



DATE	December 17 - 18, 2020
TO	Board Members, Acupuncture Board
FROM	Kristine Brothers, Policy Coordinator
SUBJECT	Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, CCR § 1399.469 (Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees and the Incorporation of SB 1448 and AB 2138)

Background

At its March 28, 2019 meeting, the Board approved regulatory language to update its Disciplinary Guidelines and implement the following:

- SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), Uniform Standards Related to Substance Abusing Licensees;
- SB 1448 (Hill, Chapter 570, Statutes of 2018), Healing arts licensees: probation status: disclosure; and
- AB 2138 (Chiu, Chapter 995, Statutes of 2018), Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

On June 26, 2020, staff brought changes to the previously proposed regulations for implementation of AB 2138 to conform to the directives from the Office of Administrative Law (OAL) and the other Department of Consumer Affairs (DCA) programs' AB 2138 packages. These changes were mostly technical in nature, but also included some substantive changes as well. The Board addressed all of the modifications and rationale for said modifications at its June 2020 meeting and voted to approve the modified language. The modifications to the sections within the Guidelines are double underlined and highlighted to indicate text added and double stricken and highlighted to show removed text to delineate changes that occurred since March 2019.

Recommendation

The Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Guidelines) include text from the AB 2138 regulations under two sections within the Guidelines: Substantial Relationship Criteria and Criteria of Rehabilitation for Denials, and Suspensions and Revocations. To align the Guidelines with the modified AB 2138 text, staff has updated the affected sections with the modified AB 2138 text that was approved at the June 26, 2020 Board Meeting.

Staff is bringing the proposed language and Guidelines, which is a document incorporated by reference in Title 16 of the California Code of Regulations (CCR) section 1399.469, for the Board's review and possible action.

Motion

If the language is approved as is, the motion is as follows:

Move to approve the amended proposed regulatory text for Title 16, CCR section 1399.469, 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 a rulemaking package, make any non-substantive technical and/or grammatical changes to the package, and schedule the matter for hearing, if requested.

Attachments:

Attachment A – Proposed regulation

Attachment B – Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees

Attachment C – June 26, 2020 Memorandum to Board on the Discussion and Possible Action Regarding Assembly Bill 2138 and Substantial Relationship Criteria Rulemaking Package

Acupuncture Board Update to Disciplinary Guidelines and Implementation of Uniform Standards Related to Substance-Abusing Licensees

Changes proposed are underlined to denote new text and ~~strikethrough~~ to denote removed text.

Modifications to the proposed regulatory language are shown in double underlined and highlight for new text and ~~double strikethrough~~ and highlight for deleted text.

Amend the title of Division 13.7 of Title 16 of the California Code of Regulations:

Division 13.7. Acupuncture Board ~~Examining Committee of the Board of Medical Quality Assurance~~

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' 4996 (Revised December 2020)," 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~~

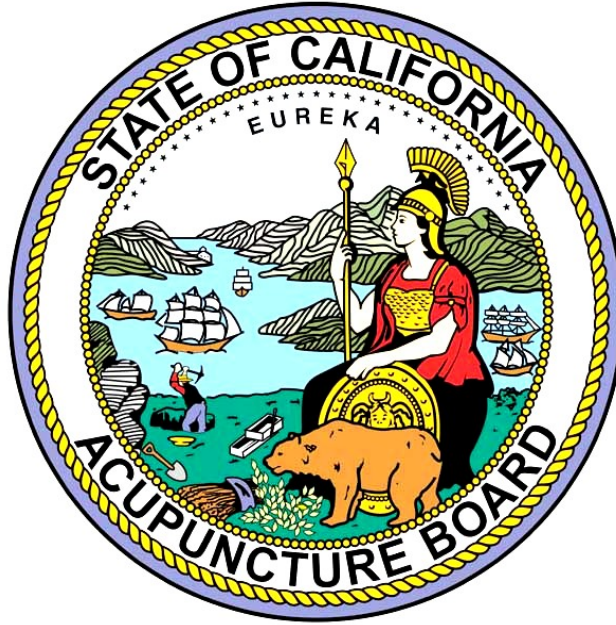
~~Medical Board of California~~

~~ACUPUNCTURE
COMMITTEE~~

~~DISCIPLINARY
GUIDELINES~~

~~1996~~

Acupuncture Board



Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees

Revised December 2020

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.acupuncture.ca.gov.

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Introduction

The ~~Acupuncture Committee (AC) Board (Board)~~ is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the ~~AC Board~~ has adopted the following recommended “Acupuncture Board Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees (Revised June 2018)” (hereafter “Guidelines”) for disciplinary orders and conditions of probation for violations of the Acupuncture Licensure Act.

~~The AC recognizes that a rare individual case may necessitate a departure from these Guidelines for disciplinary order. However, in such a rare case, the mitigating circumstances must be detailed in the "Findings of Fact" which is in every Proposed Decision or Stipulation.~~

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 ~~stipulation~~ Stipulated Settlement and Disciplinary Order, the AG Board requests that all ~~optional~~ standard conditions ~~that are being imposed~~ be listed first in sequence followed immediately by all of the standard optional and special terms and conditions that are being imposed.

If at the time of hearing, the Administrative Law Judge finds that the respondent, for any reason, is not capable of safe practice, the AG Board expects outright revocation of the license. This is particularly true in cases of patient sexual abuse or bodily harm. In less egregious cases, a stayed revocation with probation pursuant to the ~~attached~~ Penalty Guidelines ~~would be~~ is expected.

~~The Board has adopted the "Department of Consumer Affairs, Acupuncture Board, Disciplinary Guidelines, 1996" as an administrative regulation pursuant to the Administrative Procedures Act. (Government Code Section 11400.20, 11400.21 and 11425.50, Sub. (E); Operative 7/1/97 [Statutes of 1995, Chapter 938, Section 98].)~~

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 Board requests that all ~~optional~~ standard conditions that are being imposed be listed first in sequence followed immediately by all of the ~~standard~~ optional and special terms and conditions that are being imposed.

List of all Terms and Conditions

Standard Terms and Conditions

- | | | | |
|----------|---|-----------|--|
| <u>1</u> | <u>Obey All Laws</u> | <u>9</u> | <u>Violation of Probation</u> |
| <u>2</u> | <u>Quarterly Reports</u> | <u>10</u> | <u>Probation Monitoring Costs</u> |
| <u>3</u> | <u>Monitoring Program</u> | <u>11</u> | <u>License Surrender</u> |
| <u>4</u> | <u>Interview with the Board or Its Designee</u> | <u>12</u> | <u>Severability Clause</u> |
| <u>5</u> | <u>Changes of Employment</u> | <u>13</u> | <u>Notification of Name, Address, Telephone Number or E-mail Address Changes</u> |
| <u>6</u> | <u>Tolling of Probation</u> | <u>14</u> | <u>Disclosure of Probation Status</u> |
| <u>7</u> | <u>Employment and Supervision of Trainees</u> | <u>15</u> | <u>Maintenance of Clear and Active License</u> |
| <u>8</u> | <u>Cost Recovery</u> | <u>16</u> | <u>Completion of Probation</u> |

Optional Terms and Conditions

- | | | | |
|-----------|---|-----------|---|
| <u>17</u> | <u>Actual Suspension</u> | <u>26</u> | <u>Restitution</u> |
| <u>18</u> | <u>Psychological Evaluation</u> | <u>27</u> | <u>Alcohol and Drug Abuse Treatment Program</u> |
| <u>19</u> | <u>Physical Examination</u> | <u>28</u> | <u>Attend Chemical Dependency Support and Recovery Groups</u> |
| <u>20</u> | <u>Practice/Billing Monitor</u> | <u>29</u> | <u>Abstain from Drugs and Alcohol and Submit to Tests and Samples</u> |
| <u>21</u> | <u>Psychotherapy</u> | <u>30</u> | <u>Coursework</u> |
| <u>22</u> | <u>Restrictions on Patient Population or Practice Setting</u> | <u>31</u> | <u>Community Service</u> |
| <u>23</u> | <u>No Solo Practice</u> | <u>32</u> | <u>Supervised Practice</u> |
| <u>24</u> | <u>Restrictions on Practice Techniques and Modalities</u> | <u>33</u> | <u>Notification of Probationer Status to Employers</u> |
| <u>25</u> | <u>Examination(s)</u> | <u>34</u> | <u>Notification of Probationer Status to Employees</u> |

Special Conditions

- | | | | |
|-----------|---|-----------|---|
| <u>35</u> | <u>Clinical Diagnostic Evaluations and Reports</u> | <u>38</u> | <u>Substance Abuse Support Group Meetings</u> |
| <u>36</u> | <u>Notification of Employer or Supervisor Information</u> | <u>39</u> | <u>Worksite Monitor for Substance Abusing Licensees</u> |
| <u>37</u> | <u>Biological Fluid Testing</u> | <u>40</u> | <u>Violation of Probation Condition for Substance Abusing Licensees</u> |

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 AG Board requests that this fact be included in the pleading and made part of the accusation.

Statements of Issues

The AG Board will file a Statement of Issues to deny an application of licensure under Business and Professions Code section 480 ~~a candidate~~ for the commission of an act which if committed by a licensee would be cause for license discipline.

Stipulated Settlements

The AG Board will consider agreeing to stipulated settlements to promote cost effective consumer protection and to expedite disciplinary Decisions. The Respondent should be informed that in order to stipulate to a settlement with the AG Board, he/she must admit to the violations set forth in the accusation. All ~~Proposed~~ Stipulated Decisions must be accompanied by a memo from the Deputy Attorney General addressed to AG Board members explaining the background of the case, defining the allegations, mitigating circumstances, admissions and proposed penalty along with a recommendation.

Language for Probation Orders

When a stipulated settlement or Proposed Decision orders probationary terms and conditions, the Board recommends the following language be included:

- **Licenses:** It is hereby ordered, Acupuncture license no. AC-_____, issued to Respondent _____, is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for _____ years on the following terms and conditions:
- **Applicants:** It is hereby ordered, the application of Respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees and evaluation of the application, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent's license placed on probation for a period of _____ years on the following conditions:
- **Reinstatements with conditions of probation:** It is hereby ordered, the petition of _____ for reinstatement of his or her acupuncture license is hereby GRANTED, as follows.

Acupuncture license number AC-_____ is reinstated. The license will then be immediately revoked; however, the revocation is stayed and petitioner is placed on probation for _____ years on the following terms and conditions:

In cases in which petitioners for reinstatement have not practiced acupuncture in the state of California for an extended amount of time, they must retake the licensing exam before reinstatement. This information must be provided to the Administrative Law Judge so that he or she can include: "Upon successful completion of the licensure examination, license no. AC-_____ shall be reinstated to Respondent."

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and Decision.

Recommended Language for Cost Recovery for Surrenders

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

If Respondent should ever apply or reapply for a new license, or petition for reinstatement of a license, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 4959 in the amount of \$ _____ prior to issuance of a new or reinstated license. Respondent shall be permitted to pay these costs in a payment plan approved by the Board.

Respondent shall relinquish his/her wall and pocket certificate of licensure to the Board or its designee once this Decision becomes effective and upon request.

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, of Division 1.5 (commencing with Section 475), or Sections 4955, 4955.1, or 4955.2 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.

(c) For purposes of subsection (a), a substantially related crime, professional misconduct, or act shall include, but is 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 Chapter 12, Division 2 of the Business and Professions Code or other state or federal laws governing the practice of acupuncture.
- (2) Conviction of a crime involving fiscal dishonesty.

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 has been 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 applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria set forth above, the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Sections 4955, 4955.1, and 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating an applicant's rehabilitation: 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 gravity of the act(s), professional misconduct or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s), professional misconduct or crime(s) committed subsequent to the act(s), professional misconduct 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), professional misconduct or crime(s) referred to in subdivision paragraphs (1) or (2).
- (4) The extent to which Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) The first criteria in subdivision (a) paragraphs (1) to (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 under Section 490 of the Business and Professions Code 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, and
- (5) The extent to which the terms or conditions of parole or probation were modified and the reason(s) for the modification.

If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subsection (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Business and Professions Code, or the suspension or revocation is based on or more of the grounds specified in Sections 4955, 4955.1, or 4955.2 of the Business and Professions Code, the board shall apply the following criteria in evaluating the licensee's rehabilitation: 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 first criteria in ~~subdivision (a)~~ paragraphs (1) to (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 Board at reinstatement or penalty relief hearings ~~are~~ is that the evidence presented by the petitioner of his/her rehabilitation. The AC Board ~~is not interested in retrying the original revocation or probation case.~~ is not interested in re-litigating the facts of the original disciplinary case in determining whether or not to grant reinstatement.

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

1. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
2. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
3. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
4. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
5. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

6. A culpability or excludability statement.

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.
2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from professors or colleagues within the field of acupuncture.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of an acupuncture profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

If the AG Board should deny a request for reinstatement of licensure or penalty relief, the AG Board requests that the Administrative Law Judge provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

If a petitioner fails to appear for his/her scheduled reinstatement or penalty relief hearing, such action shall result in a default Decision to deny reinstatement of the license or reduction of penalty pursuant to Government Code section 11520.

Evidence of Mitigation

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and competency in acupuncture:

1. Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, or ongoing therapy, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement and/or rehabilitation, and the credentials of the counselor.
2. Recent letters describing Respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, etc., where appropriate, and sobriety date.
3. Recent, dated laboratory analyses or drug screen reports, where appropriate.
4. Recent, dated physical examination or assessment report by a licensed physician and surgeon, nurse practitioner, or physician assistant.
5. Certificates or transcripts of courses related to acupuncture which Respondent may have completed since the date of the violation.

Evidence of Aggravation

The following are examples of aggravating circumstances which may be considered by Administrative Law Judges in providing for discipline in their Proposed Decisions:

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc.).
3. History of prior discipline.
4. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
5. Perjury on official Board forms.
6. Violent nature of crime or act.
7. Violation of Board Probation.
8. Failure to provide a specimen for testing in violation of terms and conditions of probation.
9. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

Proposed Decisions

The **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 **AC Board** requests that the order first list all of the Standard Terms and Conditions (1-16) followed by any combination of the Optional Terms and Conditions (17-34) or Special Terms (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.

Standard Terms and Conditions

(To be included in all Decisions)

1	<u>Obey All Laws</u>	9	<u>Violation of Probation</u>
2	<u>Quarterly Reports</u>	10	<u>Probation Monitoring Costs</u>
3	<u>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</u>

1. 13 Obey All Laws

Respondent shall obey all federal, state and local laws, remain in full compliance with any court ordered criminal probation terms, payments, and/or other orders, and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the Respondent to the AG Board or its designee in writing within seventy-two (72) hours of occurrence. This condition applies to any jurisdiction with authority over the Respondent, whether inside or outside California.

2. 14 Quarterly Reports

Respondent shall submit quarterly ~~declarations~~ reports under penalty of perjury on forms provided by the AG Board or its designee, stating whether there has been compliance with all the conditions of probation. If the final probation report is not submitted as directed, probation shall be extended automatically until such time as the final report is submitted and accepted by the Board or its designee.

3.15 Surveillance Monitoring Program

Respondent shall comply with the AG's Board's probation surveillance monitoring program and shall, upon reasonable notice, report to the assigned probation monitor ~~investigative district office~~. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation

order. Unless the Respondent obtains prior approval from his or her assigned Board probation monitor to allow for contact, Respondent shall not have any unsolicited or unapproved contact with (1) victims, witnesses, and/or complainants associated with the case; (2) Board members and/or members of its staff; (3) persons serving the AG Board as subject matter experts; and/or (4) persons who previously rendered expert opinions on behalf of the Board in Respondent's disciplinary proceeding.

4.16 Interview with the AG Board or Its Designee

Respondent shall appear in person for interviews with the AG Board or its designee upon request at various intervals and with or without prior reasonable notice throughout the term of probation.

5.17 Changes of Employment

Respondent shall notify the AG Board in writing, through the assigned probation monitor surveillance compliance officer of any and all changes of employment, location and employment address within 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 AG 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 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 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 supervisory relationship in existence on the effective date of this probation. Respondent shall not teach at any Board approved training program or continuing education courses during the course of this probation.

8.20 Cost Recovery

Respondent shall pay to the AG Board its costs of investigation and enforcement in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, with payments to be completed no later than three months prior to the end of the probation term. Cost recovery will not be tolled.

At Respondent's request, if Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board or its designee, in its discretion, may grant an extension of Respondent's probation period up to two (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.

9.24 Violation of Probation

If Respondent violates probation in any respect, the AG Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was ~~stated~~ stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the AG Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board or its designee, which may be adjusted on an annual basis. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

11. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of his or her license or registration. The Board or its designee reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 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> <u>Actual Suspension</u> | <u>26</u> <u>Restitution</u> |
| <u>18</u> <u>Psychological Evaluation</u> | <u>27</u> <u>Alcohol and Drug Abuse Treatment Program</u> |
| <u>19</u> <u>Physical Examination</u> | <u>28</u> <u>Attend Chemical Dependency Support and Recovery Groups</u> |
| <u>20</u> <u>Practice/Billing Monitor</u> | <u>29</u> <u>Abstain from Drugs and Alcohol and Submit to Tests and Samples</u> |
| <u>21</u> <u>Psychotherapy</u> | <u>30</u> <u>Coursework</u> |
| <u>22</u> <u>Restrictions on Patient Population or Practice Setting</u> | <u>31</u> <u>Community Service</u> |
| <u>23</u> <u>No Solo Practice</u> | <u>32</u> <u>Supervised Practice</u> |
| <u>24</u> <u>Restrictions on Practice Techniques and Modalities</u> | <u>33</u> <u>Notification of Probationer Status to Employers</u> |
| <u>25</u> <u>Examination(s)</u> | <u>34</u> <u>Notification of Probationer Status to Employees</u> |

Listed below are optional conditions of probation which the ~~AG Board would~~ 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 AG 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 AG Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AG Board appointed approved California licensed psychologist or psychiatrist. Respondent shall sign a release that authorizes the evaluator to furnish the AG Board or its designee shall receive with a diagnosis based on currently accepted standards, such as the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5),-III-R diagnosis and a written report regarding the Respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the AG Board or its designee deems relevant to the case. Respondent shall execute a

~~release authorizing the evaluator to release all information to the 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 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 Board to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect safe practice of acupuncture. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.*

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 in writing of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such written notification shall be signed by each patient prior to continuing or commencing treatment and the written notification shall be kept as part of the patient's healthcare record.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of acupuncture or billing, or both, and whether Respondent is practicing acupuncture safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits written reports to the Board or its designee quarterly.

If the monitor resigns or is no longer available, Respondent shall, within five days of such resignation or unavailability notify the Board. Within 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 in cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the Respondent. The condition shall also be used in cases where public protection is achieved by Respondent having a specified practice setting (e.g. no offsite visits, no multi-disciplinary office settings, etc.); language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

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)~~ 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 severe deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the Respondent to pass ~~both the written and clinical~~ the examination(s) during the course within the first 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 AG 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 AG Board or its designee. The Board may ~~consider~~ accept a recovery program taken under court order within the last three years prior to the effective date of the

Decision. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. ~~Subsequent to the program, Respondent shall submit proof of completion of the recovery program to the Board or its designee within 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 4214 ~~4022~~ of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. ~~Respondent shall abstain completely from the use of alcoholic beverages.~~

Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription or referral for the drug was legitimately issued and is a necessary part of the medical treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, shall be considered a violation of probation.

Respondent shall undergo random biological fluid testing as determined by the AG Board or its designee. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the AG Board or its designee. Any confirmed positive finding will be considered a violation of probation.

NOTE: *This condition provides documentation that the probationer is substance or chemical free. It also provides the AG Board or its designee with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. If 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.*

30.11. **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.~~

~~Upon successful completion of the coursework, Respondent shall submit original completion certificates to the Board within thirty (30) days of course completion.~~

31.42. 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:

- 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.

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.

Prior to practicing acupuncture, Respondent shall contract with a laboratory or service, assigned and approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all of the following standards:

- (a) Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
- (c) Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

- (d) Collection of specimens shall be observed.
- (e) Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.
- (f) A collection site must submit a specimen to a laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.
- (g) Specimen collectors shall possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.
- (h) Specimen collectors shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) Specimen collectors must provide collection sites that are located in areas throughout California.
- (j) Specimen collectors must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.
- (k) Specimen collectors must have a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) Specimen collectors shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent tests positive for a banned substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing acupuncture or providing acupuncture services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice acupuncture or provide acupuncture services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If the Board thereafter determines that the positive drug test does not evidence prohibited use, the Board shall immediately lift the cease-practice order, within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory; communicating with the licensee, and/or any treating physician(s); and other health care provider, including group facilitator/s, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive drug test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in Standard # 10 of the Uniform Standards and the Board shall impose the consequences set forth in special term and condition number 39, and any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent's rehabilitation.

Note: This condition implements Uniform Standards numbers four, eight, nine, ten, and thirteen. 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

The following is an attempt to provide information regarding the range of offenses ~~under the Acupuncture Licensure Act~~ and the appropriate penalty for each offense. ~~Examples are given for illustrative purposes, but no attempt is made to catalog all possible offenses.~~ The AG Board recognizes that the penalties and conditions of probation listed are merely guidelines and that individual cases will necessitate variations, which take into account each case's unique circumstances.

If there are deviations or omissions from the Guidelines in formulating a Proposed Decision, the AG Board always ~~appreciates it if~~ requests that the Administrative Law Judge hearing the case include some explanation of this in the Proposed Decision so that the circumstances can be better understood by the AG Board during its review and consideration of the Proposed Decision for final action.

~~All references are to the specified subsections of section 4955 of the Business and Professions Code.~~

The Acupuncture Licensure Act (Business and Professions Code, Division 2, Chapter 12) and general provision sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

Note: Under conditions of probation the applicable numbered conditions are set out to include in a Decision and Order.

Index of Violations

<u>California Business and Professions Code</u>	<u>Page No.</u>
<u>Section 480 – Conviction of a Crime; Committed Any Act Involving Dishonesty, Fraud or Deceit</u>	
<u>Section 490 – Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist</u>	
<u>Section 651 – Advertising</u>	
<u>Section 726 – Commission of Act of Sexual Abuse or Misconduct with Patient</u>	
<u>Section 4935(a)(1) – Unlawful Practice of Acupuncture</u>	
<u>Section 4935(a)(2) – Unlawful Practice of Acupuncture</u>	
<u>Section 4935(b) – Unlawful Practice of Acupuncture</u>	
<u>Section 4935(c) – Unlawful Practice of Acupuncture</u>	
<u>Section 4936 – Use of the Title Dr.</u>	
<u>Section 4955 (a) – Using or possessing any controlled substance, or dangerous drug or alcoholic beverage</u>	
<u>Section 4955 (b) – Conviction of a Crime Substantially Related to the Practice of Acupuncture</u>	
<u>Section 4955 (c) – False or Misleading Advertising</u>	
<u>Section 4955 (d) – Aiding or Abetting or Violating or Conspiring to Violate the Terms of this Chapter or Any Board Regulation</u>	
<u>Section 4955 (e) – Failing to Follow Infection Control Guidelines</u>	
<u>Section 4955 (f) – The Use of Threats or Harassment Against a Licensee/Patient</u>	
<u>Section 4955 (h) – Disciplinary Action Taken by Any Public Agency</u>	
<u>Section 4955 (i) – Action or Conduct that Warrants a Denial of License</u>	

<u>Section 4955 (j) – Violation of Any Law or Local Ordinance on Business Premises</u>	
<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>	
<u>Section 4955.1 (e) – Failing to Maintain Adequate and Accurate Records (repeated acts)</u>	
<u>Section 4955.2 (a) – Gross Negligence</u>	
<u>Section 4955.2 (b) – Repeated Negligent Acts</u>	
<u>Section 4955.2 (c) – Incompetence</u>	

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, #29, #30)
 3. Special Terms and Conditions, if appropriate (#35 – # 40)

Section 490 –

Conviction of Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 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 [1], participation in an alcohol/drug abuse treatment program and continuing therapy with a psychologist trained in substance abuse treatment [8], biological fluid testing [9], practice monitor~~

[4], physical examination (if appropriate) [3], and standard terms and conditions [13–22].

~~D. CONVICTION OF A CRIME SUBSTANTIALLY RELATED TO THE FUNCTIONS OF AN ACUPUNCTURIST, THE RECORD OF CONVICTION BEING CONCLUSIVE EVIDENCE THEREOF~~

~~MAXIMUM:~~ Convictions of a crime of violence against person or property or economic crime resulting in substantial harm to patient(s).

~~Penalty:~~ Revocation; denial of license.

~~MINIMUM:~~ Conviction of other crime resulting in little or no harm to patient(s).

~~Penalty:~~ 5 years probation, minimum 30 day suspension [1], ethics course [11], restitution (if appropriate) [7], community service [12], and standard terms and conditions [13–22].

~~E. IMPROPER ADVERTISING~~

~~Repeated infraction of statute regarding advertising.~~

~~Penalty:~~ 5 years probation, written and clinical examination [6], coursework in ethics [11], community service [12], and standard terms and conditions [13–22].

~~F. VIOLATING OR CONSPIRING TO VIOLATE THE TERMS OF THIS CHAPTER~~

~~No Guidelines drafted.~~

~~Refer to underlying statute or regulation.~~

~~G. GROSS NEGLIGENCE IN THE PRACTICE OF ACUPUNCTURE~~

~~MAXIMUM:~~ Gross negligence resulting in substantial harm to patient(s).

~~Penalty:~~ Revocation; denial of license.

~~MINIMUM:~~ Gross negligence resulting in minimal harm to patient(s).

~~Penalty:~~ 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13–22].

~~H. REPEATED NEGLIGENT ACTS~~

~~MAXIMUM:~~ Repeated negligent acts resulting in substantial harm to patient(s).

~~Penalty:~~ Revocation; denial of license.

~~MINIMUM:~~ Repeated negligent acts resulting in minimal harm to patient(s).

~~Penalty:~~ 5 years probation, minimum 90 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13–22].

~~I. INCOMPETENCE~~

~~MAXIMUM: Incompetence resulting in harm to patient(s).
Penalty: Revocation; denial of license.~~

~~MINIMUM: Incompetence resulting in minimal harm to patient(s).
Penalty: 5 years probation, minimum 60 days suspension [1], psychological evaluation prior to resumption of practice (condition precedent) [2], practice monitor [4], clinical examination [6], coursework [11], and standard terms and conditions [13-22].~~

The following makes reference to ~~4935~~ and are in conjunction with ~~4955(f)~~ of the Business and Profession Code.

~~**J. IMPERSONATING ANOTHER PERSON HOLDING AN ACUPUNCTURE LICENSE OR ALLOWING ANOTHER PERSON TO USE HIS OR HER LICENSE**~~

~~MAXIMUM: Impersonation or use resulting in substantial harm to patient(s).
Penalty: Revocation; denial of license, or written and clinical examination application.~~

~~MINIMUM: Impersonation or use resulting in little or no harm to patient(s).
Penalty: 5 years probation / actual suspension [1], coursework in ethics [11], community service [12], and standard terms and conditions [13-22].~~

~~**K. AIDING OR ABETTING UNLICENSED PRACTICE**~~

~~MAXIMUM: Aiding or abetting unlicensed practice which results in harm to patient(s).
Penalty: Revocation; denial of license.~~

~~MINIMUM: Aiding or abetting unlicensed practice which results in minimal harm to patient(s).
Penalty: 5 years probation / actual suspension [1], oral examination [6], coursework [11], and standard terms and conditions [13-22].~~

Violation: Unprofessional Conduct

Section 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

- 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) –

Aiding or Abetting or Violating or Conspiring to Violate the-Terms of this Chapter or Any Board Regulation

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years of probation
 1. Standard Terms and Conditions (#1 – #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)



DATE	June 26, 2020
TO	Board Members, Acupuncture Board
FROM	Alex Dodge, Policy Analyst
SUBJECT	Discussion and Possible Action Regarding Assembly Bill 2138 and Substantial Relationship Criteria Rulemaking Package

Summary

This proposal would initiate an ongoing rulemaking action implementing additional changes to the text of Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018) that have been negotiated between the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

Background

Existing law (Business and Professions Code section 480) presently authorizes the Acupuncture Board (Board) to deny an application for licensure based on a conviction for a crime or act that is 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.

At its March 2019 Board Meeting, The Acupuncture Board (Board) approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). Key provisions of that Bill, which become effective July 1, 2020, are as follows:

- Only Permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC) §480(a):
 1. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code §1192.7), or for those who must register as a sex offender as described in Penal Code §290(d)(2) or (3).

2. The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession (the prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction).
- Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary and failure to disclose will not be a factor in a board's decision to grant or deny an application. (BPC §480(f)(2)).
 - Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession. These criteria will aid the board when considering the denial, suspension, or revocation of a license. The criteria must include all of the following (BPC §481):
 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 is licensed.
 - Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation (BPC §481).
 - Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met (BPC §482).

Status of the Regulatory Proposal

The Board's current AB 2138 rulemaking package does not meet the procedural requirements of the Administrative Procedure Act. Additionally, it requires changes to the text that require new Board action. Staff recommends that an amended rulemaking package be put forward in place of the current package.

Because the AB 2138 regulations must be completed by each board and bureau under DCA, DCA Legal prepared a basic template of the required amendments for all boards and bureaus to use. DCA Legal recommended boards and bureaus use the template as a starting point, making modifications as needed to meet each practice act's unique needs. Board staff used the DCA template to draft the regulations, making modifications as needed.

The Veterinary Medical Board's (VMB) AB 2138 regulation package was the first to go to OAL for final review. However, upon review of the VMB's package, OAL advised the VMB that it would require several text changes in order for the package to go through. OAL advised the VMB that while several of the required changes are likely non-substantive, other recommended revisions may be considered substantive (which would mean they would need to go back to their board for approval, and then to a 15-day public comment period.)

The VMB ended up withdrawing their AB 2138 regulations from OAL and took text changes negotiated between DCA Legal and OAL back to their board for consideration. The revised VMB regulations were resubmitted in June 2020 to OAL for reconsideration.

This proposal accounts for the items that VMB was advised to address.

Modifications to the AB 2138 Regulatory Text

Based on reviewing the changes Veterinary Medical Board's AB 2138 regulations and consultation with DCA Legal, staff made the following changes to the Board's AB 2138 regulation text:

1. Section 1399.469.4 (a):

- a. A reference to Sections 4955, 4955.1, and 4955.2 was added. These sections authorize the Board to deny, suspend, or revoke, or impose probationary conditions upon the license of any acupuncturist for acts that the Board's Practice Act considers unprofessional conduct.

2. Section 1399.469.4 (b):

- a. Make a technical revision to use the appropriate term "subsection" in place of "subdivision".
- b. Make a technical correction to replace semi-colons with periods at the end of (b)(1) and (b)(2) and removing "and" from (b)(2) to accommodate that change.

3. Section 1399.469.4 (c):

Add a subsection listing actual substantially related crimes, professional misconduct, and acts the Board has determined are cause for denial, suspension or revocation of a license for purposes of BPC Section 1399.469.4(a). 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.

- a. Adds listed crimes as subparagraphs as follows:
 - i. 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 (BPC Division 2, Chapter 12) or other state or federal laws governing the practice of acupuncture.
 - ii. A conviction of a crime involving fiscal dishonesty

4. Section 1399.469.5 (a):

- a. Make a grammatical correction to use the appropriate conjugation "has been" in place of "was".
- b. Strike "and is presently eligible for a license," to resolve OAL's concern that this phrase could be misinterpreted.

5. Section 1399.469.5 (b):

- a. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to applicants who have not completed a criminal sentence without a violation, the applicant with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (a),

the denial is based on professional misconduct (as that term is used under the new BPC §480), or the denial is based on one or more of the grounds specified in the Board's practice acts applicable to denials, suspensions, or revocations of a license issued by the Board. This clarifying amendment is necessary to inform the public, applicants, and Board staff that rehabilitation criteria will be considered for all application denials, regardless of whether the grounds for denial stem from BPC §480. The clarifications promote equity and fairness to all applicants in keeping with the legislative intent of AB 2138.

- b. Subparagraph (1): Replace the term "severity" with "gravity" to align with the language used in the new version of BPC §481(b)(1).
- c. Subparagraphs (1), (2), and (3): Add "professional misconduct" to include the conduct described under the new BPC §480 as grounds for denial.
- d. Subparagraph (2): Delete "under Section 480 of the Business and Professions Code", as this subparagraph is applicable to all statutory grounds for denial, as specified, not just grounds under BPC §480.
- e. Subparagraph (3): Delete incorrect reference to "subdivision" (1) or (2) and make the correct reference to "paragraph" instead.
- f. Subparagraph (5): Delete incorrect reference to "subdivision" (b) (1) through (5) and make the correct reference to "subsection" instead.

6. Section 1399.469.6 (a):

- a. Clarify that the conditions for applying rehabilitation criteria for suspension or revocation of a license for criminal convictions are pursuant to BPC §490.
- b. Strike "and is presently eligible for a license," to resolve OAL's concern that this phrase could be misinterpreted.
- c. Subparagraphs (1), (2), (3), and (4): Make a technical revision to replace semicolons with periods.
- d. Subparagraph (4): Make a technical revision to remove "and" to correspond with the removal of semi-colons.

7. Section 1399.469.6 (b):

- a. Remove and restate the subsection to clarify the circumstances under which the Board will apply rehabilitation criteria to licensees who have not completed a criminal sentence without a violation, the licensee with a criminal conviction did not make a showing of rehabilitation based on the criteria shown in subsection (a), the suspension or revocation is based on a disciplinary action as defined in BPC section 141, or the suspension or revocation is based on one or more of the grounds specified in the Board's practice acts applicable to denials, suspensions, or revocations of a license issued by the Board (BPC 4955, 4955.1, and 4955.2.) This clarifying amendment is necessary to inform the public, licensees, and Board staff that rehabilitation criteria will be considered for all license suspensions and revocations, regardless of whether the grounds for discipline stem from BPC §490. The clarifications promote equity and fairness to all licensees in keeping with the legislative intent of AB 2138.

- b. Subparagraph (1): Replace the term “severity” with the term “gravity” to align with the language used in the new version of BPC §481(b)(1).
 - c. Subparagraph (2): Delete “under Section 490 of the Code”, as this subparagraph is applicable to all statutory grounds for suspension and revocation, as specified, not just grounds under BPC §490.
 - d. Subparagraphs (1), (2), and (3): Add “disciplinary action(s)” in order to include the conduct described under BPC §141 as grounds for suspension or revocation.
 - e. Subparagraph (3): Delete incorrect reference to “subdivision” (1) or (2) and make the correct reference to “paragraph” instead.
 - f. Subparagraph (4): Replace the term “such person” with the term “the licensee” for clarity.
 - g. Subparagraph (5): Delete incorrect reference and numbering for “subdivision (a) (1) through (5)” and instead make the correct reference to “subsection (b) (1)-(5)”.
 - h. Subparagraphs (1), (2), (3), (4), (5), and (6): Make a technical revision to replace semicolons with periods.
 - i. Subparagraph (6): Make a technical revision to remove “and” to correspond with the removal of semi-colons
8. Section 1399.469.6 (c):
- a. Add reference to reinstatement petition evaluations, specifying the use of criteria in subsection (b) of this section when the Board evaluates evidence of rehabilitation under the provisions of Business and Professions Code Section 4960.5.
9. Section 1399.469 Authority and Reference
- a. Make minor revision to delete inapplicable authority sections and add to the reference section statutes that relate to rehabilitation criteria (BPC §475).

Recommendation

All of the listed changes correspond to those negotiated between OAL and DCA. The new language largely provides additional clarity over the previous iterations. The Board has the option to list additional crimes it deems appropriate in CCR 1399.469.4(c) for purposes of listing crimes that are substantially related for the purpose of denial, suspension, or revocation of a license pursuant to Section 141, Division 1.5, or BPC Section 4955 (Unprofessional Conduct).

Motion

If the language is approved as is, the motion is as follows:

Approve the proposed regulatory text for Title 16, CCR section 1399.469.4, 1399.469.5, and 1399.469.6, 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 amend the preceding rulemaking package, initiate a revised rulemaking process, make any non-substantive technical or grammatical changes to the package, and set the matter for hearing.

Attachments:

Attachment A: Proposed Regulatory Amendments

Attachment B: Text of AB 2138 (Chapter 995, Statutes of 2018)

Attachment C: Memos to the California Acupuncture Board regarding Substantial Relationship Criteria (AB 2138, Dated March 29, 2019)