring compliance with existing laws, rules, and best practices." Goal 5.13 specifies that OPES will "partner with boards and bureaus to establish a schedule for timely review of their respective licensing examination programs, regardless of use of state or national exams."

<sup>\*</sup> NOTE: The unusual increase in the number of IAC hours contracted for OA work is due to multiple OAs carried over from 2017-18 to 2018-

## D. Justification

## Large volume of current and expected workload

Consistent with the 5-7 year cycle for each program, approximately one fourth of the programs require an OA in a given year. Therefore, with current staffing levels, OPES typically performs 12 OAs per year and reviews national examinations for 3-4 programs, including performing OAs of California practice for programs that utilize a national examination as a path to licensure.

Due to the large volume of ongoing examination development work, particularly in relation to California-specific examinations, OPES has achieved this level of performance by assigning a significant number of non-supervisory IAC hours to OPES Research Managers and the OPES Chief. In 2018-19, these hours are expected to total 3,572. The expected addition of 2-3 new OPES projects each year will make it impossible for OPES senior managers to absorb any additional staff-level work, and examination-related services will have to be cut back or delayed.

Due to insufficient staffing, OPES recently turned away work for the Board for Professional Engineers, Land Surveyors, and Geologists for four ongoing examination development programs. This Board will have to use an outside consultant that provides services at a significantly higher cost. OPES has received requests from four new clients (Bureau of Electronic Appliance Repair, Home Furnishings and Thermal Insulation; Board of Podiatric Medicine; Board of Occupational Therapy; and Osteopathic Medical Board) for services.

## The importance of supervisory hours spent by OPES Research Managers

The additional positions will significantly reduce non-supervisory hours spent by OPES Research Managers and the OPES Chief, as the two additional test specialists will be assigned to the more complex examination programs. This will prevent delays to critical examination development work and improve management's ability to focus on staff oversight, training, process improvement, and the implementation of new technology. Completing a large amount of program work in addition to management duties is creating a high level of stress for the OPES Research Managers.

Supervisory hours of OPES Research Managers are extremely important. Their role as managers to oversee staff and programs is vital to prevent errors and omissions in OPES services and deliverables. Allowing the OPES managers to focus on management duties will improve staff performance and efficiency, translating directly to improved quality and potential cost reductions for DCA clients. The additional positions will also give the OPES Chief more time to focus on client meetings and presentations, staying abreast of psychometric research, and special projects such as evaluating barriers to licensure.

## Training

Research Managers must spend a sufficient amount of time training newly hired OPES test specialists. Due to the substantial consequence of error, and the nuances of each examination program, this training is critical before test specialists can work independently. OPES must develop and mentor its test specialists to ensure that they become qualified to manage the more complex examination programs. Succession planning is extremely important to make sure that existing staff can take over new programs due to staff turnover or retirement. Most research data specialists work for the same programs for 20 years and develop a breadth of program-specific knowledge.

## Delay of examination development work

Limiting or delaying examination development work puts the public at risk by allowing invalid and outdated examinations to remain in use. Regularly monitoring the performance of examinations through statistical analysis is the best way to prevent test items from becoming overexposed. The longer examinations are in use, the greater the chance that they will be compromised. While neither

OPES nor programs can entirely prevent this problem, the risk of exposure and the chances of cheating can be significantly reduced by updating examinations more frequently and by increasing the number of valid, available examination questions. This is only possible with ongoing focus groups to maintain a database of usable examination questions. Delaying OA projects more than 7 years runs the risk of testing applicants on outdated techniques and not testing them on the most current methods, procedures, and practice. In addition, over time, some areas of practice may be become more important (e.g., suicide risk assessment and intervention for psychologists) and need more weight on the examination.

## E. Outcomes and Accountability

The requested positions will enable OPES to timely meet ongoing workload demand for occupational licensing examination services and minimize delays in needed services. OPES will continue to carry out its regulatory mandate and to meet DCA's strategic goals. The long-term benefit to the state will be that OPES will have the capacity to bring all DCA programs into compliance with B&P Code section 139. Regular evaluation of national examinations ensures that high quality, valid, and fair examinations are maintained, thereby protecting both the public and licensing applicants. Conducting a California OA is also an important tool for assisting programs to evaluate their licensing requirements for artificial barriers.

## F. Analysis of All Feasible Alternatives

**Alternative 1:** Establish position authority for 2.0 RDS II positions and budget authority \$287,000 in fiscal Year 2019-20 and \$271,000 in 2020-21 and ongoing.

Pros:

- Enables OPES to provide timely service to the programs.
- Allows OPES to continue to protect California consumers by ensuring the fairness, validity, and legal defensibility of licensure examinations.
- Allows OPES to bring on additional DCA programs who are in need of services, i.e., clients whose licensing examination programs are not in compliance with B&P Code section 139 requirements.
- Enables OPES to support programs with compromised examinations, examination-related legislative initiatives, and evaluating barriers to licensure.

Cons:

 Increases the number of staff positions in DCA; ongoing IACs would be needed to support these positions.

Alternative 2: Redirect internally from within DCA.

Pros:

Does not increase the number of staff positions in DCA.

Cons:

Existing workload of other DCA staff makes this alternative not feasible and other staff
do not have the requisite education and training in the area of Industrial and
Organizational Psychology.

Alternative 3: As workload increases, continue to overwork existing staff by assigning excess IAC hours in violation of their duty statements.

Pros:

• Does not increase the number of staff positions in DCA.

Cons:

- Creates risks to quality and productivity, and the potential for error is greater.
- Delays critical administrative and management work that could improve operational efficiencies and reduce costs for clients.
- Creates stress and burnout among OPES staff, increasing the likelihood of staff leaving OPES for other positions.

**Alternative 4:** Extend project plan schedules to allow time for existing OPES test specialists to complete OA and examination development work. Pros:

- Does not increase the number of staff positions in DCA.
- Mandated OA and examination development work will eventually be performed.

#### Cons:

- Delaying established schedules of examination publication will mean that examinations stay out longer and become outdated. Such examinations are more likely to be compromised.
- Periodic OAs and ongoing examination development are mandated at certain intervals; missing these intervals would render examinations unfair to candidates, invalid, and legally indefensible.
- Some programs who currently utilize OPES services through IACs will contract with outside
  consultants if they cannot wait for OPES availability. This will result in higher costs to the state
  and, potentially, services of lesser quality.

## G. Implementation Plan

OPES would advertise and fill 2.0 additional RDS II positions on July 1, 2019. In the last three years, OPES has been able to fill any vacant positions in a timely manner. The OPES Chief and Research Managers would work together to train the new RDS II staff.

## H. Supplemental Information

Workload Justification - RDS II

## I. Recommendation

Approve Alternative 1: Two RDS II positions and \$287,000 in 2019-20 and \$271,000 in 2020-21 and ongoing.

## ATTACHMENT A Workload Justifications

Program:	Office of Professional Examination Services				
Classification:	Research Data Specialist II				
Working Title:	Senior Testing Consultant				
		Duration	Total Time		
Quantity/Year	Explanation of Task	(mins/task)	(hours)		
	Consult with clients and prepare intra-agency contracts				
	(IACs) for examination development work	5,310	354		
4	Review, edit, and research examination questions	4,260	284		
	Facilitate workshops with licensees to develop examination				
24	questions	1,065	426		
4	Construct licensing examinations	2,670	178		
4	Develop OA description of practice	4,800	320		
	Compile research from OA interviews and workshops with				
4	licensees	3,278	219		
4	Determine sampling plans for OA research	1,080	72		
4	Develop and administer OA surveys	2,130	142		
4	Perform statistical analysis on OAs	1,590	106		
4	Interpret OA research results	532	35		
	Perform statistical analysis to evaluate item and exam				
4	performance	2,640	176		
2	Evaluate national licensing examination programs	9,600	320		
	Compile and interpret data from national examination				
2	vendors	3,180	106		
	Review national examination programs against psychometric				
2	standards	7,440	248		
	Conduct linkage studies to compare content of national				
2	examination with California scope of practice	4,260	142		
2	Write technical reports	2,160	72		
4	Provide psychometric consulting to DCA clients	2,640	176		
4	Perform special research projects	2,640	176		
		Total Hours	3,552		
	Total Positions (Total H				



# WHO WE ARE, WHAT WE DO, AND HOW WE DO IT



## **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

## WHAT IS THE CALIFORNIA ACUPUNCTURE BOARD?

The California Acupuncture Board (Board) is a regulatory body under the California Department of Consumer Affairs (DCA). The Board's legal mandate is to regulate the practice of Asian medicine through acupuncture in California and is the sole issuer of acupuncture licenses in the state. The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license.

The Board regulates 12,185 active licensed acupuncturists. The Board's highest priority is protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board may investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensees. Additionally, the Board may discipline licensees who may jeopardize the health, safety, and welfare of consumers.

## HISTORY OF THE ACUPUNCTURE BOARD

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

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

In 1980, the law was amended to abolish the Acupuncture Advisory Committee and replace it with the Acupuncture Examining Committee within the Division of Allied Health Professions with limited autonomous authority.

In 2002, Assembly Bill 1943 (Chapter 781, Statutes of 2002) was signed into law which raised the acupuncture training program curriculum standards requirement to 3,000 hours, including 2,050 hours of didactic training and 950 hours of clinical training. In 2006, SB 248 (Chapter 659, Statutes of 2005) repealed the nine-member Board and reconstituted it as a seven-member Board with four public members and three licensed members.

In 2014, SB 1246 (Chapter 397, Statutes of 2014) was signed into law. It changed the definitions of "approved training programs" to include training programs that are accredited and approved by the Bureau for Private Postsecondary Education (BPPE), the Accreditation Commission on Acupuncture and Oriental Medicine (ACAOM) and the Board. It also eliminated the Board's inspection authority and fees.

In 2016, AB 2190 (Chapter 667, Statutes of 2016) provided the Board authority to set foreign equivalency standards for training and licensure. In 2018, AB 3142 (Chapter 596, Statutes of 2018) was signed into law extending Board operations until Jan. 1, 2023.

# HOW IS ACUPUNCTURE DEFINED IN CALIFORNIA LAW?

As defined in Business and Professions Code, title 16, section 4927:

- (a) "Board" means the Acupuncture Board.
- **(b)** "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.
- **(c)** "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked.

(d) "Acupuncture" means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion.

# UNDER CALIFORNIA LAW, WHAT IS AN ACUPUNCTURIST ALLOWED TO DO?

As defined in Business and Professions Code, title 16, section 4937:

An acupuncturist's license authorizes the holder thereof:

- (a) To engage in the practice of acupuncture.
- **(b)** To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing or prescribing the use of any modality listed in this subdivision.
- **(c)** For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

- (d) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances, or dangerous drugs as defined in sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code.
- **(e)** For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of section 321 of title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with section 11053) of Division 10 of the Health and Safety Code.

## WHAT DOES THE BOARD DO?

The Board is responsible for overall policy direction, decision making and administering of the Acupuncture Licensure Act.

The Board is comprised of seven members. Three members of the Board are acupuncturists with at least five years of experience in acupuncture and four members are public members who do not hold a license or certificate as a physician, surgeon, or acupuncturist. The governor appoints three licensed members and two public members; the speaker of the Assembly appoints one public member; and the Senate Rules Committee appoints one public member. Each member of the Board is appointed for a term of four years.

The Board appoints and delegates certain functions to an executive officer who is responsible for management of the Board's staff and its units.

The Board generally holds four public meetings a year and others as needed. All meetings are open to the public and attendees are encouraged to participate during public comment periods. Agendas and meeting materials are posted on the Board's website prior to the meetings. The meetings may also be webcast.

Notably, the Board does not define "acupuncture" in regulation. That is a statutory definition passed by the California Legislature.

Board meetings are subject to the Bagley-Keene Open Meeting Act, which requires them to be open to the public.

All Board meetings require a quorum of four members being present, with at least one licensed member in attendance.

## SIX UNITS OF THE BOARD AND WHAT THEY DO

**1. The Board's Licensing Unit** is responsible for issuing new licenses to applicants who have passed the California Acupuncture Licensing Exam (CALE) and for renewing existing licenses.

Staff review and evaluate licensing applications and determine whether licensees are eligible for licensure or renewal of licensure. Additionally, they process fingerprint and

Live Scan background check requests for new or renewal applicants. They also provide assistance for callers relating to licensing and general Board functions.

Email: acupuncture@dca.ca.gov

All licensees eligible for renewal must complete 50 hours of Board-approved continuing education units (CEUs) every two years.

2. The Board's Examination Unit oversees the development and administration of the CALE. Staff reviews, analyzes, and approves submitted documentation from exam applicants to ensure compliance with Board standards, and reviews examination applications and qualifications to determine eligible candidates for the CALE.

Passing the CALE is the only method available to become licensed as an acupuncturist in California. No other licensing exams are accepted.

Additionally, they coordinate with the California Office of Professional

Examination Services (OPES), which develops and scores the CALE itself. The CALE is a computer-based test taken at a local testing center and is offered six days a week. Staff then notifies the applicant if they have passed or failed the CALE and prepares statistics based on the pass/fail rate of the CALE.

Email: acuexamunit@dca.ca.gov

**3. The Board's Education Unit** is responsible for approving acupuncture training programs, reviewing and approving tutorial candidates, reviewing and approving CEU providers and courses, and conducting a yearly random audit of licensees to ensure continuing education (CE) compliance.

Staff prepares and conducts audits of both CE courses and instructors and reviews all course requests for CE, and determines if subject material complies with regulatory requirements. They also review and evaluate school training program curriculums for statutory and regulatory compliance. The Education Unit also verifies and confirms instructor qualifications and analyzes school financial reports and records.

Schools also submit yearly reports to the Board to determine

Unit emails: acuconted@dca.ca.gov (for CE)

ongoing compliance.

acuceaudit@dca.ca.gov (for CE audit compliance)

acutrainingprogram@dca.ca.gov (for training programs)

acututorial@dca.ca.gov (for tutorial matters)

The Board does not approve acupuncture educational and training programs, only their curriculum. An educational and training program is approved when it meets several requirements, which involves BPPE, ACAOM, and the Board.

**4. The Board's Enforcement Unit** is responsible for all disciplinary actions taken by the Board against licensees.

Staff evaluates complaints to determine merit and/or jurisdiction, provides an analysis of possible violations of the Acupuncture Licensure Act, and interprets laws, rules, and regulations that govern the practice of acupuncture in relation to that violation.

Discipline can range from a fine to outright revocation of licensure and staff can refer a case to the Attorney General's office for criminal action. Disciplinary actions taken are posted on the Board's website.

Unit email: acuenforcement@dca.ca.gov

All complaints made against a licensee are investigated by the Board. Complaints must be in writing and can be submitted via mail, fax, or email. You can also file a complaint through the Board's website.

**5. The Board's Administrative Unit** manages the Board's day-to-day affairs.

Staff completes contracts and interagency agreements, bids for procurement, and tracks and prepares yearly budgets. In addition, staff handles the hiring process for new employees, human

resource duties, and the Board's records retention. Administrative staff also assists the executive officer and Board members with clerical and logistical support as needed.

The Board's budget and expenditures are self-funded through acupuncture licensing fees. The Board receives no direct monetary support from the state's general fund.

Unit email: acupuncture@dca.ca.gov

## **6. The Board's Policy Unit** oversees the Board's policy and regulatory affairs.

In this capacity, staff prepares all proposed regulatory actions, coordinates legislative activity, and conducts outreach with interested stakeholders. Additionally, policy staff prepare meeting agendas and materials, and produce Board minutes.

Unit email: acupuncture@dca.ca.gov

All proposed regulatory actions must be approved by the Board and are subject to a public comment period.





If you have questions or comments, do not hesitate to contact the Board:

## **California Acupuncture Board**

1747 North Market Blvd., Suite 180 Sacramento, CA 95834

> Phone: (916) 515-5200 Fax: (916) 928-2204

Email: acupuncture@dca.ca.gov Website: www.acupuncture.ca.gov







1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 18, 2019
то	Board Members
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	Update on Current Legislation

Set out below is a list of legislative bills Acupuncture Board (Board) staff have been tracking in the current 2019-20 legislative session. Bills with a fiscal impact must be passed out of a policy committee by July 10, and bills without a fiscal impact must be passed out of a policy committee by July 12. Subsequently, any fiscal bills must be passed out of fiscal committees by August 30.

The last day for the Legislature to pass bills is September 13 at midnight, and the Governor has until October 13 to sign or veto bills passed by the Legislature.

Each bill listed has the full text and latest legislative analysis as attachments. Below is a short introduction and analysis of the bill, staff comments and staff recommendations. Please be advised the Board always has the option of not taking a position on a particular bill.

It is early in the legislative session, so bills are in their early versions. Bills that currently include the Board may be amended to exclude the Board and may be amended in the future. Likewise, bills that currently do not affect the Board may be amended to include the Board at a later date. Therefore, staff will be tracking all legislative bills affecting the Board and provide Board Members the opportunity to update positions, if so desired, at future meetings.

Generally, the following positions are taken:

- Support Board supports the bill in its current form and feels it should become law.
- Support if amended Board conditionally supports the bill, but feels amendments are necessary for bill to become law.
- Oppose Board opposes the bill and feels it should not become law.
- Oppose unless amended Board conditionally opposes the bill and feels amendments are necessary to remove the Board's opposition to it becoming law.
- Watch/neutral No position is taken and the Legislature is not informed as to the Board's position on the bill (unless directed by the Board to do so).

• **No position –** Board wishes to not declare a position.

If a position is adopted by the Board, a motion may be made as follows:

"I motion that the Acupuncture Board take a (support / support if amended / oppose / oppose unless amended) position on (Bill Number and Author) and direct the Executive Officer to inform the Legislature and the Author's office of this position."

Once the position is taken, staff will communicate the Board's adopted position (except for a 'watch' or 'no position', as noted above) to the Legislature for each bill. This support/opposition will be noted in subsequent legislative analyses and may be taken into consideration by the Legislature.

## A. Assembly Bill 193 (Patterson) - Professions and vocations

## **Current Status:**

Re-referred to the Committee on Business and Professions on March 6, 2019 with author's amendments.

Date as Introduced: January 10, 2019

## Summary:

This bill would require:

- Department of Consumer Affairs (Department) beginning on January 1, 2021, to conduct a comprehensive review of all licensing requirements for each profession regulated by a board within the Department and identify unnecessary licensing requirements as specified.
- The Department to report to the Legislature on January 1, 2023, and every two (2) years thereafter, on the Department's progress.
- The Department to issue a final report to the Legislature no later than January 1, 2033.
- The Department to identify the professions reviewed, each unnecessary licensing requirement, and the Department's recommendations to the Legislature on whether to keep, modify, or eliminate the unnecessary licensing requirement in biennial reports.
- The Department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as specified.

## Staff Recommended Position: Oppose unless amended

## Comments:

This bill is similar to SB 247 that failed in policy committee in 2017. The intent of SB 247 was to remove artificial barriers for lower-income occupations. AB 193 is similarly proposing to remove unnecessary licensing requirements for all boards and bureaus under the Department, specifically for barbers, cosmetologists, and custom upholsterers.

As the bill is currently written, resources for the Department to conduct a review of all programs would be required. It is estimated that funding for such resources would affect the Board through a significant but unknown increase in its pro rata fees. Therefore, in its current version, this bill would have a significant but unknown fiscal impact on the Board.

## B. Assembly Bill 613 (Low) - Professions and vocations: regulatory fees

## **Current status:**

Referred to the Committee on Business and Professions on February 25, 2019.

Date as Introduced: February 14, 2019

## Summary:

This bill would:

- Authorize each board within the Department to increase every four (4) years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding four (4) years, subject to specified conditions.
- Require the Director of the Department to approve any fee increase proposed by a board, as specified.

## Staff Recommended Position: Watch

## Comments:

The purpose of this bill is to mitigate the process boards undergo when changing fees through legislation or through the Administrative Procedure Act. This bill will authorize boards to make fee adjustments every four (4) years, if necessary. In its current version, the impact of this bill would be minor and absorbable within existing resources.

## C. Assembly Bill 778 (Low) – Acupuncture: continuing education

## Current status:

Referred to the Committee on Business and Professions on February 28, 2019.

Date as Introduced: February 19, 2019

## Summary:

This bill would:

- Require the Board to establish, by regulation, a procedure for identifying acceptable providers of continuing education courses
- Require all providers of continuing education to comply with the procedures established by the Board.
- Authorize the Board to revoke or deny the right of a provider to offer continuing education coursework for failure to comply with specified provisions of law.

## Staff Recommended Position: Support

## Comments:

This is an early version of this bill that may change. The bill is intended to strengthen the Board's enforcement over approved continuing education (CE) courses and CE providers. The Board already has procedures in place for CE providers to comply with through regulation; however, this bill authorizes the Board to promulgate additional procedures through regulation.

Currently, the Board has authority to issue citations and fines for any non-compliance with the CE regulations. This bill would allow the Board to revoke or deny the right of a provider to offer CE coursework for non-compliance. This bill would increase public protection by expanding the Board's authority over CE providers.

In its current version, the fiscal impact of this bill may be significant as it may require additional investigation which could result in unknown enforcement related costs to meet a higher burden of proof. As a result, more enforcement workload will be required to process CE provider non-compliances through a disciplinary process if denied or revoked through the Administrative Procedure Act.

## D. Assembly Bill 779 (Low) - Acupuncture: place of practice

## Current status:

Referred to the Committee on Business and Professions on February 28, 2019.

Date as Introduced: February 19, 2019

## Summary:

This bill would:

- Require a licensee who opens a new place of practice to register the new place
  of practice with the Board in the same manner as described for a change in the
  location of a licensee's place of practice.
- Authorize the Board to deny the renewal of licensure if a licensee fails to register the location of the new place of practice.
- Makes other non-substantive changes.

## Staff Recommended Position: Support

## Comments:

This is an early version of this bill that may change. The bill is intended to clarify current law as it relates to not only the registration of a change of location of an existing place of practice, but also require registration when a licensee opens a new place of practice without a change to his or her existing place of practice. Such a clarification in the law was lacking previously.

This bill would provide more clarity to the licensee, subsequently increasing licensees' compliance with registering all practice locations - new locations and changes. In its current version, the impact of this bill would be minor and absorbable within existing resources.

## E. Assembly Bill 1245 (Low) - Acupuncture: advertising

## **Current status:**

Referred to the Committee on Business and Professions on March 11, 2019.

Date as Introduced: February 21, 2019

## Summary:

This bill would:

 Provides greater restrictions on unlicensed individuals advertising acupuncture services if using the listed terms in relation to acupuncture or the newly added terms 'traditional' and 'complementary' along with acupuncture, and, is associated with an Asian subgroup.

Staff Recommended Position: Support

## Comments:

This is an early version of this bill and may change. The bill provides more clarity and also expands the definition of unlawful practice of acupuncture by adding traditional medicine to the list of key words that a person without a current and valid license to practice acupuncture is prohibited from advertising. Adding traditional, complementary medicine also aligns with the terminology used by ICD-11 International Classification of Diseases. In its current version, the impact of this bill would be minor and absorbable within existing resources.

## F. Senate Bill 425 (Hill) – Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct

## Current status:

Referred to Committees on Business and Professions, Education, and Judiciary on March 7, 2019.

Date as Introduced: February 21, 2019

## Summary:

This bill would:

- Delete the specification that the summary of a licensee's central file be comprehensive when provided to a licensee or licensee's counsel when an information source is being protected.
- Require any health facility or clinic, administrator or chief executive officer of a health
  care service plan, or other entity that makes any arrangement under which a healing
  arts licensee is allowed to practice in or provide care for patients to report any
  allegation of sexual abuse or sexual misconduct made against a healing arts
  licensee to the relevant state licensing agency within 15 days of receiving the
  allegation and would require the relevant agency to investigate the circumstances
  underlying a received report.
- Require an employee or healing arts licensee who works in a health facility or clinic, health care service plan, or other entity with knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee to report to the relevant state agency having jurisdiction over the healing arts licensee and the administration of

the health facility or clinic, health care service plan, or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct.

- Make a willful failure to file the report by a health facility or clinic, health care service plan, or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation, as specified.
- Prohibit a person, including an employee or individual contracted or subcontracted to provide health care services, a health facility or clinic, a health care service plan, or other entity from incurring civil or criminal liability as a result of making a report.

## Staff Recommended Position: Watch

## Comments:

As of last fiscal year, sexual misconduct cases made up approximately 5% of the Board's total complaints received. The amount of sexual misconduct cases would increase based on the changes of SB 425, but the exact increase in volume is unknown at this time. Additionally, if the Board learns of any non-compliance with the reporting requirements, that could increase complaint volume as well.

At this time, judging from the low volume of current sexual misconduct cases the Board receives per year, it's estimated volume should not increase to a level warranting additional enforcement staff. The fiscal impact of SB 425 is projected to be minor and absorbable within existing resources at this time. In the event actual workload is greater than projected, the Board may be required to request additional resources through the annual process.

## AMENDED IN ASSEMBLY MARCH 5, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

## ASSEMBLY BILL

No. 193

# Introduced by Assembly Member Patterson (Coauthors: Assembly Members Choi, Gallagher, Lackey, Melendez, and Voepel)

(Coauthors: Senators Bates, Morrell, and Nielsen)

January 10, 2019

An act to amend Sections 7026.1, 7316, 7332, 7334, 7337.5, 7396, 7423, 19011, 19017, 19051, 19059.5, 19060.6, and 19170 of, to add and repeal Section 101.5 of, and to repeal Sections 7326, 7365, 19010.1, 19010.1 and 19052 of, the Business and Professions Code, and to amend Section 110371 of the Health and Safety Code, relating to professions and vocations.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 193, as amended, Patterson. Professions and vocations.

(1) Existing law establishes the Department of Consumer Affairs in the Business, Consumer Services, and Housing Agency to, among other things, ensure that certain businesses and professions that have potential impact upon the public health, safety, and welfare are adequately regulated.

This bill would require the department, beginning on January 1, 2021, to conduct a comprehensive review of all—occupational licensing requirements for each profession regulated by a board within the department and identify unnecessary licensing requirements that cannot be adequately justified. requirements, as defined by the bill. The bill would require the department to report to the Legislature on January 1, 2023, and every 2 years thereafter, on the department's progress, and

AB 193 -2-

would require the department to issue a final report to the Legislature no later than January 1, 2033. The bill would require the biennial reports to identify the professions reviewed, each unnecessary licensing requirement, and the department's recommendations to the Legislature on whether to keep, modify, or eliminate the unnecessary licensing requirement. The bill would require the department to apply for federal funds that have been made available specifically for the purpose of reviewing, updating, and eliminating overly burdensome licensing requirements, as provided.

(2) Existing law provides for the licensure and regulation of contractors by the Contractors' State License Board in the department and includes within the term "contractor" a person who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying.

This bill would delete tree pruning from those provisions.

(3)

(2) Existing law, the Barbering and Cosmetology Act, provides for the licensure and regulation of the practice of cosmetology by the State Board of Barbering and Cosmetology in the department and defines the practice of both barbering and cosmetology to include shampooing the hair of any person. The act also specifies that, within the practice of cosmetology, there is the specialty branch of skin care, which includes applying makeup, and the specialty branch of nail care, which includes eutting, trimming, polishing, coloring, tinting, cleansing, manieuring, or pedicuring the nails of any person. makeup.

This bill would delete shampooing another person from the practice of barbering and cosmetology, *and* would delete the act of applying makeup on another person from the specialty practice of skin-care, and would delete nail care from the practice of cosmetology. *care. The bill would require a person who does not hold a barbering or cosmetology license to disclose that fact before the unlicensed person applies makeup to or shampoos the hair of another person.* 

(4)

(3) Existing law provides for the regulation of custom upholsterers by the Bureau of Household Goods and Services in the department, and requires every custom upholsterer to hold a custom upholsterer's license.

This bill would delete those provisions requiring licensure of custom upholsterers.

<del>(5)</del>

-3- AB 193

(4) The bill would make conforming and other nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the 2 following:
- (a) Many entities, including the Federal Trade Commission, the
   United States Department of Labor, and the Milton Marks "Little
   Hoover" Commission on California State Government Organization
   and Economy, have acknowledged the unnecessary burdens that
   occupational licensing places on otherwise qualified workers.
  - (b) Unnecessary licensing increases costs for consumers and restricts opportunities for workers.

8

9

10

11

12

13

14

15

16

17

18

19

20

23

24

25

26

27

28

- (c) Researchers show that occupational licensing restrictions can result in almost three million fewer jobs and a cost of over \$200,000,000,000 to consumers.
- (d) The Institute for Justice estimates that burdensome licensing in California results in a loss of 195,917 jobs and \$22,000,000,000 in misallocated resources.
- (e) California is the most broadly and onerously licensed state in the nation and has been identified as the nation's worst licensing environment for workers in lower-income occupations.
- (f) Licensing is also believed to disproportionately affect minorities and exacerbate income inequality.
- SEC. 2. Section 101.5 is added to the Business and Professions Code, to read:
  - 101.5. (a) The department shall apply for federal funds that have been made available specifically for the purposes of reviewing, updating, and eliminating overly burdensome licensing requirements.
  - (b) Beginning on January 1, 2021, the department shall conduct a comprehensive review of all occupational licensing requirements for each profession and shall identify unnecessary licensing requirements that cannot be adequately justified. requirements.
- requirements that cannot be adequately justified. requirements.

  The department shall conduct the review whether or not the state
- The department shall conduct the review whether or not the state receives federal funds pursuant to subdivision (a).

**—4— AB 193** 

1

2

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

32

33

34

- (c) The department shall report to the Legislature on January 1, 2023, and every two years thereafter until the department has completed its review, on the department's progress in conducting the review. The department shall issue a final report to the Legislature no later than January 1, 2033. Each biennial report shall be organized by board and shall include all of the following:
- (1) The professions reviewed by the department in the preceding two years.
- (2) Unnecessary licensing requirements identified by the department for each profession reviewed.
- (3) For each unnecessary licensing requirement, department's recommendation to the Legislature to keep, modify, or eliminate the unnecessary licensing requirement.
- (4) For each unnecessary licensing requirement that the department recommends to keep, facts supporting the department's recommendation.
- (d) The department may use national licensing standards, where applicable, as a baseline for evaluating the necessity of licensing requirements.
  - (e) For purposes of this section, the following definitions apply:
- (1) "Profession" means a profession or vocation regulated by a board identified in Section 101.
- (2) "Unnecessary licensing requirement" means a licensing requirement that does not satisfy either of the following criteria:
  - (A) Protects the health and safety of the public or a licensee.
  - (B) Satisfies a national licensing or certification requirement.
- (f) A report to be submitted pursuant to subdivision (c) shall be submitted in compliance with Section 9795 of the Government Code.
- 31 <del>(e)</del>
  - (g) Notwithstanding Section 10231.5 of the Government Code, this section is repealed on January 1, 2034.
- SEC. 3. Section 7026.1 of the Business and Professions Code 35 is amended to read:
  - 7026.1. (a) The term "contractor" includes all of the following:
- 37 (1) Any person not exempt under Section 7053 who maintains 38 or services air-conditioning, heating, or refrigeration equipment
- 39 that is a fixed part of the structure to which it is attached.

\_5\_ AB 193

(2) (A) Any person, consultant to an owner-builder, firm, association, organization, partnership, business trust, corporation, or company, who or which undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct any building or home improvement project, or part thereof.

- (B) For purposes of this paragraph, a consultant is a person, other than a public agency or an owner of privately owned real property to be improved, who meets either of the following criteria as it relates to work performed pursuant to a home improvement contract as defined in Section 7151.2:
  - (i) Provides or oversees a bid for a construction project.
- (ii) Arranges for and sets up work schedules for contractors and subcontractors and maintains oversight of a construction project.
- (3) A temporary labor service agency that, as the employer, provides employees for the performance of work covered by this chapter. The provisions of this paragraph shall not apply if there is a properly licensed contractor who exercises supervision in accordance with Section 7068.1 and who is directly responsible for the final results of the work. Nothing in this paragraph shall require a qualifying individual, as provided in Section 7068, to be present during the supervision of work covered by this chapter. A contractor requesting the services of a temporary labor service agency shall provide the contractor's license number to that temporary labor service agency.
- (4) Any person not otherwise exempt by this chapter who performs tree removal, stump removal, or engages in tree or limb eabling or guying. The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.
- (5) Any person engaged in the business of drilling, digging, boring, or otherwise constructing, deepening, repairing, reperforating, or abandoning any water well, eathodic protection well, or monitoring well.
- (b) The term "contractor" or "consultant" does not include a common interest development manager, as defined in Section 11501, and a common interest development manager is not required

AB 193 -6-

1 to have a contractor's license when performing management 2 services, as defined in subdivision (d) of Section 11500.

- SEC. 4. Section 7316 of the Business and Professions Code is amended to read:
  - 7316. (a) The practice of barbering is all or any combination of the following practices:
    - (1) Shaving or trimming the beard or cutting the hair.
  - (2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
  - (3) Singeing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
  - (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
  - (5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.
  - (b) The practice of cosmetology is all or any combination of the following practices:
  - (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
  - (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
  - (3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
  - (4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.
- 36 (5) Massaging, cleansing, treating, or beautifying the hands or feet of any person.
  - (c) Within the practice of cosmetology there exists the specialty branch of skin care, which is any one or more of the following practices:

\_7\_ AB 193

(1) Giving facials, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person.

- (2) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (3) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (d) The practice of barbering and the practice of cosmetology do not include any of the following:
  - (1) The mere sale, fitting, or styling of wigs or hairpieces.
- (2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin and the incidental trimming of eyebrow hair.
- (e) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.
- (f) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.
- "Electrolysis" as used in this chapter includes electrolysis or thermolysis.
- 37 SEC. 5. Section 7326 of the Business and Professions Code is repealed.
- 39 SEC. 6. Section 7332 of the Business and Professions Code is 40 amended to read:

**AB 193** -8-

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

32

33

34 35

36

37

38

39

7332. (a) An apprentice is any person who is licensed by the board to engage in learning or acquiring a knowledge of barbering, cosmetology, skin care, or electrology, in a licensed establishment under the supervision of a licensee approved by the board.

- (b) For purposes of this section, "under the supervision of a licensee" means that the apprentice shall be supervised at all times by a licensee approved by the board while performing services in a licensed establishment. At no time shall an apprentice be the only individual working in the establishment. An apprentice that is not being supervised by a licensee that has been approved by the board to supervise an apprentice shall be deemed to be practicing unlicensed under this chapter.
- SEC. 7. Section 7334 of the Business and Professions Code is amended to read:
- 7334. (a) The board may license as an apprentice in barbering, cosmetology, or skin care any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:
  - (1) Is over 16 years of age.
- (2) Has completed the 10th grade in the public schools of this state or its equivalent.
  - (3) Is not subject to denial pursuant to Section 480.
- (4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.
- (b) The board may license as an apprentice in electrolysis any person who has made application to the board upon the proper form, has paid the fee required by this chapter, and who is qualified as follows:
  - (1) Is not less than 17 years of age.
- (2) Has completed the 12th grade or an accredited senior high school course of study in schools of this state or its equivalent.
  - (3) Is not subject to denial pursuant to Section 480.
- (4) Has submitted evidence acceptable to the board that any training the apprentice is required by law to obtain shall be conducted in a licensed establishment and under the supervision of a licensee approved by the board.
- (c) All persons making application as an apprentice in barbering 40 shall also complete a minimum of 39 hours of preapprentice

-9- AB 193

training in a facility approved by the board prior to serving the general public.

- (d) All persons making application as an apprentice in cosmetology, skin care, or electrology shall also complete minimum preapprentice training for the length of time established by the board in a facility approved by the board prior to serving the general public.
- (e) Apprentices may only perform services on the general public for which they have received technical training.
- (f) Apprentices shall be required to obtain at least the minimum hours of technical instruction and minimum number of practical operations for each subject as specified in board regulations for courses taught in schools approved by the board, in accordance with Sections 3074 and 3078 of the Labor Code.
- SEC. 8. Section 7337.5 of the Business and Professions Code is amended to read:
- 7337.5. (a) The board shall adopt regulations providing for the submittal of applications for admission to examination of students of approved cosmetology, electrology, or barbering schools who have completed at least 75 percent of the required course clock hours and curriculum requirements (60 percent for students of the manicurist course), or any person licensed as an apprentice in barbering, cosmetology, or skin care who has completed at least 75 percent of the required apprenticeship training hours. The regulations shall include provisions that ensure that all proof of qualifications of the applicant is received by the board before the applicant is examined.
- (b) An application for examination submitted by a student of an approved cosmetology, electrology, or barbering school under this section shall be known as a "school preapplication" and an additional preapplication fee may be required.
- (c) An application for examination submitted by a person licensed as an apprentice in barbering, cosmetology, or skin care shall be known as an "apprenticeship preapplication" and an additional fee may be required.
- (d) The board shall administer the licensing examination not later than 10 working days after graduation from an approved cosmetology, electrology, or barbering school to students who have submitted an application for admission for examination under the preapplication procedure, or not later than 10 working days

AB 193 -10-

5

6

7

8

9

10

11

14

15

16 17

18

19

20

21

22

23

2425

26

27

28

29

30

31

32

33

34

35

after completion of an approved barbering, cosmetology, or skin
 care apprenticeship program for a person licensed as an apprentice.

- 3 SEC. 9. Section 7365 of the Business and Professions Code is repealed.
  - SEC. 10. Section 7396 of the Business and Professions Code is amended to read:
  - 7396. The form and content of a license issued by the board shall be determined in accordance with Section 164.
    - The license shall prominently state that the holder is licensed as a barber, cosmetologist, esthetician, electrologist, or apprentice, and shall contain a photograph of the licensee.
- SEC. 11. Section 7423 of the Business and Professions Code is amended to read:
  - 7423. The amounts of the fees required by this chapter relating to licenses for individual practitioners are as follows:
  - (a) (1) A cosmetologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.
  - (2) A cosmetologist initial license fee shall not be more than fifty dollars (\$50).
  - (b) (1) An esthetician application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.
  - (2) An esthetician initial license fee shall not be more than forty dollars (\$40).
  - (c) (1) A barber application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.
  - (2) A barber initial license fee shall be not more than fifty dollars (\$50).
  - (d) (1) An electrologist application and examination fee shall be the actual cost to the board for developing, purchasing, grading, and administering the examination.
  - (2) An electrologist initial license fee shall be not more than fifty dollars (\$50).
- (e) An apprentice application and license fee shall be not more
   than twenty-five dollars (\$25).
- 38 (f) The license renewal fee for individual practitioner licenses 39 that are subject to renewal shall be not more than fifty dollars 40 (\$50).

-11- AB 193

(g) Notwithstanding Section 163.5 the license renewal delinquency fee shall be 50 percent of the renewal fee in effect on the date of renewal.

- (h) Any preapplication fee shall be established by the board in an amount sufficient to cover the costs of processing and administration of the preapplication.
- SEC. 3. Section 7316 of the Business and Professions Code is amended to read:
- 7316. (a) The practice of barbering is all or any combination of the following practices:
  - (1) Shaving or trimming the beard or cutting the hair.
- (2) Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand or mechanical appliances.
- (3) Singeing, shampooing, arranging, dressing, curling, waving, chemical waving, hair relaxing, or dyeing the hair or applying hair tonics.
- (4) Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.
- (5) Hairstyling of all textures of hair by standard methods that are current at the time of the hairstyling.
- (b) The practice of cosmetology is all or any combination of the following practices:
- (1) Arranging, dressing, curling, waving, machineless permanent waving, permanent waving, cleansing, cutting, shampooing, relaxing, singeing, bleaching, tinting, coloring, straightening, dyeing, applying hair tonics to, beautifying, or otherwise treating by any means, the hair of any person.
- (2) Massaging, cleaning, or stimulating the scalp, face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus or appliances, with or without the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (3) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (4) Removing superfluous hair from the body of any person by the use of depilatories or by the use of tweezers, chemicals, or preparations or by the use of devices or appliances of any kind or description, except by the use of light waves, commonly known as rays.

AB 193 — 12 —

(5) Cutting, trimming, polishing, tinting, coloring, cleansing, or manicuring the nails of any person.

- (6) Massaging, cleansing, treating, or beautifying the hands or feet of any person.
- (c) Within the practice of cosmetology there exist the specialty branches of skin care and nail care.
  - (1) Skin care is any one or more of the following practices:
- (A) Giving facials, applying makeup, giving skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person.
- (B) Beautifying the face, neck, arms, or upper part of the human body, by use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (C) Massaging, cleaning, or stimulating the face, neck, arms, or upper part of the human body, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.
- (2) Nail care is the practice of cutting, trimming, polishing, coloring, tinting, cleansing, manicuring, or pedicuring the nails of any person or massaging, cleansing, or beautifying from the elbow to the fingertips or the knee to the toes of any person.
- (d) The practice of barbering and the practice of cosmetology do not include any of the following:
  - (1) The mere sale, fitting, or styling of wigs or hairpieces.
- (2) Natural hair braiding. Natural hair braiding is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include haircutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (3) Threading. Threading is a technique that results in removing hair by twisting thread around unwanted hair and pulling it from the skin and the incidental trimming of eyebrow hair.
- (4) Shampooing hair. However, before a person who does not hold a barbering or cosmetology license shampoos the hair of another person, the unlicensed person shall disclose verbally or in writing to the other person that they do not hold a barbering or cosmetology license.

-13- AB 193

- (5) Applying makeup. However, before a person who does not hold a barbering or cosmetology license applies makeup to another person, the unlicensed person shall disclose verbally or in writing to the other person that they do not hold a barbering or cosmetology license.
- (e) Notwithstanding paragraph (2) of subdivision (d), a person who engages in natural hairstyling, which is defined as the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practices of barbering or cosmetology, is subject to regulation pursuant to this chapter and shall obtain and maintain a barbering or cosmetology license as applicable to the services respectively offered or performed.
- (f) Electrolysis is the practice of removing hair from, or destroying hair on, the human body by the use of an electric needle only.
- 17 "Electrolysis" as used in this chapter includes electrolysis or thermolysis.
- 19 SEC. 12.

1

4

5

6

10

11

12

13

14

15

16

25

26

27

28

- 20 SEC. 4. Section 19010.1 of the Business and Professions Code 21 is repealed.
- 22 SEC. 13.
- 23 SEC. 5. Section 19011 of the Business and Professions Code is amended to read:
  - 19011. "Manufacturer" means a person who, either by themselves or through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, using either new or secondhand material.
  - SEC. 14.
- 30 SEC. 6. Section 19017 of the Business and Professions Code is amended to read:
- 32 19017. "Owner's material" means any article or material 33 belonging to a person for their own, or their tenant's use, that is 34 sent to any manufacturer or bedding renovator or used in repairing 35 or renovating.
- 36 SEC. 15.
- 37 SEC. 7. Section 19051 of the Business and Professions Code is amended to read:
- 39 19051. Every upholstered-furniture retailer, unless the person holds an importer's license, a furniture and bedding manufacturer's

AB 193 —14—

license, a wholesale furniture and bedding dealer's license, or a
retail furniture and bedding dealer's license, shall hold a retail
furniture dealer's license.

- (a) This section does not apply to a person whose sole business is designing and specifying for interior spaces, and who purchases specific amenable upholstered furniture items on behalf of a client, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer. This section does not apply to a person who sells "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2.
- (b) This section does not apply to a person who is licensed as a home medical device retail facility by the State Department of Health Services, provided that the furniture is purchased from an appropriately licensed importer, wholesaler, or retailer.

SEC. 16.

SEC. 8. Section 19052 of the Business and Professions Code is repealed.

18 SEC. 17.

4

5

10

11

12 13

14

15

16 17

19

20

21

22

23

2425

26

27

28

29

30

31

32

33

34

35

- SEC. 9. Section 19059.5 of the Business and Professions Code is amended to read:
- 19059.5. Every sanitizer shall hold a sanitizer's license unless the person is licensed as a home medical device retail facility by the State Department of Health Services or as an upholstered furniture and bedding manufacturer, retail furniture and bedding dealer, or retail bedding dealer.

SEC. 18.

- SEC. 10. Section 19060.6 of the Business and Professions Code is amended to read:
- 19060.6. Every person who, on their own account, advertises, solicits, or contracts to manufacture upholstered furniture or bedding, and who either does the work themselves or has others do it, shall obtain the particular license required by this chapter for the particular type of work that the person solicits or advertises that the person will do, regardless of whether the person has a shop or factory.

36 SEC. 19.

- 37 SEC. 11. Section 19170 of the Business and Professions Code is amended to read:
- 39 19170. (a) The fee imposed for the issuance and for the 40 biennial renewal of each license granted under this chapter shall

\_15\_ AB 193

be set by the chief, with the approval of the director, at a sum not more nor less than that shown in the following table:

3
4
5

1 2

	Maximum	Mınımum
	fee	fee
Importer's license	\$940	\$120
Furniture and bedding manufacturer's		
license	940	120
Wholesale furniture and bedding		
dealer's license	675	120
Supply dealer's license	675	120
Sanitizer's license	450	80
Retail furniture and bedding dealer's license	300	40
Retail furniture dealer's license	150	20
Retail bedding dealer's license	150	20

- (b) Individuals who, in their own homes and without the employment of any other person, make, sell, advertise, or contract to make pillows, quilts, quilted pads, or comforters are exempt from the fee requirements imposed by subdivision (a). However, these individuals shall comply with all other provisions of this chapter.
- (c) Retailers who only sell "used" and "antique" furniture as defined in Sections 19008.1 and 19008.2 are exempt from the fee requirements imposed by subdivision (a). Those retailers are also exempt from the other provisions of this chapter.
- (d) A person who makes, sells, or advertises upholstered furniture and bedding as defined in Sections 19006 and 19007, and who also makes, sells, or advertises furniture used exclusively for the purpose of physical fitness and exercise, shall comply with the fee requirements imposed by subdivision (a).
- (e) A person who has paid the required fee and who is licensed as an upholstered furniture and bedding manufacturer under this chapter shall not be required to additionally pay the fee for a sanitizer's license.

SEC. 20.

SEC. 12. Section 110371 of the Health and Safety Code is amended to read:

AB 193 -16-

7

8

9

10

11

12 13

14 15

16

1 110371. (a) A professional cosmetic manufactured on or after July 1, 2020, for sale in this state shall have a label affixed on the container that satisfies all of the labeling requirements for any other cosmetic pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301, et seq.), and the federal Fair Packaging and Labeling Act (15 U.S.C. Sec. 1451, et seq.).

- (b) The following definitions shall apply to this section:
- (1) "Ingredient" has the same meaning as in Section 111791.5.
- (2) "Professional" means a person that has been granted a license by the State Board of Barbering and Cosmetology to practice in the field of cosmetology, barbering, or esthetics.
- (3) "Professional cosmetic" means a cosmetic product as it is defined in Section 109900 that is intended or marketed to be used only by a professional on account of a specific ingredient, increased concentration of an ingredient, or other quality that requires safe handling, or is otherwise used by a professional.

## **Introduced by Assembly Member Low**

February 14, 2019

An act to add Section 101.1 to the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 613, as introduced, Low. Professions and vocations: regulatory fees.

Exiting law establishes the Department of Consumer Affairs, which is comprised of boards that are established for the purpose of regulating various professions and vocations, and generally authorizes a board to charge fees for the reasonable regulatory cost of administering the regulatory program for the profession or vocation. Existing law establishes the Professions and Vocations Fund in the State Treasury, which consists of specified special funds and accounts, some of which are continuously appropriated.

This bill would authorize each board within the department to increase every 4 years any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index for the preceding 4 years, subject to specified conditions. The bill would require the Director of Consumer Affairs to approve any fee increase proposed by a board except under specified circumstances. By authorizing an increase in the amount of fees deposited into a continuously appropriated fund, this bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

 $AB 613 \qquad \qquad -2-$ 

1 2

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

SECTION 1. Section 101.1 is added to the Business and Professions Code, to read:

- 101.1. (a) Notwithstanding any other law, no more than once every four years, any board listed in Section 101 may increase any fee authorized to be imposed by that board by an amount not to exceed the increase in the California Consumer Price Index, as determined pursuant to Section 2212 of the Revenue and Taxation Code, for the preceding four years in accordance with the following:
- (1) The board shall provide its calculations and proposed fee, rounded to the nearest whole dollar, to the director and the director shall approve the fee increase unless any of the following apply:
- (A) The board has unencumbered funds in an amount that is equal to more than the board's operating budget for the next two fiscal years.
- (B) The fee would exceed the reasonable regulatory costs to the board in administering the provisions for which the fee is authorized.
- (C) The director determines that the fee increase would be injurious to the public health, safety, or welfare.
- (2) The adjustment of fees and publication of the adjusted fee list is not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) of the Government Code.
- (b) For purposes of this section, "fee" includes any fees authorized to be imposed by a board for regulatory costs. "Fee" does not include administrative fines, civil penalties, or criminal penalties.

## **Introduced by Assembly Member Low**

February 19, 2019

An act to amend Section 4945 of the Business and Professions Code, relating to healing arts.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 778, as introduced, Low. Acupuncture: continuing education. Existing law establishes the Acupuncture Board to administer and enforce the Acupuncture Licensure Act and requires each acupuncturist to complete 50 hours of continuing education every two years. Existing law requires a provider of continuing education to apply to the board for approval to offer continuing education courses and to be monitored by the board.

This bill would require the board to establish, by regulation, a procedure for identifying acceptable providers of continuing education courses and would require all providers of continuing education to comply with the procedures established by the board. The bill would authorize the board to revoke or deny the right of a provider to offer continuing education coursework for failure to comply with specified provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 4945 of the Business and Professions
- 2 Code is amended to read:

 $AB 778 \qquad \qquad -2 -$ 

4945. (a) The board shall establish standards for continuing education for acupuncturists.

- (b) The board shall require each acupuncturist to complete 50 hours of continuing education every two years as a condition for renewal of his or her the acupuncturist's license. No more than five hours of continuing education in each two-year period may be spent on issues unrelated to clinical matters or the actual provision of health care to patients. A
- (c) The board shall establish, by regulation, a procedure for identifying acceptable providers of continuing education courses, and all providers of continuing education shall comply with procedures established by the board.
- (d) A provider of continuing education shall apply to the board for approval to offer continuing education courses for credit toward this the requirement under subdivision (b) on a form developed by the board, shall pay a fee covering the cost of approval and for the monitoring of the provider by the board board, and shall set forth the following information on the application:
  - (1) Course content.
  - (2) Test criteria.
- (3) Hours of continuing education credit requested for the course.
  - (4) Experience and training of instructors.
  - (5) Other information as required by the board.
- (6) That interpreters or bilingual instruction will be made available, when necessary.
- (e) The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with this section or any regulation adopted pursuant to this section.

<del>(e)</del>

(f) Licensees residing out of state or out of the country shall comply with the continuing education requirements.

34 <del>(d</del>

(g) Providers of continuing education shall be monitored by the board as determined by the board.

37 <del>(e</del>

(h) If the board determines that any acupuncturist has not obtained the required number of hours of continuing education, it may renew the acupuncturist's license and require that the deficient

-3- AB 778

1 hours of continuing education be made up during the following

- 2 renewal period in addition to the current continuing education
- 3 required for that period. If any acupuncturist fails to make up the
- 4 deficient hours and complete the current requirement of hours of
- 5 continuing education during the subsequent renewal period, then
- 6 his or her the acupuncturist's license to practice acupuncture shall
- 7 not be renewed until all the required hours are completed and
- 8 documented to the board.

## **Introduced by Assembly Member Low**

February 19, 2019

An act to amend Section 4961 of the Business and Professions Code, relating to healing arts.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 779, as introduced, Low. Acupuncture: place of practice.

Existing law establishes the Acupuncture Board to administer and enforce the Acupuncture Licensure Act and requires a person licensed to practice acupuncture in this state to register the licensee's place of practice, as specified. Existing law requires a licensee that changes the location of the licensee's place of practice to register the change within 30 days of making that change and authorizes the board to deny the renewal of licensure if a licensee fails to register that change.

This bill would additionally require a licensee that opens a new place of practice to register the new place of practice with the board in the same manner as described above for a change in the location of a licensee's place of practice and would also authorize the board to deny the renewal of licensure if a licensee fails to register the location of the new place of practice. The bill would also make other nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

AB 779 — 2 —

1 2

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

SECTION 1. 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 licensee shall register within 30 days after the date of his or her licensure. the licensee being licensed by the board.
- (b) An acupuncturist licensee shall post his or her a wall license issued by the board to the licensee in a conspicuous location in his or her the licensee's place of practice at all times. If an acupuncturist licensee has more than one place of practice, he or she the licensee shall obtain from the board a duplicate wall license for each additional location and post the duplicate wall license at each location.
- (c) Any-If a licensee-that opens a new place of practice or changes the location of his or her an existing place of practice practice, the licensee shall register each new location or change of location within 30 days of making that change. opening or changing the licensee's place of practice. In the event a licensee fails to-notify register a new location or change of location with 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 is a new location or whether there has been a change in the location of the licensee's place of practice and, if so, the date of that change. the location opened or changed. The board may accept that statement as evidence of the change of address.

## **Introduced by Assembly Member Low**

February 21, 2019

An act to amend Section 4935 of the Business and Professions Code, relating to healing arts.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1245, as introduced, Low. Acupuncture: advertising.

Existing law establishes the Acupuncture Board to administer and enforce laws in the Acupuncture Licensure Act and makes it a misdemeanor for any person who does not hold a current and valid license to practice acupuncture to advertise or otherwise represent that the person is practicing or engaging in the practice of acupuncture. Existing law provides that a person advertises or otherwise represents that the person is practicing or engaging in the practice of acupuncture by representing that the person is trained, experienced, an expert, or otherwise qualified to practice acupuncture, Asian Medicine, oriental medicine, or any other complementary or integrative medicine that involves acupuncture and is associated with an Asian subgroup.

This bill would additionally provide that a person advertises or otherwise represents that the person is practicing or engaging in the practice of acupuncture by representing that the person is trained, experienced, an expert, or otherwise qualified to practice any other traditional medicine that involves acupuncture and is associated with an Asian subgroup. By adding traditional medicine to the provision of what constitutes a person advertising or representing that the person engages in the practice of acupuncture, this bill would expand an existing crime and would, therefore, result in a state-mandated local program.

AB 1245 -2-

1 2

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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. 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 the person 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 the person 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,"

-3- AB 1245

or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she 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 traditional, 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 the person's 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. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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 XIIIB of the California Constitution.

## **Introduced by Senator Hill**

February 21, 2019

An act to amend Sections 800, 2221, and 2234 of, and to add Sections 805.8 and 2232.5 to, the Business and Profession Code, relating to healing arts.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 425, as introduced, Hill. Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct.

Existing law requires the Medical Board of California and specified other boards responsible for the licensure, regulation, and discipline of health care practitioners to separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board, including prescribed historical information for each licensee. Existing law makes the contents of any central file that are not public records confidential, except that the licensee or their counsel or a representative are authorized to inspect and have copies made of the licensee's complete file other than the disclosure of the identity of an information source. Existing law authorizes a board to protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material.

This bill would delete the specification that the summary be comprehensive.

Existing law establishes a peer review process for certain healing arts licentiates, as defined, and requires the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer

SB 425 — 2 —

or administrator of any licensed health care facility or clinic to report specified information, including the denial or revocation of staff privileges, as defined, for a medical disciplinary cause or reason, within 15 days of the denial or revocation to the relevant state licensing agency. Existing law makes a violation of this reporting requirement punishable by a civil fine.

This bill would require any health facility or clinic, administrator or chief executive officer of a health care service plan, or other entity that makes any arrangement under which a healing arts licensee is allowed to practice in or provide care for patients to report any allegation of sexual abuse or sexual misconduct made against a healing arts licensee to the relevant state licensing agency within 15 days of receiving the allegation and would require the relevant agency to investigate the circumstances underlying a received report. The bill would also require an employee or healing arts licensee that works in a health facility or clinic, health care service plan, or other entity with knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee to report to the relevant state agency having jurisdiction over the healing arts licensee and the administration of the health facility or clinic, health care service plan, or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct. The bill would make a willful failure to file the report by a health facility or clinic, health care service plan, or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation, as specified. The bill would also prohibit a person, including an employee or individual contracted or subcontracted to provide health care services, a health facility or clinic, a health care service plan, or other entity from incurring civil or criminal liability as a result of making a report.

The Medical Practice Act establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons.

The act authorizes the board to deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The act authorizes the board in its sole discretion to issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions.

This bill would require the board to disclose a probationary physician's and surgeon's certificate and the operative statement of -3-**SB 425** 

issues to an inquiring member of the public and to post the certificate and statement on the board's internet website for 10 years from issuance.

The act requires the board to take action against any licensee who is charged with unprofessional conduct and provides that unprofessional conduct includes the repeated failure by a certificate holder who is the subject of an investigation by the board, in the absence of good cause, to attend and participate in an interview by the board.

This bill would delete the condition that the failure to attend and participate in an interview by the board be repeated. The bill would also delete an obsolete provision.

The bill would authorize the board or its designee, upon receipt of information that the public health, safety, or welfare requires emergency action, to place a physician's and surgeon's certificate on suspension pending formal proceedings and would require the board to inform the licensee of the facts or conduct warranting the suspension. The bill would require the board to post reference to the emergency order of suspension on its internet website. The bill would authorize the holder of the suspended license to request a hearing for an interim suspension order and would specify how the hearing is to be conducted.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 800 of the Business and Professions Code is amended to read:
- 3 800. (a) The Medical Board of California, the California Board
- 4 of Podiatric Medicine, Podiatric Medical Board of California, the 5 Board of Psychology, the Dental Board of California, the Dental
- 6 Hygiene Board of California, the Osteopathic Medical Board of 7
- California, the State Board of Chiropractic Examiners, the Board
- 8 of Registered Nursing, the Board of Vocational Nursing and
- Psychiatric Technicians of the State of California, the State Board
- 10 of Optometry, the Veterinary Medical Board, the Board of
- 11 Behavioral Sciences, the Physical Therapy Board of California,
- 12 the California State Board of Pharmacy, the Speech-Language
- 13 Pathology and Audiology and Hearing Aid Dispensers Board, the
- 14 California Board of Occupational Therapy, the Acupuncture Board,
- 15 and the Physician Assistant Board shall each separately create and
- 16 maintain a central file of the names of all persons who hold a

SB 425 —4—

license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

- (1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.
- (2) Any judgment or settlement requiring the licensee or his or her the licensee's insurer to pay any amount of damages in excess of three thousand dollars (\$3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.
- (3) Any public complaints for which provision is made pursuant to subdivision (b).
- (4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licentiate pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.
- (5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.
- (b) (1) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.
- (2) If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.
- (3) Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board

\_5\_ SB 425

of California shall maintain complaints or reports as long as each board deems necessary.

2

23

24

25

26

27

28

29

30

31

32

33

34

37

38

- 3 (c) (1) The contents of any central file that are not public 4 records under any other provision of law shall be confidential 5 except that the licensee involved, or his or her the licensee's 6 counsel or representative, shall have the right to may inspect and 7 have copies made of his or her the licensee's complete file except 8 for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an 10 information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or 11 12 by providing a-comprehensive summary of the substance of the 13 material. Whichever method is used, the board shall ensure that 14 full disclosure is made to the subject of any personal information 15 that could reasonably in any way reflect or convey anything 16 detrimental, disparaging, or threatening to a licensee's reputation, 17 rights, benefits, privileges, or qualifications, or be used by a board 18 to make a determination that would affect a licensee's rights, 19 benefits, privileges, or qualifications. The information required to 20 be disclosed pursuant to Section 803.1 shall not be considered 21 among the contents of a central file for the purposes of this 22 subdivision.
  - (2) The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.
  - (3) Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.
  - (4) These disclosures shall effect no change in the confidential status of these records.
  - SEC. 2. Section 805.8 is added to the Business and Professions Code, to read:
- 35 805.8. (a) As used in this section, the following terms shall have the following meanings:
  - (1) "Agency" means the relevant state licensing agency with regulatory jurisdiction over a healing arts licensee listed in paragraph (3).

SB 425 -6-

(2) "Health care service plan" means a health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

- (3) "Healing arts licensee" or "licensee" means a licensee licensed under Division 2 (commencing with Section 500) or any initiative act referred to in that division. "Healing arts licensee" or "licensee" also includes a person authorized to practice medicine pursuant to Sections 2064.5, 2113, and 2168.
- (4) "Other entity" includes, but is not limited to, a postsecondary educational institution as defined in Section 66261.5 of the Education Code.
- (b) A health facility or clinic, the administrator or chief executive officer of a health care service plan, or other entity that makes any arrangement under which a healing arts licensee is allowed to practice in or provide care for patients shall file a report of any allegation of sexual abuse or sexual misconduct made against a healing arts licensee to the agency within 15 days of receiving the allegation of sexual abuse or sexual misconduct. An arrangement under which a licensee is allowed to practice in or provide care for patients includes, but is not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.
- (c) An employee or a healing arts licensee that works in any health facility or clinic, health care service plan, or other entity that subdivision (b) applies to who has knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee shall file a report with the agency that has regulatory jurisdiction over the healing arts licensee and the administration of the health facility or clinic, health care service plan, or other entity within 15 days of knowing about the allegation of sexual abuse or sexual misconduct.
- (d) A willful failure to file the report described in subdivision (b) shall be punishable by a fine not to exceed one hundred thousand dollars (\$100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the

\_7\_ SB 425

1 licensee regarding whom the report was or should have been filed. 2 If the person who is designated or otherwise required to file the 3 report under this section is a licensed physician and surgeon, the 4 action or proceeding shall be brought by the Medical Board of 5 California. If the person who is designated or otherwise required 6 to file the report required under this section is a licensed doctor of 7 podiatric medicine, the action or proceeding shall be brought by 8 the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the 10 Legislature. A violation of this subdivision may constitute 11 unprofessional conduct by the licensee. A person who is alleged 12 to have violated this subdivision may assert any defense available 13 at law. As used in this subdivision, "willful" means a voluntary 14 and intentional violation of a known legal duty.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

(e) Except as provided in subdivision (d), any failure to file the report described in subdivision (b) shall be punishable by a fine not to exceed fifty thousand dollars (\$50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file the report required under this section is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. If the person who is designated or otherwise required to file the report required under this section is a licensed doctor of podiatric medicine, the action or proceeding shall be brought by the Podiatric Medical Board of California. The fine shall be paid to that agency, but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars (\$50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether any person who is designated or otherwise required by law to file the report required under this section exercised due diligence despite the failure to file or whether the person knew or should have known that a report required under this section would not be filed; and whether there has been a prior failure to file a report required under this section. The amount of the fine imposed may also differ based on whether a health care

SB 425 —8—

facility or clinic is a small or rural hospital as defined in Section
 124840 of the Health and Safety Code.

- (f) A person, including an employee or individual contracted or subcontracted to provide health care services, a health facility or clinic, a health care service plan, or other entity shall not incur any civil or criminal liability as a result of making a report required by this section.
- (g) The agency shall investigate the circumstances underlying a report received pursuant to this section.
- SEC. 3. Section 2221 of the Business and Professions Code is amended to read:
- 2221. (a) The board may deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of his or her their license. The board board, in its sole discretion, may issue a probationary physician's and surgeon's certificate to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:
- (1) Practice limited to a supervised, structured environment where the licensee's activities shall be supervised by another physician and surgeon.
- (2) Total or partial restrictions on drug prescribing privileges for controlled substances.
  - (3) Continuing medical or psychiatric treatment.
  - (4) Ongoing participation in a specified rehabilitation program.
- (5) Enrollment and successful completion of a clinical training program.
  - (6) Abstention from the use of alcohol or drugs.
- (7) Restrictions against engaging in certain types of medical practice.
  - (8) Compliance with all provisions of this chapter.
  - (9) Payment of the cost of probation monitoring.
- (b) The board may modify or terminate the terms and conditions imposed on the probationary certificate upon receipt of a petition from the licensee. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board.

-9- SB 425

(c) The board shall deny a physician's and surgeon's certificate to an applicant who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.

- (d) An applicant shall not be eligible to reapply for a physician's and surgeon's certificate for a minimum of three years from the effective date of the denial of his or her their application, except that the board may, board, in its discretion and for good cause demonstrated, may permit reapplication after not less than one year has elapsed from the effective date of the denial.
- (e) The board shall disclose a probationary physician's and surgeon's certificate issued pursuant to this section and the operative statement of issues to an inquiring member of the public and shall post the certificate and statement on the board's internet website for 10 years from issuance.
- SEC. 4. Section 2232.5 is added to the Business and Professions Code, to read:
- 2232.5. (a) Notwithstanding any other law, the board or its designee, upon receipt of information that the public health, safety, or welfare requires emergency action, may place a physician's and surgeon's certificate on suspension pending formal proceedings in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). An emergency order of suspension shall be issued to the licensee informing the licensee of the facts or conduct warranting the emergency suspension, pending an investigation. A reference to the emergency order of suspension shall be posted on the board's internet website.
- (b) Upon placement of the physician's and surgeon's certificate on emergency suspension pursuant to this section, the holder of the certificate may request a hearing for an interim suspension order, which shall be held within 180 days of the certificate holder's request. The hearing shall be conducted in accordance with Section 11529 of the Government Code.
- SEC. 5. Section 2234 of the Business and Professions Code is amended to read:
- 39 2234. The board shall take action against any licensee who is 40 charged with unprofessional conduct. In addition to other

-10

provisions of this article, unprofessional conduct includes, but is not limited to, the following:

- (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
  - (b) Gross negligence.

- (c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.
- (1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.
- (2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.
  - (d) Incompetence.
- (e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.
- (f) Any action or conduct that would have warranted the denial of a certificate.
- (g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

<del>(h)</del>

(g) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



# **Acupuncture Board Regulatory Update**

Updated: March 18, 2019

The table below is a list of the Board's regulations proposed for rulemaking packages in the 2019 calendar year. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action. Due date reflects the final due date when regulatory filing is anticipated to be submitted for rulemaking to Office of Administrative Law (OAL).

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

	Pending regulations							
	Subject	Title 16, California Code of Regulations (CCR) Section referred	Date of original authorizing vote / subsequent vote	Current Status	Due Dates / Anticipated Filing Date			
1	AB 2138: Denial of Application, Revocation or Suspension of Licensure for a Criminal Conviction	Adopt new Sections: • 1399.469.4 • 1399.469.5 • 1399.469.6	Scheduled for 3/29/19	Regulatory language drafted and scheduled for Board review at 3/29/19 meeting	August 2019			
2	SB 1441: Implement Uniform Standards Related to Substance Abusing Licensees and Update of Disciplinary Guidelines	Amend existing Section 1399.469	Scheduled for 3/29/19	Board approved text and Guidelines at 2/24/2017 public meeting. Revised package to be presented to the Board at the 3/29/19 meeting	August 2019			
3	SB 1448: Disclosure of Probation Status to Patients	Section 1399.469 (Implementation through Disciplinary Guidelines)	Scheduled for 3/29/19	Standard probation condition drafted and incorporated into the revised Disciplinary Guidelines to be presented to the Board at the 3/29/19 meeting	August 2019			
4	SB 1246: Align Curriculum Standards and Approval Related Regulations with the Statutes	Amend existing Sections: • 1399.434 • 1399.435 • 1399.438 • 1399.439	TBD	Staff has identified the problematic language and is drafting amendments to take to the Board for approval	December 2019			

5	AB 2190: Application Process, Criteria, and Procedures for Approval of a Credential Evaluation Service	Amend existing Sections:  1399.411 1399.413 1399.414 1399.415 1399.416 Adopt new Sections: 1399.416.1 1399.416.2	TBD	Regulatory language has been drafted and is under review.	December 2019
---	---	--	-----	---	---------------



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov

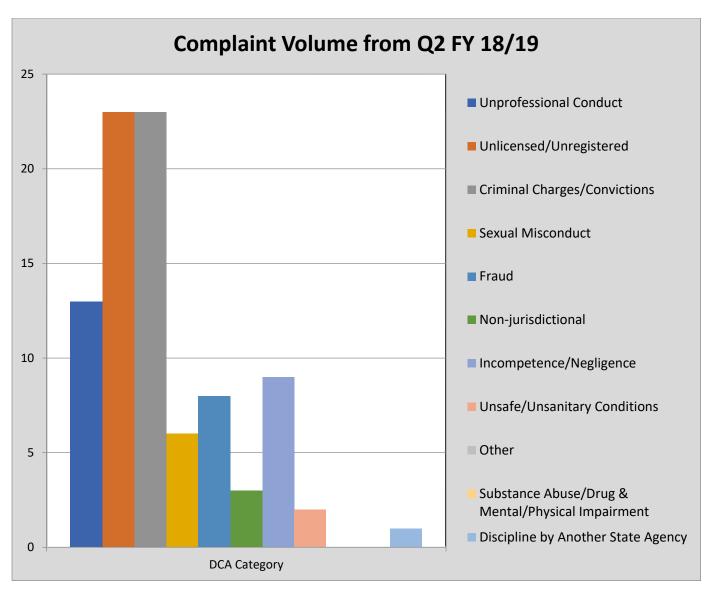


DATE	March 29, 2019
ТО	Board Members
FROM	Cricket Borges, Enforcement Coordinator
SUBJECT	Enforcement Update for Quarter (Q2) FY 2018/2019: October 1, 2018 to December 31, 2018

# **COMPLAINTS/CONVICTIONS & ARRESTS**

DCA Category	Received	Closed/Referre d to Investigation		
Unprofessional Conduct	13	13		
Unlicensed/Unregistered	23	23		
Criminal Charges/Convictions*	23	23		
Sexual Misconduct	6	7		
Fraud	8	9		
Non-jurisdictional	3	3		
Incompetence/Negligence	9	8		
Unsafe/Unsanitary Conditions	2	3		
Other	0	0		
Substance Abuse/Drug & Mental/Physical Impairment	0	0		
Discipline by Another State Agency	1	1		
Total	88	90		
Average Intake Time: 3 days				

\*Of the 23 Criminal Charges/Convictions, 18 were received on Applicants and 5 were received on Licensees.

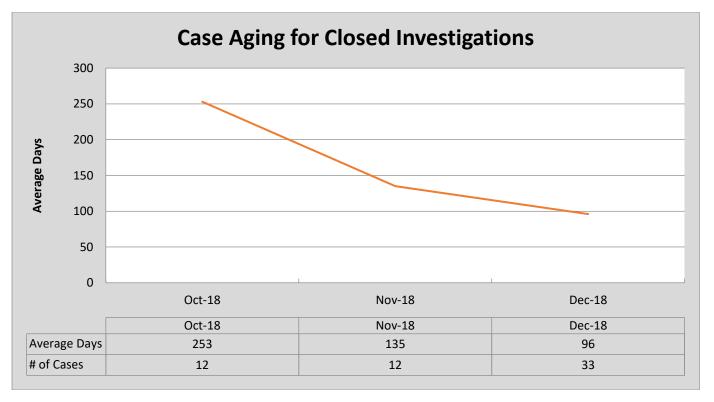


The graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

#### **INVESTIGATIONS**

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

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	13	30	2
Unlicensed/Unregistered	23	28	19
Criminal Charges/Convictions (includes pre-licensure)	23	17	23
Sexual Misconduct	7	14	2
Fraud	9	22	4
Non-jurisdictional	3	2	3
Incompetence/Negligence	8	36	3
Unsafe/Unsanitary Conditions	3	8	0
Other	0	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	1	0	1
Total	90	157	57
Average days			138



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

#### **DISCIPLINARY ACTIONS**

Requested	2
Pending	18
Accusation/SOI Filed	4
Decisions	0
Revoked	0
<ul> <li>Voluntary Surrender</li> </ul>	0
Probation	0
License Denied	0
Public Reprimand	0
Avg. Overall Process	
Time	0 days*
Citations Issued	19
Open Probation Cases	37

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

#### **QUARTER 2 FY 18/19 TREND ANALYSIS**

### **Complaint Trends**

This quarter's data is better understood when we use last year's FY 17/18 quarter 2 (Q2) 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 Q2 is comparable to last year's Q2; last year the Board received 79 complaints and this year the Board received 88 complaints. Since last year, the Board has seen an increase in complaints received in Q2. The only notable changes in the types of complaints received were found in unlicensed/unregistered complaints, which increase from 4 to 23; however, unprofessional conduct complaints had a downturn from 20 to 13. The other complaint types only had slight differences from last year's Q2 to this year's Q2.

# **Investigation Trends**

Investigation statistics look more favorable than the prior quarter, Q2 of fiscal year 17/18. Additionally, when compared with last year's Q2, there were some less favorable trends as well. The total investigations pending at the close of Q2 this year is 3.5% lower than last year. Last year there were 163 investigations pending whereas this year there were 157 investigations pending. The total investigations closed decreased slightly by 17% with 69 investigations closed last year to 57 investigations closed this year. However, the average time to close an investigation decreased by 20%, with last year's Q2 averaging 173 days and this year's Q2 averaging 138 days. This is a continued 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 33% decrease in complaints referred to the Office of the Attorney General for discipline, going from three complaints referred last year's Q2 to two complaints referred this year's Q2. However, there has been an increase in Accusations and Statement of Issues filed this year, going from zero 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 11 cases pending last year whereas this year there were 18 pending cases, which is a 63% increase. The increased pending cases is a direct result of the higher number of overall complaints referred to the Attorney General's Office this year. The average overall process time for decisions is a 100% decrease comparable to last year's, with 479 days from complaint to discipline to this year's 0 days because there weren't any pending cases closed during this quarter. The Board is meeting its performance measure target in this area.

# ACUPUNCTURE BOARD'S TOP 10 VIOLATIONS LEADING TO ENFORCEMENT ACTIONS

The following are the most frequent violations in rank order from the fiscal years 2016-17 and 2017-18 based upon the incidence of complaints received that have resulted in administrative citations or disciplinary actions. Please refer to the **Laws and Regulations Relating to the Practice of Acupuncture** for all requirements.

#### 1. CONVICTIONS AND ARRESTS:

- Multiple DUIs
- Sexual battery or assault
- · Insurance or health care fraud

#### 2. UNLAWFUL PRACTICE OF ACUPUNCTURE:

- Delinquent or cancelled licensees still in practice
- Advertising acupuncture or specialist without a valid license
- Dry needling or acupuncture performed by unlicensed individuals
- Unlicensed individual owning an acupuncture business or corporation

#### 3. FAILURE TO REGISTER AN ADDRESS CHANGE:

- Moved residence without notifying the board
- Moved practice without notifying the board

#### 4. UNREGISTERED PRACTICE LOCATION/DISPLAY OF LICENSE:

- Failure to register one or all practice locations
- Failure to properly display wall license

#### 5. **NEGLIGENCE/INCOMPETENCE:**

Failure to remove needles from patient after treatment

- Caused adverse reaction (burns, bruising, etc.)
- Practicing beyond scope of practice
- Needling through clothing

#### **6. MALPRACTICE SETTLEMENTS:**

- Pneumothorax
- Burns/blisters

#### 7. SEXUAL MISCONDUCT:

- Inappropriate touching
- Romantic relationship with a patient
- Improper draping and exposure of body parts

#### 8. FAILURE TO FOLLOW INFECTION CONTROL:

- Improper disposal of needles
- Failure to sterilize instruments
- Unclean and unsanitary conditions

#### 9. DISCIPLINE BY PUBLIC AGENCY:

 Revocation or probation of other healing arts license (in-state and out-of-state)

#### 10. FAILURE TO NOTIFY BOARD OF FALSE/ASSUMED NAME:

 Use of nickname or AKA different from licensed name without notifying the board

Please note, this material is for informational purposes only, is general in nature, and is not intended to and should not be relied upon or construed as legal advice regarding any specific issue or factual circumstance.









1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 29, 2019
TO	Board Members
FROM	Jay Herdt – Licensing Manager
SUBJECT	Education Report for Q1 and Q2 18/19 FY (July 1, 2018 – December 31, 2018)

# **Acupuncture Training Programs:**

There are currently 35 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:

28 programs are in full compliance:

- Academy of Chinese Culture and Health Sciences, in Oakland, CA
- Acupuncture and Integrative Medicine College, Berkeley, CA (MAIM)
- Acupuncture and Integrative Medicine College, Berkeley, CA (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)
- College of Eastern Medicine at Southern California University of Health Science, Whitter, CA (DACM)
- 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
- 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 remaining seven 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
- Southwest Acupuncture College Boulder, CO

There are currently three 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, Whitter, CA DACM
- University of Bridgeport Acupuncture Institute, Bridgeport CT DTCM

Southern California University, School of Oriental Medicine and Acupuncture, Los Angeles, CA (SCUSOMA) program ceased operations in December 2018 forfeiting Board curriculum approval status.

# **New Applications for Board Approval of Curriculum:**

The Board has received a total of two Applications for Board Approval of Curriculum in Q2 FY 18-19.

Curriculum Applications are currently under review for:

- The American College of Traditional Chinese Medicine at California Institute of Integral Studies, for their Doctorate Acupuncture and Chinese Medicine (DACM) program.
- Five Branches University Santa Cruz and San Jose campuses, for their Doctorate of Traditional Chinese Medicine (DTCM) program.

These applications have exceeded the statutorily mandated 30-day statutory reporting requirement. This is due to a temporary staff vacancy and is anticipated to be temporary backlog. Both applications are from programs with existing approved curriculum in their master's programs that is either identical or imbedded within the applicant doctoral program's curriculum. Students completing these programs will have met the curriculum requirements enabling these students to qualify for the California Acupuncture Licensing Exam (CALE).

To apply for curriculum-change approvals after January 1, 2017, education and training programs are required to complete the Application for Board Approval of Curriculum. Programs have averaged three application submissions to reach full compliance.

Whitewater Institute of CA, in Cupertino, CA, has received curriculum approval for FY 18/19 Q1 after demonstrating full compliance with the Board's requirements:

However, Whitewater Institute currently only meets one of the three requirements 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.

BPC § 4927.5 (a)(3):

Accreditation status from the Accreditation Commission for Acupuncture and Oriental Medicine

The loss of any of these three requirements results in a program's inability to qualify applicants for the CALE.

### **Continuing Education (CE) Audit Update:**

The Continuing Education Unit is progressing through the FY 15/16 CE audit process To date; 16 months of CE Audit letters have been processed, with November 30, 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.

#### **Continuing Education Update**

- 1,595 CE Course applications processed in Q1-Q2 FY 18-19.
- 588 CE Providers with a current and valid approval status.

### **Tutorial Program Update:**

There are currently 45 active tutorials in progress.

- Tutorial training statistics for Q1, Q2 FY 18-19:
  - Five programs completed
  - o Five new tutorial program approvals
  - Two programs terminated



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 28, 2019
ТО	Board Members
FROM	Jay Herdt – Licensing Manager
SUBJECT	Update on Computer-Based Testing for the California Acupuncture Licensing Exam

On October 1, 2018, the California Acupuncture Board went live with Computer Based Testing (CBT) for the California Acupuncture Licensing Exam (CALE).

The Office of Professional Exam Services (OPES) continues to develop the CALE and has assigned the Board a Project Manager that liaises the Board and the testing company, Psychological Services Incorporated (PSI).

Applications for Examination are now processed on a continuous basis. All approved applications with an exam fee accepted, are immediately submitted to PSI, allowing applicants to promptly schedule their exams. Exam testing locations are available six days a week at 17 sites in California and additional out-of-state exam testing locations. Aside from a few computer issues that have been fixed, the overall feedback from test takers completing the CALE in CBT format has been positive.

# Computer Based Testing Statistics (10/1/2018 - 3/16/2019)

- 309 total test takers
- Overall pass rate for this period: 82%
- Total number test takers and pass rate by language:
  - English Pass rate 78% [175 total, 136 passed, 39 failed]
     Chinese Pass rate 93% [83 total, 77 passed, 6 failed]
     Korean Pass rate 80% [51 total, 41 passed, 10 failed]
- Pass percentage for first time and re-takers:
  - o First-time Pass rate 90% [231 total, 208 passed]
  - o Re-taker Pass rate 59% [78 total, 46 passed]

# Reporting of CALE Pass Rates by Institution

The implementation of CBT on October 1, 2018 will allow for a 180-day California CALE statistics reporting, available in mid to late April 2019.

In the past, an exam would have been offered in August 2018. That testing would have allowed Board staff to prepare statistics for that exam to be available in October 2018. The Board plans to continue to offer CALE statistics twice a year, at 180-day intervals. The CALE statistics by training program will be prepared using an aggregate of test takers from:

- The period of 10/1/2018-3/31/2019
- The period of 4/1/2019-9/30/2019
- Every 180 days thereafter



#### 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

Ch. 995 -2-

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.

\_3 \_ Ch. 995

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.

Ch. 995 — 4 —

- (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.

\_5 \_ Ch. 995

- (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

Ch. 995 — 6 —

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.

\_7 \_ Ch. 995

- (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

Ch. 995 —8—

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

\_9 \_ Ch. 995

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:

Ch. 995 — 10 —

- (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:

-11- Ch. 995

- (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.

Ch. 995 — 12 —

- (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

—13— Ch. 995

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.



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 29, 2019
то	Board Members
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	AB 2138 Implementation of Substantial Relationship Criteria

Existing law (Business and Professions Code section 480) presently authorizes the Board to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. Likewise, Section 490 authorizes the Board to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession.

The Legislature's intent in enacting AB 2138 was "to reduce licensing and employment barriers for people who are rehabilitated." Section 480 was amended to restrict the Board's ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, the Board may not deny a license to an applicant because the applicant was convicted of a crime, or due to acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged.

#### Discussion

AB 2138 will permit the Board to deny a license when an applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of an acupuncturist and one of the following conditions exists:

- The conviction occurred within the seven years preceding the application date. This
  does not apply if the applicant was ever convicted of:
  - A serious felony under Penal Code section 1192.7
  - A registerable offense under Penal Code section 290
- The applicant is presently incarcerated for the crime
- The applicant was released from incarceration for the crime within the seven years preceding the application date.

AB 2138 also specified three criteria that the Board must consider when evaluating whether a crime is substantially related to acupuncture. The criteria shall include all of the following:

- The nature and gravity of the offense,
- The number of years elapsed since the date of the offense, and
- The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

#### Option #1

The proposed language incorporates the AB 2138 substantial relationship criteria. It is also expanded to included discipline under Business and Professions Code section 141, because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under this section. The proposed language also includes "professional misconduct" as this may be considered for denial under Business and Professions Code section 480.

#### Option #2

The proposed language incorporates the AB 2138 substantial relationship criteria. It is also expanded to included discipline under Business and Professions Code section 141, because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under this section. The proposed language also includes "professional misconduct" as this may be considered for denial under Business and Professions Code section 480.

This option also lists actual substantially related crimes, professional misconduct, and acts the Board has determined are cause for denial, suspension or revocation of a license. It also specifies the list of crimes, professional misconduct, and acts are included, but are not limited to just those listed. Therefore, the regulation does not serve as a comprehensive list.

#### Motion

#### Motion for Option #1

Approve the proposed regulatory text of Option #1 for Title 16, CCR section 1399.469.4, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

#### Motion for Option #1

Approve the proposed regulatory text as amended:

Of Option #1 for Title 16, CCR section 1399.469.4, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Motion for Option #2

Motion for Option #2

Approve the proposed regulatory text of Option #2 for Title 16, CCR section 1399.469.4, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

Approve the proposed regulatory text as amended:	

Of Option #2 for Title 16, CCR section 1399.469.4, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Acupuncture Board AB 2138 Implementation – Proposed Regulation for Substantial Relationship Criteria

Changes proposed are <u>underlined</u> to denote new text.

Adopt new Section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

# **OPTION NO. 1:**

# § 1399.469.4 Substantial Relationship Criteria.

- (a) For the purpose of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.
- (b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:
- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of an acupuncturist.

Note: Authority cited: Sections 481, 493, 4933, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 4955(b), 4955(b), 4955(j), and 4956, Business and Professions Code.

#### **OPTION NO. 2:**

#### § 1399.469.4 Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

- (b) In making the substantial relationship determination required under subdivision (a) for a crime, the board shall consider the following criteria:
- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of an acupuncturist.
- (c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include but are not limited to, the following:
- (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Acupuncture Licensure Act or other state or federal laws governing the practice of acupuncture.
- (2) A conviction of child abuse.
- (3) Conviction as a sex offender.
- (4) Any crime, professional misconduct, or act involving the sale, gift, administration, or furnishing of narcotics or dangerous drugs or dangerous devices, as defined in Section 4022 of the code.
- (5) Conviction for assault and/or battery.
- (6) Conviction of a crime involving lewd conduct.
- (7) Conviction of a crime involving fiscal dishonesty.
- (8) Conviction for driving under the influence of drugs or alcohol.

Note: Authority cited: Sections 481, 493, 4933, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 4955(b), 4955(b), 4955(j), and 4956, Business and Professions Code.



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 29, 2019
то	Board Members
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	AB 2138 Implementation of Rehabilitation Criteria for Denials

Existing law (Business and Professions Code section 482) required the Board to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. The Board may not deny an applicant a license based solely on a misdemeanor conviction if the applicant met the applicable requirements of the criteria of rehabilitation that the Board developed.

Effective July 1, 2020, Section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime, or on the basis of the facts underlying a conviction if the applicant made a showing of rehabilitation pursuant to Section 482.

In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant's rehabilitation pursuant to the process established in the Board's practice act, or its regulations, and as directed under Section 482.

The Board will need to adopt a regulation that establishes criteria for evaluating rehabilitation when deciding whether to deny a license based on a conviction. The Board will also need to decide whether an applicant or licensee "made a showing of rehabilitation," if the applicant completed the criminal sentence at issue without a violation of parole or probation, or the Board finds in applying its rehabilitation criteria, that the applicant is rehabilitated.

#### **Discussion**

#### Option # 1

The proposed regulation would require the Board to consider whether an applicant made a showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply a narrow set of rehabilitation criteria focused on the applicant's parole or probation and whether successful completion of parole or probation sufficiently demonstrates the applicant's rehabilitation. The Board would not be required to consider its standard

rehabilitation criteria and could find that the applicant made a sufficient showing of the rehabilitation based on the narrower set of criteria. However, if the Board determines that the requisite showing was not made, or the applicant did not comply with the terms of parole or probation, the proposed regulation would require the Board to apply its standard set of rehabilitation criteria to evaluate the applicant's rehabilitation.

# Option # 2

This proposed option would require the Board to find that the applicant made a showing of rehabilitation and is eligible for licensure, if the applicant completed the criminal sentence without a parole or probation violation. And if not, the Board would apply its standard rehabilitation criteria to determine whether the applicant made the requisite showing of rehabilitation.

#### Motion

### Motion for Option #1

Approve the proposed regulatory text of Option #1 for Title 16, CCR section 1399.469.5, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

### Motion for Option #1

Approve the proposed regulatory text as amended:					

Of Option #1 for Title 16, CCR section 1399.469.5, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Motion for Option #2

Approve the proposed regulatory text of Option #2 for Title 16, CCR section 1399.469.5, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Motion for Option #2

Approve the proposed regulatory text as amended:						

Of Option #2 for Title 16, CCR section 1399.469.5, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Acupuncture Board AB 2138 Implementation – Proposed Regulation for Criteria for Rehabilitation for Denials

Changes proposed are <u>underlined</u> to denote new text.

Adopt new Section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

#### OPTION NO. 1

#### § 1399.469.5 Criteria for Rehabilitation – Denial of Licensure.

- (a) When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:
- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason (s) for modification.
- (b) If subdivision (a) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 493, 4938, 4944, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.

# OPTION NO. 2

#### § 1399.469.5 Criteria for Rehabilitation – Denial of Licensure.

- (a) When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation.
- (b) If subdivision (a) is inapplicable, the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:
- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (b)(1) or (b)(2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.
Reference: Sections 480, 481, 482, 488, 493, 4938, 4944, 4955, 4955.1, 4955.2, and 4956, Business and Professions Code.



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 29, 2019
то	Board Members
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	AB 2138 Implementation of Rehabilitation Criteria for Suspensions and Revocations

Existing law (Business and Professions Code section 482) required the Board to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, and to consider evidence of rehabilitation in making such decisions. The Board may not deny an applicant a license based solely on a misdemeanor conviction if the applicant met the applicable requirements of the criteria of rehabilitation that the Board developed.

Effective July 1, 2020, Section 480 will prohibit the Board from denying a license on the basis that the applicant was convicted of a crime, or on the basis of the facts underlying a conviction if the applicant made a showing of rehabilitation pursuant to Section 482.

In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant's rehabilitation pursuant to the process established in the Board's practice act, or its regulations, and as directed under Section 482.

The Board will need to adopt a regulation that establishes criteria for evaluating rehabilitation when deciding whether to suspend or revoke a license based on a conviction. The Board will also need to decide whether an applicant or licensee "made a showing of rehabilitation," if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation, or the Board finds in applying its rehabilitation criteria, that the applicant or licensee is rehabilitated.

#### Discussion

# Option #1

The proposed regulation would require the Board to consider whether a licensee made a showing of rehabilitation if the person completed the applicable criminal sentence without a parole or probation violation. In this circumstance, the Board would apply a narrow set of rehabilitation criteria focused on the licensee's parole or probation and whether successful completion of parole or probation sufficiently demonstrates the licensee's rehabilitation. The Board would not be required to consider its standard rehabilitation

criteria and could find that the licensee made a sufficient showing of the rehabilitation based on the narrower set of criteria. However, if the Board determines that the requisite showing was not made, or the licensee did not comply with the terms of parole or probation, the proposed regulation would require the Board to apply its standard set of rehabilitation criteria to evaluate the licensee's rehabilitation.

### Option # 2

This proposed option would require the Board to find that the licensee made a showing of rehabilitation and is fit for licensure, if the licensee completed the criminal sentence without a parole or probation violation. And if not, the Board would apply its standard rehabilitation criteria to determine whether the licensee made the requisite showing of rehabilitation.

#### **Motion**

# Motion for Option #1

Approve the proposed regulatory text of Option #1 for Title 16, CCR section 1399.469.6, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

### Motion for Option #1

Approve the proposed regulatory text as amended:					

Of Option #1 for Title 16, CCR section 1399.469.6, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Motion for Option #2

Approve the proposed regulatory text of Option #2 for Title 16, CCR section 1399.469.6, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

///

# Motion for Option #2

Approve the proposed regulatory text as amended:						

Of Option #2 for Title 16, CCR section 1399.469.6, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

## Acupuncture Board AB 2138 Implementation – Proposed Regulation for Criteria for Rehabilitation for Suspensions or Revocations

Changes proposed are <u>underlined</u> to denote new text.

Adopt new Section under Article 6 Miscellaneous Provisions of Chapter 13.7 of Title 16 of the California Code of Regulations:

### **OPTION NO. 1:**

### § 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations.

- (a) When considering the suspension or revocation of a license on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:
- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for the modification.
- (b) If subdivision (a) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:
- (1) The nature and severity of the act(s) or crime(s).
- (2) The total criminal record.
- (3) The time that has elapsed since commission of the act(s) or crime(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.

- (6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.
- (7) Evidence, if any of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.

Reference: Sections 141, 480, 481, 482, 488, 493, 4955, 4955.1, 4955.2, and 4956,
Business and Professions Code.

### **OPTION NO. 2:**

### § 1399.469.6 Criteria for Rehabilitation – Suspensions or Revocations.

- (a) When considering the suspension or revocation of a license on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall find that the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation.
- (b) If subdivision (a) is inapplicable, the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:
- (1) The nature and severity of the act(s) or crime(s).
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for suspension or revocation under Section 490 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 482 and 4933, Business and Professions Code.

Reference: Sections 141, 480, 481, 482, 488, 493, 4955, 4955.1, 4955.2, and 4956,

Business and Professions Code.



1747 N. Market Blvd., Suite 180 Sacramento, CA 95834 P 916.515.5200 F 916.928.2204 www.acupuncture.ca.gov



DATE	March 29, 2019				
ТО	Board Members				
FROM	Kristine Brothers, Policy Coordinator				
SUBJECT	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 update of the Board's Disciplinary Guidelines (DGs). The Board last reviewed the regulation at the October 26, 2018 public meeting and suggested several changes, which are detailed below.

At the last meeting the biggest change that was presented to the Board was the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Uniform Standards) being combined as one document as opposed to two, which was the previous approach. Staff explained the benefits of it being a combined document and it was reviewed in its entirety.

Following this memo is the proposed regulation marked up to show the prior version (attachment A), a clean version of the proposed regulation as it would be submitted to Office of Administrative Law (OAL) (attachment B), and the proposed "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees – revised March 2019" document (attachment C). A clean copy of the document as it would be submitted to OAL (attachment D) has also been included. The proposed regulation has not been publicly noticed nor filed with OAL.

#### Action items for the Board:

- 1. Continued discussion, review, and possible adoption of proposed text for Title 16, CCR §1399.469. (attachment B).
- Continued discussion, review, and possible adoption of the proposed "Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees – revised March 2019" document incorporated by reference into CCR §1399.469 (attachment C).

### **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 DGs 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.

In 2008, the Uniform Standards, 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.

Accordingly, the Board is directed to implement these Uniform Standards, as required by Business and Professions Code (BPC) Section 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 proposing one combined document where both the required Uniform Standards and the DGs are merged, fulfilling the requirements of BPC Section 315.

Probation conditions labeled special terms and conditions have been proposed in the DGs for the implementation of the Uniform Standards to make those standards operational in a Decision and Order. Uniform Standards 11 and 12 are indicated to be administrative and do not require to be implemented through probation terms and conditions.

#### **Discussion:**

### Changes to the text of CCR §1399.469 (attachment B):

The amendments of CCR §1399.469 to implement the Uniform Standards have also been changed since the last Board meeting and are presented in attachment B. The prior amendments presented to the Board established a licensee as a substance abusing licensee through hearing, placing the burden on the Board to prove he or she is a substance abusing licensee. After further research and review, staff found this route less favorable. Additionally, at the last Board meeting, the Board requested that staff research the option of establishing a licensee as a substance abusing licensee through a clinical diagnostic evaluation as a condition precedent.

After conducting research of all 20 healing arts boards and bureaus, it was discovered there are three options that result in a finding that a licensee is a substance abusing licensee within the meaning of the statute, and, trigger the application of the Uniform Standards. Staff reviewed the following three options:

Option #1 – creates a rebuttable presumption that the licensee is a substance-abusing licensee. Once grounds are established that involve drugs or alcohol, the licensee is

considered to be a substance abuser unless evidence rebuts that presumption (e.g. sobriety for a certain number of years);

Option #2 – allows for a determination to be made after a clinical diagnostic evaluation that the licensee is a substance-abusing licensee;

Option #3 – requires the Board to prove at the hearing that the licensee is a substance abuser.

Staff's research found nine boards implemented the Uniform Standards through rulemaking. Of the nine, only one board used Option #3, three boards used Option #2, and five boards used Option #1. Staff chose to propose implementation of Option #1 to create a presumption that the licensee is a substance-abusing licensee which in turn will give notice to the licensee that they have the burden of rebutting that presumption. This option also aligns with the favored option among the other boards.

Option #2 was rejected because it relies on a clinical diagnostic evaluation which may create a lack of clarity and be problematic for an ALJ when faced with a violation that involves drugs and/or alcohol when sufficient rehabilitation has been provided by the licensee. Option #3 was rejected due to the obligation of the Board having to prove that a licensee is a substance abuser which may be difficult to prove.

Any of the three options considered would not impact the content of each standard once it is applied, however, staff believes option #1 is the most reasonable option as it puts everyone on notice before the hearing so the licensee is given the option to present evidence to rebut that presumption. If the presumption is not rebutted, then the special conditions (uniform standards) will be applied if probation is ordered.

## Changes to the 'Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees', incorporated by reference into CCR §1399.469 (attachment C):

The Board reviewed the DGs at the October 26, 2018 public meeting and suggested some revisions and additional research, which are reviewed below. Additionally, staff and Legal Counsel have also recommended changes. Within the DGs attachment, all additions to the 1996 Guidelines are <u>underlined</u>, and deletions are <u>struck through</u>. Additions or deletions made by the Board and staff since the October 2018 meeting are <u>highlighted in yellow</u>.

Throughout the document, anywhere a number of days appears has been uniformly changed to the number in parenthesis with the number written out per the direction of the Board. The page numbers on the table of contents, violation index, and throughout the document, are not final due to edits being made by the Board and staff.

### Introduction (Page 4):

The description for the third condition type, special conditions, was modified to remove reference to the previous text of CCR §1399.469 and was replaced with the new proposed rebuttable presumption language.

The Board requested that the direction regarding sex offender registrants be moved to another more appropriate location of the DGs. The section was moved under the Terms and Conditions part of the DGs under BPC §4955(b). Staff indicates that this part of the DGs is more relevant because this section involves licensees who are sex offenders who are subject to discipline under BPC §4955(b), for having sustained a substantially related conviction.

### General Considerations (Page 6):

Staff is proposing moving this section further into the document after the Recommended Language for Cost Recovery for Surrenders section on page 11. This would place General Considerations at the start of a series of sections that pertain to rehabilitation and aggravating considerations. The placement will provide greater clarity to the reader.

### Terms and Conditions (Page 7):

Board requested that this section be restored. Additionally, language was modified to remove reference to the previous text of CCR §1399.469 when explaining when special conditions will apply. The new rebuttable presumption language was put in its place.

### • <u>List of Terms and Conditions (Page 8):</u>

The list of terms and conditions was reformatted so each type of condition is clearly labeled.

#### Accusations, Statement of Issues, Stipulated Settlements (Page 9):

This section was moved up towards the beginning of the document in a more logical placement.

### General Considerations (Page 12):

Board requested that staff review the General Considerations, Evidence of Mitigation, and Evidence of Aggravation sections to see if the sections could be consolidated. Four of the 13 general factors to consider were removed or edited after review. These four factors were already included in the Evidence of Aggravation and Criteria of Rehabilitation sections.

### Substantial Relationship Criteria (Page 13):

Staff added this section for the implementation of AB 2138. The proposed section of the DGs is identical to the text of Option #1 of the proposed Substantial Relationship Criteria regulation also being brought to the Board for approval today.

### Criteria of Rehabilitation (Pages 14-16):

Staff added this section for the implementation of AB 2138. The proposed section of the DGs is identical to the text of Option #1 of the proposed Criteria of Rehabilitation for Denials and Criteria of Rehabilitation for Suspensions and Revocations regulations also being brought to the Board for approval today. This section was previously proposed to

read Demonstration of Rehabilitation. It had a list of considerations for the Board to consider when evaluating rehabilitation. This list is proposed to be removed because it's redundant of the AB 2138 language. AB 2138 language is statutorily mandated; therefore, such criteria should replace anything the Board previously had or was proposing.

### Examples of Evidence of Rehabilitation for Petitioners (Pages 16-17):

A subsection that was part of the originally proposed Demonstrations of Rehabilitation section has been moved to the Reinstatement/Penalty Relief Hearings section where it is more applicable.

### • Reinstatement/Penalty Relief Hearings (Pages18-19):

This section was moved to this new logical location of the document where it fits within all of the other criteria and evidence of rehabilitation/aggravation sections of the document.

### Standard Terms and Conditions (Pages 25-30):

Per the direction of the Board, staff has moved the standard terms and conditions section up in the document prior to the listing of optional and special terms and conditions.

### • #6 Tolling of Probation (Page 26):

Board requested that staff research other Boards to see alternative probation conditions that also addressed tolling one's probation when they are in-state not practicing. Staff reviewed probation terms from four other Boards and favored the tolling conditions from the Chiropractic Board of Examiners and the Board of Psychology.

The proposed standard condition has clear language that outlines the circumstance in which a probationer will be tolled when out-of-state or in-state not practicing. It defines what constitutes non-practice and solves the problem faced by Enforcement when licensees remain in tolled status for years.

The proposed condition states that probationers cannot remain in tolled status for more than two years and it constitutes a violation of probation when the two years is exceeded. Additionally, the proposed condition excludes cost recovery as part of the tolling terms and requires that probationers keep up on their cost recovery even when tolled.

Finally, the title of the tolling condition was changed from Tolling for Out-of-State Practice or Residence to Tolling of Probation so it is broader to encompass the two situations in which probation is tolled.

### #14 Disclosure of Probation Status (page 29):

This is a new proposed standard condition that is implementing the changes from SB 1448 which will go into effect on July 1, 2019 under Section 4962. SB 1448 requires that all probationers provide written disclosure to all patients or their surrogate that they are on probation and the disclosure must contain the following: respondent's probation status; length of probation; probation end date; all practice restrictions imposed by the

probation order; the Board's telephone number; and explanation of how the patient can find further information on Respondent's probation by running a license verification on the Board's web site. This proposed condition also provides the deadline and logistical requirements to make this condition operational.

### #27 Alcohol and Drug Abuse Treatment Program (Page 37):

The note was modified to remove the reference to the previous text of CCR §1399.469 and replace it with a reference to the current proposed text.

• #28 Abstain from Drugs and Alcohol and Submit to Tests and Samples (Page 39):

The note was modified to remove the reference to the previous text of CCR §1399.469 and replace it with a reference to the current proposed text.

#29 Attend Chemical Dependency Support and Recovery Groups (Page 39):

The note was modified to remove the reference to the previous text of CCR §1399.469 and replace it with a reference to the current proposed text.

### Special Terms and Conditions (Page 48):

Staff removed the sub header: standard language to be included in every probationary order for substance-abusing licensees, as it was confusing to the reader to state standard. It was also removed for consistency since none of the other standard and optional terms and conditions have sub headers.

The introduction to the Special Terms and Conditions section was modified. Existing language that matched the text of the previous regulation was removed and language was added to match the current proposed text of CCR §1399.469 reflecting the rebuttable presumption route of establishing a licensee as a substance abuser. Instruction specifying that some Uniform Standards are discretionary, therefore, not required, was also added.

### • #35 Clinical Evaluations and Reports (Page 49):

The note at the end of the term was modified to indicate clinical diagnostic evaluations and treatment programs are discretionary. It was also indicated cease practice orders are mandatory if an evaluation is ordered.

• #36 Notice of Employer or Supervisor Information (Page 51):

The note at the end of the term was modified to indicate this standard is mandatory.

• #37 Biological Fluid Testing (Page 51):

The note at the end of the term was modified to indicate drug testing is mandatory.

#38 Substance Abuse Support Group Meetings (Page 54):

The note at the end of the term was modified to indicate facilitated support group meetings are discretionary and Optional Term #28, non-facilitated support group meetings may also be ordered.

### • #39 Worksite Monitor for Substance Abusing Licensee (Page 54):

The note at the end of the term was modified to indicate the worksite monitor standard is discretionary.

### Index of Violations (Pages 59-60):

This section was moved to this more logical location of the document right before the Recommended Action by Violation section.

### Recommended Action by Violation (Pages 61-72):

Terms and their numbers were updated throughout this section based upon the reordering and addition of new terms and conditions since the last update.

### Business and Professions Code Section 4935 (Pages 66-67):

All three subdivisions of BPC §4935 were added into the Recommended Action by Violation section of the document per the direction of the Board. It was initially recommended by Board Legal Counsel to include this law in the DGs since there is the potential a licensee could be administratively charged with violating this Section. Maximum and minimum penalties were identified, as well as conditions to apply if the licensee is placed on probation.

### Business and Professions Code Section 4955(a) (Pages 66-67):

The description or title of this Section was shortened to be consistent with the other titles of the other BPC sections.

### Business and Professions Code Section 4955(b) (Page 68):

Part of the Note under this Section was removed as it was not necessary. Additionally, direction regarding licensees who have been convicted and required to register as sex offenders under Penal Code section 290 was moved under this Section under the Note as it is most applicable in this location.

#### Motion

### Option #1

### Approve:

- The proposed regulatory text for Title 16, CCR section 1399.469
- To amend the title of Division 13.7 of Title 16, CCR
- To adopt new Article 6.1 of Division 13.7 of Title 16, CCR
- To adopt new Article 6.2 of Division 13.7 of Title 16, CCR

and direct staff to submit the text to the Director 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 non	-substantive	changes	to the	package,	and s	set the
matter for hearing.							

<u>O</u>	pt	io	n	#2

Approve the proposed regulatory text as amended:					

For Title 16, CCR section 1399.469, direct staff to submit the text to the Director 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 non-substantive changes to the package, and set the matter for hearing.

# Acupuncture Board Update to Disciplinary Guidelines and Implementation of Uniform Standards Related to Substance-Abusing Licensees

Changes proposed are <u>underlined</u> to denote new text and <del>strikethrough</del> to denote removed text.

### Amend the title of Division 13.7 of Title 16 of the California Code of Regulations:

Division 13.7. Acupuncture <u>Board Examining Committee of the Board of Medical Quality Assurance</u>

### Adopt new Article 6.1 of Division 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.

### Adopt new Article 6.2 of Division 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 Division 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 March 2019)," 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and

all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation. 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.

# Acupuncture Board Update to Disciplinary Guidelines and Implementation of Uniform Standards Related to Substance-Abusing Licensees

Changes proposed are <u>underlined</u> to denote new text and <del>strikethrough</del> to denote removed text.

### Amend the title of Division 13.7 of Title 16 of the California Code of Regulations:

Division 13.7. Acupuncture <u>Board Examining Committee of the Board of Medical Quality Assurance</u>

### Adopt new Article 6.1 of Division 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.

### Adopt new Article 6.2 of Division 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 Division 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 March 2019)," 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and

all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

(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.

### 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 March 2019

The following informational note will be removed upon Board adoption of the Guidelines:

Changes reviewed by the Board at previous Board meetings are <u>underlined</u> to denote new text and <u>strikethrough</u> to denote removed text.

New changes are highlighted in yellow 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.

### **Table of Contents**

		Commented [BK1]: The entire table of contents, including page numbers, will be updated before going to OAL
Introduction	4	be updated before going to OAL
General Considerations	<u>6</u>	
Terms and Conditions	<u>7</u>	
Standard Terms and Conditions	<u>8</u>	
Optional Terms and Conditions	<u>12</u>	
Special Terms and Conditions	<u>23</u>	
Penalty Recommendations	<u>32</u>	
Recommended Action by Violation of General California Business and Professions Code Provisions	<u>33</u>	
Recommended Action by Violation of Acupuncture Licensure Act	<u>34</u>	
Accusations	<u>45</u>	
Statements of Issues	<u>45</u>	
Stipulated Settlements	<u>45</u>	
Language for Probation Orders	<u>46</u>	
Recommended Language for Cost Recovery for Surrenders	<u>47</u>	
Substantial Relationship Criteria		
Demonstrations Criteria of Rehabilitation	<u>48</u>	
Evidence of Mitigation	<u>50</u>	
Evidence of Aggravation	<u>51</u>	
Proposed Decisions	<u>52</u>	
Reinstatement/Penalty Relief Hearings	<u>54</u>	
Index of Violations	<u>55</u>	

### 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to

Commented [BK2]: Changed to match the rebuttable presumption text of the newly proposed regulation.

Substance Abusing Licensees, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation. 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 <u>stipulation Stipulated Settlement and Disciplinary Order</u>, the <u>AC Board</u> requests that all <u>optional standard</u> conditions <u>that are being imposed</u> be listed first in sequence followed immediately by all of the <u>standard</u> optional <u>and special</u> 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 AC Board expects outright revocation of the license. This is particularly true in cases of patient sexual abuse or bodily harm. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines-would be 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].)

Commented [BK3]: This was moved to the Recommended Action by Violation section under BPC 4955(b).

### **General Considerations**

In determining whether revocation, suspension, or probation is to be imposed in a given case, 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.
- 10. 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.
- 11. Evidence that respondent was dishonest, untruthful, or engaged in corruption during the pendency of the Board's proceedings.
- 12. 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.
- 13. 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.

Commented [BK4]: Section moved after page
11

Commented [BK5]: Board asked to consolidate and review with evidence of mitigation, rehabilitation, etc. - remove redundant sections

### **Terms and Conditions**

Terms and conditions of probation are divided into two categories. The first category consists of optional terms and conditions that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the standard terms and conditions which must appear in all proposed decisions and proposed stipulated settlements.

Terms and conditions of probation are divided into three categories. 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 when the conduct found to be grounds for discipline involves drugs and/or alcohol, and the licensee does not rebut the presumption he or she is a substance abusing licensee 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). In this situation then the special terms and conditions shall be used in any probationary order of the Board affecting that licensee.

To enhance the clarity of a Proposed Decision or stipulation, the AC <u>Board</u> requests that all <u>optional standard</u> conditions that are being imposed be listed first in sequence followed immediately by all of the <u>standard</u> <u>optional</u> and <u>special</u> terms and conditions <u>that are being</u> imposed.

**Commented [BK6]:** Board requested this be restored. Edits have been made and a list of all conditions added

### **List of all Terms and Conditions**

### **Standard Terms and Conditions**

	Standard Terms and Conditions					
<u>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>	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 of Probation for Out-of-State Practice or Residence	<u>14</u>	Disclosure of Probation Status			
<u>7</u>	Employment and Supervision of Trainees	<u>15</u>	Maintenance of Clear and Active License			
<u>8</u>	Cost Recovery	<u>16</u>	Completion of Probation			
	Optional Ter	ms a	and Conditions			
<u>17</u>	Actual Suspension	<u>26</u>	Restitution			
<u>18</u>	Psychological Evaluation	<u>27</u>	Alcohol and Drug Abuse Treatment Program			
<u>19</u>	Physical Examination	<u>28</u>	Attend Chemical Dependency Support and Recovery Groups			
<u>20</u>	Practice/Billing Monitor	<u>29</u>	Abstain from Drugs and Alcohol and Submit to Tests and Samples			
<u>21</u>	<u>Psychotherapy</u>	<u>30</u>	Coursework			
<u>22</u>	Restrictions on Patient Population or Practice Setting	<u>31</u>	Community Service			
<u>23</u>	No Solo Practice	<u>32</u>	Supervised Practice			
<u>24</u>	Restrictions on Practice Techniques and Modalities	<u>33</u>	Notification of Probationer Status to Employers			
<u>25</u>	Examination(s)	<u>34</u>	Notification of Probationer Status to Employees			
	Special Conditions					
<u>35</u>	Clinical Diagnostic Evaluations and Reports	<u>38</u>	Substance Abuse Support Group Meetings			
<u>36</u>	Notification of Employer or Supervisor Information	<u>39</u>	Worksite Monitor for Substance Abusing Licensees			
<u>37</u>	Biological Fluid Testing	<u>40</u>	Violation of Probation Condition for Substance Abusing Licensees			

### **Accusations**

The Board has the authority, pursuant to section 425.3 4959 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The AC Board requests that this fact be included in the pleading and made part of the accusation.

### Statements of Issues

The AC <u>Board</u> will file a Statement of Issues to deny an application of <u>licensure under Business and Professions Code section 480 a candidate</u> for the commission of an act which if committed by a licensee would be cause for license discipline.

### **Stipulated Settlements**

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

Commented [BK7]: Accusations through reinstatement sections are relocated from pg 47-56 per Board request.

### **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-, is hereby revoked; however, the revocation is issued to Respondent \_\_\_ stayed and Respondent's license is placed on probation for the following terms and conditions: **Applicants:** It is hereby ordered, the application of Respondent 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 vears on the following conditions: Reinstatements with conditions of probation: It is hereby ordered, the petition for reinstatement of his or her acupuncture license is hereby GRANTED, as follows. Acupuncture license number ACis 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

**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.

shall be

completion of the licensure examination, license no. AC-

reinstated to Respondent."

### 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.

### **General Considerations**

In determining whether revocation, suspension, or probation is to be imposed in a given case, 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.
- 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.
- Evidence of aggravation any additional, subsequent acts which also could be considered grounds for discipline.
- 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.
- 10. 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.
- 11. Evidence that respondent was dishonest, untruthful, or engaged in corruption during the pendency of the Board's proceedings.
- 12. 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.
- 13. 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.

Commented [BK8]: Strikethrough is removed language because these are items that are redundant and covered in the Criteria of Rehabilitation and Evidence of Aggravation sections

Commented [BK9]: Board asked to consolidate and review with evidence of mitigation, rehabilitation, etc. - remove redundant sections

### Substantial Relationship Criteria

Commented [BK10]: Language implemented
from AB 2138

For the purpose of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

In making the substantial relationship determination related to a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of an acupuncturist.

### Demonstration Criteria of Rehabilitation

### A. Denials

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.

- (1) 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.

When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason (s) for modification.

If the above criteria is inapplicable, or the board determines that the applicant did not

Commented [BK11]: Removing this section since the language from AB 2138 replaces it

make the showing of rehabilitation based on the criteria set forth above, the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) The criteria in subdivision (b)(1)-(5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant.

### **B. Suspensions and Revocations**

When considering the suspension or revocation of a license on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason (s) for modification.

If the above criteria is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria set forth above, the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

- (1) The nature and severity of the act(s) or crime(s).
- (2) The total criminal record.
- (3) The time that has elapsed since commission of the act(s) or crime(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- (6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.
- (7) Evidence, if any of rehabilitation by the licensee.

When considering the reinstatement of a surrendered or revoked license or an early termination or modification of probation on the grounds that the petitioner was convicted of a crime, 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.
- 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.
- Letters of reference from professors or colleagues within the field of acupuncture.
- 4. Letters of reference from past and/or current employers.
- 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.

**Commented [BK12]:** Moved to the Reinstatement/Penalty Relief Hearings section

### Reinstatement/Penalty Relief Hearings

The primary concerne of the AC <u>Board</u> at reinstatement or penalty relief hearings are <u>is</u> that the evidence presented by the petitioner of his/her rehabilitation. The AC <u>Board</u> is not interested in retrying the original revocation or probation case. <u>is not interested in relitigating the facts of the original disciplinary case in determining whether or not to grant reinstatement.</u>

The AC Board will consider the following criteria of rehabilitation:

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

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

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

- 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.
- 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.

Commented [BK13]: Section moved here from page 23

6. A culpability or excludability statement.

When considering the reinstatement of a surrendered or revoked license or an early termination or modification of probation on the grounds that the petitioner was convicted of a crime, the petitioner should provide details regarding rehabilitation that include:

- 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. <u>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.</u>
- 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.
- Letters of reference from other knowledgeable professionals, such as probation or parole officers.
- 8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

If the AC <u>Board</u> should deny a request for reinstatement of licensure or penalty relief, the AC <u>Board</u> 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.

 $\begin{tabular}{ll} \textbf{Commented [BK14]:} Moved from the Criteria of Rehabilitation section \\ \end{tabular}$ 

### **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:

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

Commented [BK15]: This section has been retained because it differs from Criteria of Rehabilitation and General Considerations in that it provides specific examples of evidence of mitigation/rehabilitation that the Board would consider.

### **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.

Commented [BK16]: Section retained as there was not much redundancy with the General Considerations section. Any redundancy that was found with the General Considerations section was removed within that section. Evidence of Aggravation is evidence that may drive the penalty up, whereas Criteria of Rehabilitation and Evidence of Mitigation may help to bring the penalty down. So, there is no redundancy with those sections.

### **Proposed Decisions**

#### The AC Board requests that Proposed Decisions include the following:

- 1. Names and addresses of all parties to the action.
- 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.
- Respondent's explanation of the violation if he/she is present at the hearing in the findings of fact.
- 5. Explanation of deviation from AC's Board's Disciplinary Guidelines.

When a probation order is imposed, the AC <u>Board</u> requests that the order first list <u>all of the Standard Terms and Conditions</u> (1-16) followed by any combination of the Optional Terms and Conditions (17-34) or <u>Special Terms</u> (35-40) 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 AC <u>Board</u> at reinstatement or penalty relief hearings are <u>is</u> that the evidence presented by the petitioner of his/her rehabilitation. The AC <u>Board</u> is not interested in retrying the original revocation or probation case. <u>is not interested in relitigating the facts of the original disciplinary case in determining whether or not to grant reinstatement.</u>

The AC Board will consider the following criteria of rehabilitation:

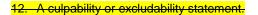
- 7. Nature and severity of the act(s) or offense(s).
- Total criminal record.
- 9. The time that has elapsed since commission of the act(s) or offense(s).
- Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.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

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

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

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

Commented [BK17]: Section moved after page



- 10. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
- 11. 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.
- 42. Letters of reference from professors or colleagues within the field of acupuncture.
- 13. Letters of reference from past and/or current employers.
- 14. 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.
- 15. 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.
- 16. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
- 17. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- 18. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

If the AC <u>Board</u> should deny a request for reinstatement of licensure or penalty relief, the AC <u>Board</u> 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.

Commented [BK18]: Moved from the Criteria of Rehabilitation section

### **Standard Terms and Conditions**

(To be included in all Decisions)

Q. Violation of Probation

	Obey All Laws	9	<u>violation of Probation</u>
<u>2</u>	Quarterly Reports	<u>10</u>	Probation Monitoring Costs
<u>3</u>	Surveillance Monitoring Program	<u>11</u>	<u>License Surrender</u>
<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 of Probation—fer Out-of-State Practice or Residence	<u>14</u>	Disclosure of Probation Status
<u>7</u>	Employment and Supervision of Trainees	<u>15</u>	Maintenance of Clear and Active License
8	Cost Recovery	16	Completion of Probation

#### 1. 13 Obey All Laws

Oboy All Laws

Respondent shall obey all federal, state and local laws, <u>remain in full compliance</u> 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 <u>Board or its designee</u> in writing within <u>seventy-two (72)</u> hours of occurrence. This condition applies to any jurisdiction with authority over the Respondent, whether inside or outside California.

#### 2. 14 Quarterly Reports

Respondent shall submit quarterly <u>declarations reports</u> under penalty of perjury on forms provided by the AC <u>Board or its designee</u>, stating whether there has been compliance with all the conditions of probation. <u>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.</u>

#### 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 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.

#### 4.16 Interview with the AC Board or Its Designee

Respondent shall appear in person for interviews with the AC <u>Board</u> or its designee upon request at various intervals and <u>with or without prior</u> <del>reasonable</del> notice throughout the term of probation.

#### 5.17 Changes of Employment

Respondent shall notify the AC <u>Board</u> in writing, through the assigned probation <u>monitor</u> <u>surveillance compliance officer</u> of any and all changes of employment, location and employment address within <u>thirty</u> (30) days of such change.

#### 6.18 Tolling for Out-of-State Practice or Residence of Probation

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 thirty (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 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.

If Respondent leaves California to reside or practice outside this state, or for any reason, unless by Board order, should Respondent stop practicing acupuncture in California, Respondent must notify the Board in writing of the dates of departure and return or the dates of non-practice within 10 days of departure or return. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaging in the practice of acupuncture or any time the license is inactive or in cancelled status. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, consecutive period of two years.

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

Commented [BK19]: Board request to #6 - research what other boards do with tolling. Including in-state non-practice as a condition of tolling is a big change to the current probation program.

Commented [BK20]: After research of several other Boards, staff settled on Chiropractic Board's tolling condition with a little of Psych Board's language.

payment of cost recovery shall remain in effect whether or not probation is tolled.

All provisions of probation shall recommence on the effective date of resumption of practice in California, and the term of probation shall be extended for the period of time respondent was out of state or in state and not practicing.

#### 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 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 (2) years without further hearing in order to comply with this condition. During the two (2) 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.

#### 9.21 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.

#### 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 fifteen (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 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 ten (10)

days, of any and all name, address, telephone and/or e-mail address changes.

#### 14. Disclosure of Probation Status

Within ten (10) days of the effective date of this Decision, Respondent shall submit a proposed written disclosure to provide to all patients or a patient's guardian or health care surrogate to the Board for prior approval. The written disclosure shall include the following:

- (1) Respondent's probation status;
- (2) Length of probation;
- (3) Probation end date;
- (4) All practice restrictions imposed by the probation order;
- (5) The Board's telephone number:
- (6) Explanation of how the patient can find further information on Respondent's probation by running a license verification on the Board's web site

Once the Board approves Respondent's written disclosure, Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of the written disclosure.

Within five (5) days prior to a patient's first visit following the effective date of the Board's Decision, Respondent shall provide the written disclosure to all patients or a patient's guardian or health care surrogate except when 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.

Respondent shall make all records available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours

Commented [BK21]: Implementation of SB

and shall retain the records for the entire term of probation.

#### 15. 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 (2) 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.

#### 16. 22 Completion of Probation

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

## **Optional Terms and Conditions**

<u>17</u>	Actual Suspension	<u>26</u>	Restitution
<u>18</u>	Psychological Evaluation	<u>27</u>	Alcohol and Drug Abuse Treatment Program
<u>19</u>	Physical Examination	<u>28</u>	Attend Chemical Dependency Support and Recovery Groups
<u>20</u>	Practice/Billing Monitor	<u>29</u>	Abstain from Drugs and Alcohol and Submit to Tests and Samples
<u>21</u>	<u>Psychotherapy</u>	<u>30</u>	Coursework
<u>22</u>	Restrictions on Patient Population or Practice Setting	<u>31</u>	Community Service
<u>23</u>	No Solo Practice	<u>32</u>	Supervised Practice
<u>24</u>	Restrictions on Practice Techniques and Modalities	<u>33</u>	Notification of Probationer Status to Employers
<u>25</u>	Examination(s)	<u>34</u>	Notification of Probationer Status to Employees

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

#### 17. 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.

#### 18.2. Psychological Evaluation

Within ninety (90) days of the effective date of this Decision and on a periodic basis thereafter as may be required by the AC Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AC Board appointed approved California licensed psychologist or psychiatrist. Respondent shall sign a release that authorizes the evaluator to furnish the AC 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 AC Board or its designee deems relevant to the case. Respondent shall execute a

release authorizing the evaluator to release all information to the AC. The completed evaluation is the sole property of the AC Board.

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

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then 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 thirty (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 efalcohol or controlled substances. When appropriate, Respondent shall be barred from rendering acupuncture services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the AC Board has accepted and approved the evaluation. The Board requires that therapists, psychologists or psychiatrists have appropriate knowledge, training, and experience in the area involved in the violation.

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

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

**NOTE**: This condition permits the AC <u>Board</u> 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.

#### 20.4. 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 ninety (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 fifteen (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 one-hundred twenty (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 <u>in writing</u> 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 <u>written</u> notification shall be signed by each patient prior to continuing or commencing treatment <u>and the written notification shall be kept as part of the patient's</u> 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 thirty (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 sixty (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.

#### 21. 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 or psychiatrist 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; (3) not be the same person as respondent's monitor. Counseling—Psychotherapy shall, at a minimum, 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 psychotherapy 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 of the therapist 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.

If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of acupuncture without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of acupuncture without restrictions.

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

#### 22.5. 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 sixty (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 tin 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.

#### 23. 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 sixty (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 sixty (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.

### 24. Restrictions on Practice Techniques and Modalities

Respondent's practice shall be prohibited from providing [insert treatment modalities]. Within thirty (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.)

#### 25.6. 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 eighteen (18) months from the effective date of this Decision, Respondent shall be considered to be in violation of probation.

**NOTE**: In cases involving evidence of <u>severe</u> 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 eighteen (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).

#### 26.7. Restitution

Within ninety (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.

### 27.8 Alcohol and Drug Abuse Treatment Program

Effective thirty (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 (3) 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 <u>Decision</u>. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. Subsequent to the program, rRespondent shall submit proof of completion of the recovery program to the Board or its designee within fifteen (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 # 9-28 (Attend Chemical Dependency Support and Recovery Groups) and #29 (Abstain from Drugs and Alcohol and Submit to Tests and Samples). If the conduct found to be grounds for discipline <u>involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing</u> licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation. If, after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections <u>11500 et seq.), the Board finds that the evidence establishes that an individual is a</u> substance abusing licensee, 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.

Commented [BK22]: Added to align with new regulation.

#### 28. Attend Chemical Dependency Support and Recovery Groups

Within thirty (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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation. 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 special terms and conditions shall be used in any probationary order of the Board affecting that licensee in lieu of this condition.

#### 29.9. 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 4211 4022 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall abstain completely from the use of alcoholic beverages.

Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription 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 AC <u>Board or its designee</u>. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the AC <u>Board or its designee</u>. Any confirmed positive finding will be considered a violation of probation.

NOTE: This condition provides documentation that the probationer is substance or

chemical free. It also provides the AC Board 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.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 seg.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the special terms and conditions shall be used in any probationary order of the Board affecting that licensee in lieu of this condition.

#### 30.11. Coursework

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

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

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

The coursework shall be in addition to that required for license renewal. The Board or its designee shall notify Respondent of the course content and number of hours required. Within thirty (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.

<u>Upon successful completion of the coursework, Respondent shall submit original completion certificates to the Board within thirty (30) days of course completion.</u>

#### 31.12. Community Service

Within sixty (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.

#### 32. 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 thirty (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 fifteen (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 thirty (30) days of leaving employment, Respondent shall notify the Board or its designee in writing.

#### 33. 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 thirty (30) days and will include written employer confirmation of receipt.

#### 34. 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 Statement of Issues.

Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within thirty (30) days. The confirmation(s) provided to the Board shall include the name, address, and phone number of the employees.

## Standard Terms and Conditions

Conditions section

(To be included in all Decisions)

<del>16</del>	Obey All Laws	<u>24</u>	Violation of Probation	
<del>17</del>	Quarterly Reports	<del>25</del>	Probation Monitoring Costs	
<del>18</del>	Surveillance Monitoring Program	<u>26</u>	<u>License Surrender</u>	
<del>19</del>	Interview with the Board or Its Designee	<del>27</del>	Severability Clause	
<del>20</del>	Changes of Employment	<del>28</del>	Notification of Name, Address, Telephone Number or E-mail Address Changes	<del>3n(</del>
<del>21</del>	Tolling for Out-of-State Practice or Residence	<del>29</del>	Maintenance of Clear and Active License	
<del>22</del>	Employment and Supervision of Trainees	<u>30</u>	Completion of Probation	

#### 16. 13 Obey All Laws

Cost Recovery

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 <u>reports</u> under penalty of perjury on forms provided by the AC <u>Board or its designee</u>, stating whether there has been compliance with all the conditions of probation. <u>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.</u>

#### 18.15 Surveillance Monitoring Program

Respondent shall comply with the AC's <u>Board's</u> probation surveillance <u>monitoring</u> program and shall, upon reasonable notice, report to the assigned <u>probation monitor</u> investigative district office. Respondent shall contact the assigned probation <u>monitor</u> surveillance monitor regarding any questions specific to the probation order. Respondent shall <u>not have any unsolicited or unapproved contact</u> 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 <u>Board</u> as subject matter experts; <u>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.</u>

#### 19.16 Interview with the AC Board or Its Designee

Respondent shall appear in person for interviews with the AC <u>Board</u> or its designee upon request at various intervals and <u>with or without prior</u> reasonable notice throughout the term of probation.

#### 20.17 Changes of Employment

Respondent shall notify the AC <u>Board</u> in writing, through the assigned probation <u>monitor</u> surveillance compliance officer of any and all changes of employment, location and <u>employment</u> 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 <u>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.</u>

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 <u>Board</u> 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 <u>Board</u> may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated <u>stayed</u>. If an accusation or petition to revoke probation is filed against Respondent during probation, the AC <u>Board</u> 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. <u>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.</u>

#### 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.

- 35 Clinical Diagnostic Evaluations and Reports
- 36 Notification of Employer or Supervisor Information
- 37 Biological Fluid Testing
- 38 Substance Abuse Support Group Meetings
- 39 Worksite Monitor for Substance Abusing Licensees
- 40 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 healings 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 as written when a licensee is determined to be a substance abusing licensee., which is developed in accordance with those SACC standards.

The following special terms and conditions describe the Uniform Standards that apply to a substance abusing applicant or licensee. If the ground(s) for discipline involves drugs and/or alcohol, the applicant or licensee shall be presumed to be a substance abusing applicant or licensee for purposes of section 315 of the Code. If the applicant or licensee does not rebut that presumption, there shall be a finding that he or she is a substance abusing applicant or licensee, and the special terms and conditions applying the Uniform Standards for a substance abusing applicant or licensee shall apply as written and be used in the order placing the license on probation. If a Uniform Standard has been indicated as discretionary, then the corresponding special term or conditions are not required. If a Uniform Standard is included in a probation order, the language below must be included as written.

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, unless otherwise specified. 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.

**Commented [BK24]:** Removed to lessen confusion and to be consistent with other Terms and Conditions Sections

#### 35. 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.

Commented [BK25]: If a licensee elects to do a clinical diagnostic evaluation prior to the decision becoming effective, specifically during the time rehabilitation is being reviewed, staff does not see any reason such an evaluation should not be accepted, as long as all criteria/requirements were followed.

Commented [BK26]: Proposed to remove this sentence because it is inconsistent with the new tolling term.

Note: This condition implements Uniform Standard numbers one, two and six. Whether the clinical diagnostic evaluation is ordered is discretionary. If the evaluation is ordered, a cease practice order is mandatory. Whether a treatment program is ordered is discretionary.

#### 36. Notice of Employer or Supervisor Information

Within fourteen (14) 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. This standard is mandatory.

#### 37. 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.
- (I) 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. Drug testing standards are mandatory and shall apply to a substance abusing licensee, and the required testing frequency shall be ordered.

#### 38. 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. Whether facilitated support group meetings are ordered is discretionary. Under the Disciplinary Guidelines, non-facilitated support group attendance, such as Optional Term # 28, Attend Chemical Dependency Support and Recovery Groups, may also be ordered.

#### 39. 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. Whether a worksite monitor is ordered is discretionary.

#### 40. 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 AC Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations, which take into account each case's unique circumstances.

If there are deviations or omissions from the Guidelines in formulating a Proposed

Decision, the AC <u>Board</u> always <u>appreciates it if requests that</u> 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 AC <u>Board</u> 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 the applicable numbered conditions are set out to include in a Decision and Order.

# Index of Violations

Commented [BK27]: Relocated to logical position

California Business and Professions Code	Page	No.	Commented [BK28]: Change page # once sections are finalized.
Section 480 – Conviction of a Crime; Committed Any Act Involving Dishonesty, Fraud or Deceit		(	sections are finalized.
Section 490 – Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist			
Section 651 – Advertising			
Section 726 – Commission of Act of Sexual Abuse or Misconduct with Patient			
Section 4935(a)(1) – Unlawful Practice of Acupuncture			
Section 4935(a)(2) – Unlawful Practice of Acupuncture			
Section 4935(b) – Unlawful Practice of Acupuncture			
Section 4935(c) – Unlawful Practice of Acupuncture			
Section 4936 – Use of the Title Dr.			
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.			
Section 4955 (b) – Conviction of a Crime Substantially Related to the Practice of Acupuncture			
Section 4955 (c) – False or Misleading Advertising			
Section 4955 (d) — Aiding or Abetting or Violating or Conspiring to Violate the Terms of this Chapter or Any Board Regulation			

Section 4955 (e) – Failing to Follow Infection Control Guidelines	
Section 4955 (f) – The Use of Threats or Harassment Against a	
· · · · · · · · · · · · · · · · · · ·	
Licensee/Patient	
Section 4955 (h) – Disciplinary Action Taken by Any Public Agency	
Section 4955 (i) – Action or Conduct that Warrants a Denial of License	
Total of Conduct that Warranto a Bolliar of Eloonoo	
Section 4955 (j) – Violation of Any Law or Local Ordinance on Business	
Premises	
<u>Temises</u>	
Section 4955.1 (a) – Securing a License by Fraud or Deceit	
<u> </u>	
Section 4955.1 (b), (c), (d) – Any Act involving Fraud, Dishonesty, or Corruption	
as an Acupuncturist	
<u>ao an Acapanetano.</u>	
Section 4955.1 (e) – Failing to Maintain Adequate and Accurate Records	
(repeated acts)	
Trepented dots)	
Section 4955.2 (a) - Gross Negligence	
Section 4955.2 (b) – Repeated Negligent Acts	
Section 4955.2 (c) – Incompetence	
destion 4000.2 (c) incompetence	

# <u>Recommended Action by Violation of General</u> 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #2, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### Section 490 -

# <u>Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist</u>

- 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #29, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40 39)

#### 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 #16)
  - 2. Optional Terms and Conditions (#30, #31)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #18, #21, #22, #29, #31)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

# 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: Penalty:	Impersonation or use resulting in substantial harm to patient(s).  Revocation; denial of license, or written and clinical examination application.
MINIMUM: Penalty:	Impersonation or use resulting in little or no harm to patient(s).  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]

#### **ACCUSATIONS**

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

#### STATEMENTS OF ISSUES

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

#### STIPULATED SETTLEMENTS

The 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 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 Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

#### PROPOSED DECISIONS

The 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 Board's Disciplinary Guidelines.

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

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

#### REINSTATEMENT/PENALTY RELIEF HEARINGS

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

The Board will consider the following criteria of rehabilitation:

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

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

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

- A. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
- F. A culpability or non-culpability statement.

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

If a petitioner fails to appear for his/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.

Commented [BK29]: These sections have been relocated to above, hence the strikethrough

#### **Violation: Unprofessional Conduct**

#### Section 4935(a)(1) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### Section 4935(a)(2) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#17, #23, #25, #30, #31 #33)

#### Section 4935(b) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### Section 4935(c) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### Section 4936 -

#### Use of the Title Dr.

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#30)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #26, #27, #28, #29)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #29, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

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. 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.

#### 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 #16)

Commented [BK30]: Sex Offender language moved from Terms and Conditions Section

2. Optional Terms and Conditions (#29. #30)

#### Section 4955 (d) -

# <u>Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation</u>

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years of probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Condition (#30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### Section 4955 (e) -

#### **Failing to Follow Infection Control Guidelines**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #30, #33, #34)

#### 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 #16)
  - 2. Optional Terms and Condition (#30, #33, #34)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### 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

- 1. Standard Terms and Conditions (#1 #16)
- 2. Optional Terms and Condition (#30)

#### Section 4955 (i) -

#### **Action or Conduct that Warrants a Denial of License**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years of probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Condition (#30)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### 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. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#30, #31)

#### **Violation: Fraud**

#### Section 4955.1 (a) -

#### Securing a License by Fraud or Deceit

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#17, #23, #25, #30, #31)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #18, #20, #23, #30, #31, #33)

#### 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 #16)
  - 2. Optional Terms and Conditions (#20, #29)

#### **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 #16)
  - 2. Optional Terms and Conditions (#17, #20, #22, #23, #30, #33, #34)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #20, #22, #23, #30, #33, #34#13)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### 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 #16)
  - 2. Optional Term and Conditions (#17, #20, #22, #23, #24, #30, #33, #34)

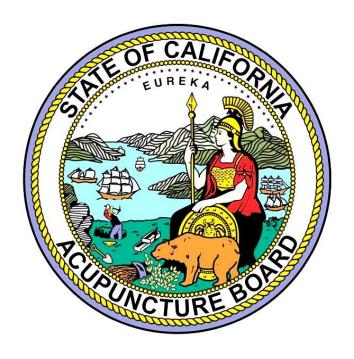
# Department of Consumer Affairs

# Medical Board of California ACUPUNCTURE COMMITTEE

# DISCIPLINARY GUIDELINES

1996

# **Acupuncture Board**



# <u>Disciplinary Guidelines and</u> <u>Uniform Standards Related to</u> <u>Substance Abusing Licensees</u>

Revised March 2019

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.

# **Table of Contents**

Introduction	<u>Page :</u> <u>4</u>
General Considerations	
	<u>6</u>
Terms and Conditions	<u>7</u>
Standard Terms and Conditions	<u>8</u>
Optional Terms and Conditions	<u>12</u>
Special Terms and Conditions	<u>23</u>
Penalty Recommendations	<u>32</u>
Recommended Action by Violation of General California Business and Professions Code Provisions	<u>33</u>
Recommended Action by Violation of Acupuncture Licensure Act	<u>34</u>
Accusations	<u>45</u>
Statements of Issues	<u>45</u>
Stipulated Settlements	<u>45</u>
Language for Probation Orders	<u>46</u>
Recommended Language for Cost Recovery for Surrenders	<u>47</u>
Substantial Relationship Criteria	
Criteria of Rehabilitation	<u>48</u>
Evidence of Mitigation	<u>50</u>
Evidence of Aggravation	<u>51</u>
Proposed Decisions	<u>52</u>
Reinstatement/Penalty Relief Hearings	<u>54</u>
Index of Violations	<u>55</u>

# 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.

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.
- 2. 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

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 <u>stipulation Stipulated Settlement and Disciplinary Order</u>, the AC <u>Board</u> requests that all <u>optional standard</u> conditions <u>that are being imposed</u> be listed first in sequence followed immediately by all of the <u>standard optional and special</u> terms and conditions <u>that are being imposed</u>.

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

# **Terms and Conditions**

Terms and conditions of probation are divided into two categories. The first category consists of optional terms and conditions that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the standard terms and conditions which must appear in all proposed decisions and proposed stipulated settlements.

Terms and conditions of probation are divided into three categories. 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 when the conduct found to be grounds for discipline involves drugs and/or alcohol, and the licensee does not rebut the presumption he or she is a substance abusing licensee pursuant to Title 16, Code of Regulations section 1399.469, subdivision (b). In this situation the special terms and conditions shall be used in any probationary order of the Board affecting that licensee.

To enhance the clarity of a Proposed Decision or stipulation, the AC <u>Board</u> requests that all <u>optional standard</u> conditions that are being imposed be listed first in sequence followed immediately by all of the <u>standard optional and special</u> terms and conditions <u>that are being imposed</u>.

# **List of all Terms and Conditions**

# **Standard Terms and Conditions**

<u>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>	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 of Probation	<u>14</u>	Disclosure of Probation Status	
<u>7</u>	Employment and Supervision of Trainees	<u>15</u>	Maintenance of Clear and Active License	
<u>8</u>	Cost Recovery	<u>16</u>	Completion of Probation	
Optional Terms and Conditions				
<u>17</u>	Actual Suspension	<u>26</u>	Restitution	
<u>18</u>	Psychological Evaluation	<u>27</u>	Alcohol and Drug Abuse Treatment Program	
<u>19</u>	Physical Examination	<u>28</u>	Attend Chemical Dependency Support and Recovery Groups	
<u>20</u>	Practice/Billing Monitor	<u>29</u>	Abstain from Drugs and Alcohol and Submit to Tests and Samples	
<u>21</u>	<u>Psychotherapy</u>	<u>30</u>	<u>Coursework</u>	
<u>22</u>	Restrictions on Patient Population or Practice Setting	<u>31</u>	Community Service	
<u>23</u>	No Solo Practice	<u>32</u>	Supervised Practice	
<u>24</u>	Restrictions on Practice Techniques and Modalities	<u>33</u>	Notification of Probationer Status to Employers	
<u>25</u>	Examination(s)	<u>34</u>	Notification of Probationer Status to Employees	
	Special Conditions			
<u>35</u>	Clinical Diagnostic Evaluations and Reports	<u>38</u>	Substance Abuse Support Group Meetings	
<u>36</u>	Notification of Employer or Supervisor Information	<u>39</u>	Worksite Monitor for Substance Abusing Licensees	
<u>37</u>	Biological Fluid Testing	<u>40</u>	Violation of Probation Condition for Substance Abusing Licensees	

## **Accusations**

The Board has the authority, pursuant to section 425.3 4959 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The AC Board requests that this fact be included in the pleading and made part of the accusation.

### Statements of Issues

The AC Board will file a Statement of Issues to deny an application of <u>licensure under Business and Professions Code section 480</u> a candidate for the commission of an act which if committed by a licensee would be cause for license discipline.

# **Stipulated Settlements**

The AC <u>Board</u> will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary Decisions. The Respondent should be informed that in order to stipulate to a settlement with the AC <u>Board</u>, he/she must admit to the violations set forth in the accusation. All <u>Proposed Stipulated</u> Decisions must be accompanied by a memo from the Deputy Attorney General addressed to AC <u>Board</u> 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 Respondentfor
	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:
	your on the length of and contained
	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."
	Tomotated to reopondent.

**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.

# **General Considerations**

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

- 1. Actual or potential harm to any consumer, client, or the public.
- 2. Number and/or variety of current violations.
- 3. Time that has elapsed since commission of act(s) or crimes(s).
- 4. Evidence of aggravation.
- 5. Evidence of rehabilitation submitted by respondent.
- 6. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
- 7. 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.
- 8. Evidence that respondent was dishonest, untruthful, or engaged in corruption during the pendency of the Board's proceedings.
- 9. 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.
- 10. 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.

# **Substantial Relationship Criteria**

For the purpose of denial, suspension, or revocation of a license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, or welfare.

In making the substantial relationship determination related to a crime, the board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of an acupuncturist.

# **Criteria of Rehabilitation**

## A. Denials

When considering the denial of a license under Section 480 of the Business and Professions Code on the ground that the applicant was convicted of a crime, the board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified. and the reason (s) for modification.

If the above criteria is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria set forth above, the board shall apply the following criteria in evaluating an applicant's rehabilitation. The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the applicant is rehabilitated:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

- (5) The criteria in subdivision (b)(1)-(5), as applicable.
- (6) Evidence, if any, of rehabilitation submitted by the applicant.

## **B. Suspensions and Revocations**

When considering the suspension or revocation of a license on the ground that a person holding a license under the Acupuncture Licensure Act has been convicted of a crime, the board shall consider whether the licensee made a showing of rehabilitation and is presently eligible for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the board shall consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason (s) for modification.

If the above criteria is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria set forth above, the board shall apply the following criteria in evaluating a licensee's rehabilitation. The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated:

- (1) The nature and severity of the act(s) or crime(s).
- (2) The total criminal record.
- (3) The time that has elapsed since commission of the act(s) or crime(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.

- (6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.
- (7) Evidence, if any of rehabilitation by the licensee.

# **Reinstatement/Penalty Relief Hearings**

The primary concerns of the AC <u>Board</u> at reinstatement or penalty relief hearings <u>are is</u> that the evidence presented by the petitioner of his/her rehabilitation. The <u>AC Board is not interested in retrying the original revocation or probation case. is not interested in relitigating the facts of the original disciplinary case in determining whether or not to grant reinstatement.</u>

The AC Board will consider the following criteria of rehabilitation:

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

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

The AC <u>Board</u> 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.

When considering the reinstatement of a surrendered or revoked license or an early termination or modification of probation on the grounds that the petitioner was convicted of a crime, the petitioner should provide details regarding rehabilitation that include:

- 1. <u>Copies of court documents pertinent to conviction, including documents specifying</u> conviction and sanctions, and proof of completion of sanction.
- 2. <u>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.</u>
- 3. Letters of reference from professors or colleagues within the field of acupuncture.
- 4. Letters of reference from past and/or current employers.
- 5. <u>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.</u>
- 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. <u>Letters of reference from other knowledgeable professionals, such as probation</u> or parole officers.
- 8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- 9. <u>Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.</u>

If the AC <u>Board</u> should deny a request for reinstatement of licensure or penalty relief, the AC <u>Board</u> 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 <u>pursuant to Government Code section 11520.</u>

# **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:

- 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.
- 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. <u>Certificates or transcripts of courses related to acupuncture which Respondent may have completed since the date of the violation.</u>

# **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. <u>Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).</u>
- 5. Perjury on official Board forms.
- 6. Violent nature of crime or act.
- 7. Violation of Board Probation.
- 8. <u>Failure to provide a specimen for testing in violation of terms and conditions of probation.</u>
- 9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

# **Proposed Decisions**

#### The AC Board requests that Proposed Decisions include the following:

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

When a probation order is imposed, the <u>AC Board</u> requests that the order first list <u>all of the Standard Terms and Conditions (1-16) followed by</u> any combination of the Optional Terms and Conditions <u>(17-34) or Special Terms (35-40)</u> 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.

## Standard Terms and Conditions

(To be included in all Decisions)

<u>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>	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 of Probation	<u>14</u>	Disclosure of Probation Status
<u>7</u>	Employment and Supervision of Trainees	<u>15</u>	Maintenance of Clear and Active License
<u>8</u>	Cost Recovery	<u>16</u>	Completion of Probation

#### 1. 13 Obey All Laws

Respondent shall obey all federal, state and local laws, <u>remain in full compliance</u> <u>with any court ordered criminal probation terms</u>, <u>payments</u>, <u>and/or other orders</u>, 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 <u>Board or its designee</u> in writing within <u>seventy-two (72)</u> hours of occurrence. <u>This condition applies to any jurisdiction with authority over</u> the Respondent, whether inside or outside California.

#### 2. 14 Quarterly Reports

Respondent shall submit quarterly <u>declarations reports</u> under penalty of perjury on forms provided by the <u>AC Board or its designee</u>, stating whether there has been compliance with all the conditions of probation. <u>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.</u>

## 3.15 Surveillance Monitoring Program

Respondent shall comply with the AC's <u>Board's</u> probation <u>surveillance monitoring</u> program and shall, upon reasonable notice, report to the assigned <u>probation monitor investigative district office</u>. Respondent shall contact the assigned probation <u>surveillance monitor</u> 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 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.

#### 4.16 Interview with the AC Board or Its Designee

Respondent shall appear in person for interviews with the AC <u>Board</u> or its designee upon request at various intervals and <u>with or without prior</u> reasonable notice <u>throughout the term of probation.</u>

#### 5.17 Changes of Employment

Respondent shall notify the AC <u>Board</u> in writing, through the assigned probation <u>monitor surveillance compliance officer</u> of any and all changes of employment, location and employment address within thirty (30) days of such change.

#### 6.18 Tolling for Out-of-State Practice or Residence of Probation

In the event Respondent should leave California to reside or to practice outside the State, Respondent must notify the AC 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.

If Respondent leaves California to reside or practice outside this state, or for any reason, unless by Board order, should Respondent stop practicing acupuncture in California, Respondent must notify the Board in writing of the dates of departure and return or the dates of non-practice within10 days of departure or return. Non-practice is defined as any period of time exceeding 30 days in which Respondent is not engaging in the practice of acupuncture or any time the license is inactive or in cancelled status. Periods of temporary residency or practice outside the state or of non-practice within the state shall not apply to reduction of the probationary period. It shall be a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total, consecutive period of two years.

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.

All provisions of probation shall recommence on the effective date of resumption of practice in California, and the term of probation shall be extended for the period of time respondent was out of state or in state and not practicing.

#### 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 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 (2) years without further hearing in order to comply with this condition. During the two (2) 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**: <u>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.</u>

#### 9.21 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.

#### 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 fifteen (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 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 ten (10) days, of any and all name, address, telephone and/or e-mail address changes.

#### 14. Disclosure of Probation Status

Within ten (10) days of the effective date of this Decision, Respondent shall submit

a proposed written disclosure to provide to all patients or a patient's guardian or health care surrogate to the Board for prior approval. The written disclosure shall include the following:

- (1) Respondent's probation status;
- (2) Length of probation;
- (3) Probation end date;
- (4) All practice restrictions imposed by the probation order;
- (5) The Board's telephone number;
- (6) Explanation of how the patient can find further information on Respondent's probation by running a license verification on the Board's web site

Once the Board approves Respondent's written disclosure, Respondent shall obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of the written disclosure.

Within five (5) days prior to a patient's first visit following the effective date of the Board's Decision, Respondent shall provide the written disclosure to all patients or a patient's guardian or health care surrogate except when 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.

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

#### 15. 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 (2) 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.

#### 16. 22 Completion of Probation

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

## **Optional Terms and Conditions**

<u>17</u>	Actual Suspension	<u>26</u>	Restitution
<u>18</u>	Psychological Evaluation	<u>27</u>	Alcohol and Drug Abuse Treatment Program
<u>19</u>	Physical Examination	<u>28</u>	Attend Chemical Dependency Support and Recovery Groups
<u>20</u>	Practice/Billing Monitor	<u>29</u>	Abstain from Drugs and Alcohol and Submit to Tests and Samples
<u>21</u>	<u>Psychotherapy</u>	<u>30</u>	<u>Coursework</u>
<u>22</u>	Restrictions on Patient Population or Practice Setting	<u>31</u>	Community Service
<u>23</u>	No Solo Practice	<u>32</u>	Supervised Practice
<u>24</u>	Restrictions on Practice Techniques and Modalities	<u>33</u>	Notification of Probationer Status to Employers
<u>25</u>	Examination(s)	<u>34</u>	Notification of Probationer Status to Employees

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

#### 17. 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.

## 18.2. Psychological Evaluation

Within <u>ninety</u> (90) days of the effective date of this Decision and on a periodic basis thereafter as may be required by the AC <u>Board</u> or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AC <u>Board</u> appointed approved California licensed psychologist or psychiatrist. Respondent shall sign a release that authorizes the evaluator to <u>furnish the AC Board or its designee shall receive with a diagnosis based on currently accepted standards, such as the Diagnostic and Statistical Manual of <u>Mental Disorders</u>, 5<sup>th</sup> Edition (DSM-5),-III-R diagnosis and a written report regarding the Respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the AC <u>Board or its designee</u> deems relevant to the case. <del>Respondent shall execute a</del></u>

release authorizing the evaluator to release all information to the AC. The completed evaluation is the sole property of the AC Board.

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

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 thirty (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 AC Board has accepted and approved the evaluation. The Board requires that psychologists or psychiatrists have appropriate knowledge, training, and experience in the area involved in the violation.

#### 19. 3. Physical Examination

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

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

**NOTE**: This condition permits the AC <u>Board</u> 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.

#### 20.-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 ninety (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 fifteen (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 one-hundred twenty (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 <u>in writing</u> 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 <u>written</u> notification shall be signed by each patient prior to continuing or commencing treatment <u>and the written notification shall be kept as part of the patient's healthcare record.</u>

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 thirty (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 sixty (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.

#### 21. Psychotherapy

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. The therapist shall: (1) be a California-licensed psychologist or psychiatrist with a clear and current license; (2) shall have had no prior business, professional, personal, or other relationship with Respondent; (3) not be the same person as respondent's monitor. Psychotherapy shall, at a minimum, consist of one hour per week, unless otherwise determined by the Board or its designee. Respondent shall continue in psychotherapy 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 of the therapist 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.

If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of acupuncture without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of acupuncture without restrictions.

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

#### 22.5. 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 sixty (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 lin 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.

#### 23. 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 sixty (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 sixty (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.

#### 24. Restrictions on Practice Techniques and Modalities

Respondent's practice shall be prohibited from providing [insert treatment modalities]. Within thirty (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.)

#### 25.6. 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 <u>has not passed the</u> examination three times, his/her license to practice acupuncture is suspended until the examination is successfully passed within eighteen (18) months from the effective date of this Decision, Respondent shall be considered to be in violation of probation.

**NOTE**: In cases involving evidence of <u>severe</u> 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 eighteen (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).

#### 26.<del>7.</del> Restitution

Within I	ninety	<u>(90)</u>	da	ys o	of the e	ette	Ctive	e date o	t this	Decision,	Re	espo	ndent	sha	all
provide	proof	to 1	the	AC	<b>Board</b>	<u>or</u>	its	designe	<u>e</u> of	restitution	in	the	amou	nt	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.

## 27.8 Alcohol and Drug Abuse Treatment Program

Effective thirty (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 (3) 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, rRespondent shall submit proof of completion of the recovery program to the Board or its designee within fifteen (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 #28 (Attend Chemical Dependency Support and Recovery Groups) and #29 (Abstain from Drugs and Alcohol and Submit to Tests and Samples). If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

#### 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.

#### 28. Attend Chemical Dependency Support and Recovery Groups

Within thirty (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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

#### 29.9. 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 4211 4022 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall abstain completely from the use of alcoholic beverages.

Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription 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 AC Board or its designee. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the AC Board or its designee. Any confirmed positive finding will be considered a violation of probation.

**NOTE**: This condition provides documentation that the probationer is substance or chemical free. It also provides the AC Board 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 the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of Section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all other relevant terms and conditions contained in the Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees, the special terms and conditions that incorporate the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the license on probation.

#### 30.<del>11.</del> Coursework

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

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

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

The coursework shall be in addition to that required for license renewal. The Board or its designee shall notify Respondent of the course content and number of hours required. Within thirty (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.

<u>Upon successful completion of the coursework, Respondent shall submit original completion certificates to the Board within thirty (30) days of course completion.</u>

#### 31.12. Community Service

Within sixty (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.

#### 32. 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 thirty (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 fifteen (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 thirty (30) days of leaving employment, Respondent shall notify

the Board or its designee in writing.

#### 33. 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 thirty (30) days and will include written employer confirmation of receipt.

#### 34. 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 Statement of Issues, Accusation, and Decision and Order to each employee and submit confirmation of employee receipt to the Board within thirty (30) days. The confirmation(s) provided to the Board shall include the name, address, and phone number of the employees.

### **Special Terms and Conditions:**

- 35 Clinical Diagnostic Evaluations and Reports
   36 Notification of Employer or Supervisor Information
   37 Biological Fluid Testing
   38 Substance Abuse Support Group Meetings
   39 Worksite Monitor for Substance Abusing Licensees
- 40 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 healings 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 as written when a licensee is determined to be a substance abusing licensee.

The following special terms and conditions describe the Uniform Standards that apply to a substance abusing applicant or licensee. If the ground(s) for discipline involves drugs and/or alcohol, the applicant or licensee shall be presumed to be a substance abusing applicant or licensee for purposes of section 315 of the Code. If the applicant or licensee does not rebut that presumption, there shall be a finding that he or she is a substance abusing applicant or licensee, and the special terms and conditions applying the Uniform Standards for a substance abusing applicant or licensee shall apply as written and be used in the order placing the license on probation. If a Uniform Standard has been indicated as discretionary, then the corresponding special term or conditions are not required. If a Uniform Standard is included in a probation order, the language below must be included as written.

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, unless otherwise specified. 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.

#### 35. 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:

- <u>set forth, in the evaluator's opinion, whether Respondent has a substance</u> abuse problem,
- <u>set forth, in the evaluator's opinion, whether Respondent is a threat to</u> 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.

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.

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. Whether the clinical diagnostic evaluation is ordered is discretionary. If the evaluation is ordered, a cease practice order is mandatory. Whether a treatment program is ordered is discretionary.

#### 36. Notice of Employer or Supervisor Information

Within fourteen (14) 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. This standard is mandatory.

#### 37. 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.

<u>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:</u>

- (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.
- (I) 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. Drug testing standards are mandatory and shall apply to a substance abusing licensee, and the required testing frequency shall be ordered.

#### 38. 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. Whether facilitated support group meetings are ordered is discretionary. Under the Disciplinary Guidelines, non-facilitated support group attendance, such as Optional Term # 28, Attend Chemical Dependency Support and Recovery Groups, may also be ordered.

## 39. 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. Whether a worksite monitor is ordered is discretionary.

#### 40. Violation of Probation Condition for Substance Abusing Licensees

<u>Failure to fully comply with any term or condition of probation is a violation of probation.</u>

- 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**

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

If there are deviations or omissions from the Guidelines in formulating a Proposed Decision, the AC <u>Board</u> 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 AC <u>Board</u> 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 the applicable numbered conditions are set out to include in a Decision and Order.

# **Index of Violations**

California Business and Professions Code	Page No.
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 651 – Advertising	
Section 726 – Commission of Act of Sexual Abuse or Misconduct with Patient	
Section 4935(a)(1) – Unlawful Practice of Acupuncture	
Section 4935(a)(2) - Unlawful Practice of Acupuncture	
Section 4935(b) - Unlawful Practice of Acupuncture	
Section 4935(c) – Unlawful Practice of Acupuncture	
Section 4936 – Use of the Title Dr.	
Section 4955 (a) – Using or possessing any controlled substance, or dangerous drug or alcoholic beverage	
Section 4955 (b) – Conviction of a Crime Substantially Related to the Practice of Acupuncture	
Section 4955 (c) – False or Misleading Advertising	
Section 4955 (d) — Aiding or Abetting or Violating or Conspiring to Violate the Terms of this Chapter or Any Board Regulation	
Section 4955 (e) – Failing to Follow Infection Control Guidelines	
Section 4955 (f) – The Use of Threats or Harassment Against a Licensee/Patient	
Section 4955 (h) - Disciplinary Action Taken by Any Public Agency	
Section 4955 (i) – Action or Conduct that Warrants a Denial of License	

Section 4955 (j) – Violation of Any Law or Local Ordinance on Business Premises	
Section 4955.1 (a) - Securing a License by Fraud or Deceit	
Section 4955.1 (b), (c), (d) – Any Act involving Fraud, Dishonesty, or Corruption as an Acupuncturist	
Section 4955.1 (e) – Failing to Maintain Adequate and Accurate Records (repeated acts)	
Section 4955.2 (a) – Gross Negligence	
Section 4955.2 (b) – Repeated Negligent Acts	
Section 4955.2 (c) – Incompetence	

# 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #2, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### <u>Section 490 – </u>

# <u>Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist</u>

- 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #29, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### 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 #16)
  - 2. Optional Terms and Conditions (#30, #31)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #18, #21, #22, #29, #31)
  - 3. Special Terms and Conditions, if appropriate (#35 # 40)

## 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 [4], 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 [4], 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 4935(a)(1) -

#### <u>Unlawful Practice of Acupuncture</u>

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### Section 4935(a)(2) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#17, #23, #25, #30, #31 #33)

#### Section 4935(b) -

#### **Unlawful Practice of Acupuncture**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### <u>Section 4935(c) – </u>

#### <u>Unlawful Practice of Acupuncture</u>

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #25, #30)

#### **Section 4936 –**

#### Use of the Title Dr.

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#30)

#### Section 4955(a) -

# <u>Using or possessing any controlled substance, or dangerous drug or alcoholic</u> beverage

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 30 days suspension, with 3 years probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#17, #26, #27, #28, #29)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #25, #29, #30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

NOTE: 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.

#### 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 #16)
  - 2. Optional Terms and Conditions (#30)

#### Section 4955 (d) -

# <u>Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation</u>

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years of probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Condition (#30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### Section 4955 (e) -

#### **Failing to Follow Infection Control Guidelines**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#20, #30, #33, #34)

#### 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 #16)

- 2. Optional Terms and Condition (#30, #33, #34)
- 3. Special Terms and Conditions, if appropriate (#35 # 40)

#### 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
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Condition (#30)

#### Section 4955 (i) -

#### Action or Conduct that Warrants a Denial of License

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years of probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Condition (#30)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### 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. Standard Terms and Conditions (#1 #16)
  - Optional Terms and Conditions (#30, #31)

## **Violation: Fraud**

#### Section 4955.1 (a) -

#### **Securing a License by Fraud or Deceit**

• Maximum Penalty: Revocation or denial of license

- Minimum Penalty: Revocation, stayed with 3 years' probation
  - 1. Standard Terms and Conditions (#1 #16)
  - 2. Optional Terms and Conditions (#17, #23, #25, #30, #31)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #18, #20, #23, #30, #31, #33)

#### 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 #16)
  - 2. Optional Terms and Conditions (#20, #29)

## **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 #16)
  - 2. Optional Terms and Conditions (#17, #20, #22, #23, #30, #33, #34)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### 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 #16)
  - 2. Optional Terms and Conditions (#17, #20, #22, #23, #30, #33, #34#13)
  - 3. Special Terms and Conditions, if appropriate (#35 #40)

#### Section 4955.2 (c) -

#### <u>Incompetence</u>

- 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 #16)
  - 2. Optional Term and Conditions (#17, #20, #22, #23, #24, #30, #33, #34)

# 2019 Calendar

January								February									March									April								
Su	Мо	Tu	We	Th	Fr	Sa	_	Su	Мо	Tu	We	Th	Fr	Sa	_	Su	Мо	Tu	We	Th	Fr	Sa	_	Su	Мо	Tu	We	Th	Fr	Sa				
30	31	1	2	3	4	5		27	28	29	30	31	1	2		24	25	26	27	28	1	2		31	1	2	3	4	5	6				
6	7	8	9	10	11	12		3	4	5	6	7	8	9		3	4	5	6	7	8	9		7	8	9	10	11	12	13				
13	14	15	16	17	18	19		10	11	12	13	14	15	16		10	11	12	13	14	15	16		14	15	16	17	18	19	20				
20	21	22	23	24	25	26		17	18	19	20	21	22	23		17	18	19	20	21	22	23		21	22	23	24	25	26	27				
27	28	29	30	31	1	2		24	25	26	27	28	1	2		24	25	26	27	28	29	30		28	29	30	1	2	3	4				
																31	1	2	3	4	5	6												
			May					June								July								August										
Su	Мо	Tu	We	Th	Fr	Sa	_	Su	Мо	Tu	We	Th	Fr	Sa		Su	Мо	Tu	We	Th	Fr	Sa	_	Su	Мо	Tu	We	Th	Fr	Sa				
28	29	30	1	2	3	4		26	27	28	29	30	31	1		30	1	2	3	4	5	6		28	29	30	31	1	2	3				
5	6	7	8	9	10	11		2	3	4	5	6	7	8		7	8	9	10	11	12	13		4	5	6	7	8	9	10				
12	13	14	15	16	17	18		9	10	11	12	13	14	15		14	15	16	17	18	19	20		11	12	13	14	15	16	17				
19	20	21	22	23	24	25		16	17	18	19	20	21	22		21	22	23	24	25	26	27		18	19	20	21	22	23	24				
26	27	28	29	30	31	1		23	24	25	26	27	28	29		28	29	30	31	1	2	3		25	26	27	28	29	30	31				
								30	1	2	3	4	5	6																				
		Sep	otem	ber				October								November								December										
Su	Мо	Tu	We	Th	Fr	Sa		Su	Мо	Tu	We	Th	Fr	Sa		Su	Мо	Tu	We	Th	Fr	Sa		Su	Мо	Tu	We	Th	Fr	Sa				
1	2	3	4	5	6	7	_	29	30	1	2	3	4	5		27	28	29	30	31	1	2		1	2	3	4	5	6	7				
8	9	10	11	12	13	14		6	7	8	9	10	11	12		3	4	5	6	7	8	9		8	9	10	11	12	13	14				
15	16	17	18	19	20	21		13	14	15	16	17	18	19		10	11	12	13	14	15	16		15	16	17	18	19	20	21				
		24														17				21						24			27	28				
		1	2	3	4	5							1														1	2	3	4				
Su	Mo 2 9	Sep Tu 3 10	otem we 4 11 18 25	ber Th 5 12 19 26	Fr 6 13 20 27	7 14 21 28		30 Su 29 6	Mo 30 7	2 Oc Tu	otobowe 2	4 er Th 3 10	5 Fr 4 11	6 Sa 5 12		Su 27 3 10	Mo 28 4	Nov Tu 29 5	veml we 30 6	Th 31 7 14	Fr 1 8	\$a 2 9		Su 1	Mo 2 9	Dec Tu 3 10	ceml we 4	5 12 19 26	1 2 2	6 13 20				