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California Legislature

Senate Committee on Business, Professions & Economic Development

Senator
Curren D. Price, Jr.
Chair

Acupuncture Board
RECEIVED
MAY 11 2011

Memorandum

To: Boards Subject to Review in 2011-12

From: Senator Curren D. Price, Jr.

Date: May 10, 2011

Subject: Request for Information and Issues to be Addressed for 2011-12 Oversight Review

This is to inform you that the Senate Committee on Business, Professions and Economic Development (Committee) will begin its oversight review of the following boards in the fall of 2011:

- ✓ Acupuncture Board
- Board of Behavioral Sciences
- Chiropractic Board
- Court Reporters Board
- Pharmacy Board
- Physical Therapy Board
- Physician Assistant Committee
- Podiatric Medicine Board
- Psychology Board

You will receive separately by email a Report Form that should be completed and submitted to the Committee by November 1, 2011. The Report has been significantly revised from the Report used by the Committee in prior years. The revisions are intended to simplify the reporting process for the boards, and focus more clearly on issues of interest to the Committee. The first sections of the Report provide an overview of the board's current regulatory program, and gives pre-formatted tables and charts to be filled in by the board. The latter sections focus on responses by the board to

particular issues that are raised by the Committee or that are raised by the individual board.

We ask that you complete the tables and charts and provide the appropriate statistical information for the fiscal years indicated. In the event that some information may not pertain to your particular board, please note it on your response, but please be sure to include information that is relevant to your activities and programs.

In completing your Report, please note the following sections:

Section 10 – Board Action and Response to Prior Sunset Issues. This should reflect the board's response to each individual issue and recommendation that was raised by the Committee during the prior review of the board.

Section 11 – New Issues. The Committee may have additional issues that the board will have to address during this review. The board also has an opportunity to raise new issues and make recommendations to the Committee within this section. We encourage the board to request a meeting with Committee staff to review possible issues to be addressed within this document for the 2011 review.

Along with the Report Form, you are also being sent a Guide to complete the tables in the Report. Most of the tables may be completed from data in standard reports that the board already receives. If your board does not use the Department's report and data processes, please report information using the definitions given in the Guide.

Each board should submit 15 printed copies of its final Report to the Committee, and also submit an electronic copy to the Committee (you may submit a PDF version, but we also request a MS-Word copy).

Committee staff will be responsible for investigating and analyzing information provided by the board, and then preparing a background paper with issues to be addressed by the board and, when possible, preliminary recommendations for the board and interested parties to consider during our public hearings to be held early in 2012.

We expect to announce the dates for the hearings sometime in December. We would like to request that once the hearing dates are set that the board send out letters of interest (by mail or email) to your mailing list of organizations, groups, or individuals who would be interested in attending the Committee's public hearings.

If you have any questions about the attached documents or the review process, please contact G. V. Ayers of my staff at (916) 651-4104.

Attachments to be sent by email

[BOARD NAME]
**BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT
 REGULATORY PROGRAM**
As of [date]

**Section 1 –
 Background and Description of the Board and Regulated Profession**

Provide a short explanation of the history and function of the board.¹ Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

1. Describe the make-up and functions of each of the board's committees.

Table 1a. Attendance			
[Enter board member name]			
Date Appointed:	[Enter date appointed]		
Meeting Type	Meeting Date	Meeting Location	Attended?
Meeting 1	[Enter Date]	[Enter Location]	[Y/N]
Meeting 2	[Enter Date]	[Enter Location]	[Y/N]
Meeting 3	[Enter Date]	[Enter Location]	[Y/N]
Meeting 4	[Enter Date]	[Enter Location]	[Y/N]

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?
3. Describe any major changes to the board since the last Sunset Review, including:
 - Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)

¹ The term "board" in this document refers to a board, bureau, commission, committee, department, division, program or agency, as applicable. Please change the term "board" throughout this document to appropriately refer to the entity being reviewed.

- All legislation sponsored by the board and affecting the board
 - All proposed regulations initiated since the board's last sunset review.
4. Describe any major studies conducted by the board.
 5. List the status of all national associations to which the board belongs.
 - Does the board's membership include voting privileges?
 - List committees, workshops, working groups, task forces, etc., on which board participates.
 - How many meetings did board representative(s) attend? When and where?
 - If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

Section 2 – Performance Measures and Customer Satisfaction Surveys

6. Provide each quarterly and annual performance measure report as published on the DCA website
7. Provide results for each question in the customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

Section 3 – Fiscal and Staff

Fiscal Issues

8. Describe the board's current reserve level, spending, and if a statutory reserve level exists.
9. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.
10. Describe if/when deficit is projected to occur and if/when fee increase or reduction is anticipated. Describe the fee changes anticipated by the board.

Table 2. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved

Table 3. Fee Schedule and Revenue

Fee	Current Fee Amount	Statutory Limit	FY 2007/08 Revenue	FY 2008/09 Revenue	FY 2009/10 Revenue	FY 2010/11 Revenue	% of Total Revenue

Table 4. Fund Condition

(Dollars in Thousands)	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Beginning Balance						
Revenues and Transfers						
Total Revenue	\$	\$	\$	\$	\$	\$
Budget Authority						
Expenditures						
Fund Balance	\$	\$	\$	\$	\$	\$

11. Describe license renewal cycles and history of fee changes in the last 10 years.
12. Describe history of general fund loans. When were the loans made? When were payments made? What is the remaining balance?
13. Describe the amounts and percentages of expenditures by program components. Use the attached Table 5a: Expenditures by Program Component Worksheet as the basis for calculating expenditures by program component. Expenditures by each component should be broken out by personnel expenditures and other expenditures.

Table 5. Expenditures by Program Component

	FY 2007/08		FY 2008/09		FY 2009/10		FY 2010/11	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement								
Examination								
Licensing								
Diversion (if applicable)								
TOTALS	\$	\$	\$	\$	\$	\$	\$	\$

Staffing Issues

14. Describe any staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.
15. Describe the board's staff development efforts and how much is spent annually on staff development. Provide year-end organizational charts for the last four fiscal years.

Section 4 – Licensing Program

16. What are the board's performance targets/expectations for its licensing program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
17. Describe any increase or decrease in average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

Table 6. Licensee Population					
		FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				
[Enter License Type]	Active				
	Out-of-State				
	Out-of-Country				
	Delinquent				

Table 7a. Licensing Data by Type											
Application Type		Received	Approved	Closed	Issued	Pending Applications			Cycle Times		
						Total (Close of FY)	Outside Board control*	Within Board control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2008/09	(Exam)					-	-	-	-	-	-
	(License)					-	-	-	-	-	-
FY 2009/10	(Exam)					-	-	-	-	-	-
	(License)					-	-	-	-	-	-
FY 2010/11	(Exam)										
	(License)										

* Optional. List if tracked by the board.

Table 7b. Total Licensing Data						
				FY 2008/09	FY 2009/10	FY 2010/11
Initial Licensing Data:						
Initial License/Initial Exam Applications Received						
Initial License/Initial Exam Applications Approved						
Initial License/Initial Exam Applications Closed						
License Issued						
Initial License/Initial Exam Pending Application Data:						
Pending Applications (total at close of FY)						
Pending Applications (outside of board control)*						
Pending Applications (within the board control)*						
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE)						
Average Days to Application Approval (All - Complete/Incomplete)						
Average Days to Application Approval (incomplete applications)*						
Average Days to Application Approval (complete applications)*						

* Optional. List if tracked by the board.

18. How does the board verify information provided by the applicant?

- a. What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?
- b. Does the board fingerprint all applicants?
- c. Have all current licensees been fingerprinted? If not, explain.
- d. Does the board check a national databank?
- e. Does the board require primary source documentation?

19. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

Continuing Education/Competency Requirements

20. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.
- How does the board verify CE or other competency requirements?
 - Does the board conduct CE audits on its licensees? Describe the board's policy on CE audits.
 - What are consequences for failing a CE audit?
 - How many CE audits were conducted in the past four fiscal years? How many fails?
 - What is the board's course approval policy?
 - Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?
 - How many applications for CE providers and CE courses were received? How many were approved?
 - Does the board audit CE providers? If so, describe the board's policy and process.
 - Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensees' continuing competence.

Table 8. Examination Data			
California Examination (include multiple language) if any:			
	License Type		
	Exam Title		
FY 2007/08	# of 1 st Time Candidates		
	Pass %		
FY 2008/09	# of 1 st Time Candidates		
	Pass %		
FY 2009/10	# of 1 st Time Candidates		
	Pass %		
FY 2010/11	# of 1 st time Candidates		
	Pass %		
	Date of Last OA		
	Name of OA Developer		
	Target OA Date		
National Examination (include multiple language) if any:			
	License Type		
	Exam Title		
FY 2007/08	# of 1 st Time Candidates		
	Pass %		
FY 2008/09	# of 1 st Time Candidates		

	Pass %			
FY 2009/10	# of 1 st Time Candidates			
	Pass %			
FY 2010/11	# of 1 st time Candidates			
	Pass %			
Date of Last OA				
Name of OA Developer				
Target OA Date				

Examinations

- 21. Describe the examinations required for licensure. Is a national exam used? Is there a California specific exam required?
- 22. What are pass rates for first time vs. retakes in the past 4 fiscal years? (*Refer to Table 8: Exam Data*)
- 23. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?
- 24. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

School approvals

- 25. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?
- 26. How many schools are approved by the board? How often are schools reviewed?
- 27. What are the board's legal requirements regarding approval of international schools?

Section 5 – Enforcement Program

- 28. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
- 29. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

Table 9a. Enforcement Statistics			
	FY 2008-09	FY 2009-10	FY 2010-11
COMPLAINT			
Intake (Use CAS Report EM 10)			
Received			
Closed			
Referred to INV			
Average Time to Close	-	-	
Pending (close of FY)			
Source of Complaint (Use CAS Report 091)			
Public			
Licensee/Professional Groups			
Governmental Agencies			
Other			
Conviction / Arrest (Use CAS Report EM 10)			
CONV Received			
CONV Closed			
Average Time to Close	-	-	
CONV Pending (close of FY)			
LICENSE DENIAL (Use CAS Reports EM 10 and 095)			
License Applications Denied			
SOIs Filed			
SOIs Withdrawn			
SOIs Dismissed			
SOIs Declined			
Average Days SOI	-	-	
ACCUSATION (Use CAS Report EM 10)			
Accusations Filed			
Accusations Withdrawn			
Accusations Dismissed			
Accusations Declined			
Average Days Accusations	-	-	
Pending (close of FY)			

Table 9b. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
DISCIPLINE			
Disciplinary Actions (Use CAS Report EM 10)			
Proposed/Default Decisions			
Stipulations			
Average Days to Complete	-	-	
AG Cases Initiated			
AG Cases Pending (close of FY)			
Disciplinary Outcomes (Use CAS Report 096)			
Revocation			
Voluntary Surrender			
Suspension			
Probation with Suspension			
Probation			
Probationary License Issued			
Other			
PROBATION			
New Probationers			
Probations Successfully Completed			
Probationers (close of FY)			
Petitions to Revoke Probation			
Probations Revoked			
Probations Modified			
Probations Extended			
Probationers Subject to Drug Testing			
Drug Tests Ordered			
Positive Drug Tests			
Petition for Reinstatement Granted			
DIVERSION			
New Participants			
Successful Completions			
Participants (close of FY)			
Terminations			
Terminations for Public Threat			
Drug Tests Ordered			
Positive Drug Tests			

Table 9c. Enforcement Statistics (continued)			
	FY 2008-09	FY 2009-10	FY 2010-11
INVESTIGATION			
All Investigations (Use CAS Report EM 10)			
First Assigned			
Closed			
Average days to close	-	-	
Pending (close of FY)			
Desk Investigations (Use CAS Report EM 10)			
Closed	-	-	
Average days to close	-	-	
Pending (close of FY)	-	-	
Non-Sworn Investigation (Use CAS Report EM 10)			
Closed	-	-	
Average days to close	-	-	
Pending (close of FY)	-	-	
Sworn Investigation			
Closed (Use CAS Report EM 10)			
Average days to close	-	-	
Pending (close of FY)			
COMPLIANCE ACTION (Use CAS Report 096)			
ISO & TRO Issued			
PC 23 Orders Requested			
Other Suspension Orders			
Public Letter of Reprimand			
Cease & Desist/Warning			
Referred for Diversion			
Compel Examination			
CITATION AND FINE (Use CAS Report EM 10 and 095)			
Citations Issued			
Average Days to Complete	-	-	
Amount of Fines Assessed			
Reduced, Withdrawn, Dismissed			
Amount Collected			
CRIMINAL ACTION			
Referred for Criminal Prosecution			

Table 10. Enforcement Aging

	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year						
2 Years						
3 Years						
4 Years						
Over 4 Years						
Total Cases Closed						
Investigations (Average %)						
Closed Within:						
90 Days						
180 Days						
1 Year						
2 Years						
3 Years						
Over 3 Years						
Total Cases Closed						

30. What do overall statistics show as to increases or decreases in disciplinary action since last review.
31. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's model? If so, explain why.
32. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report any actions taken against the licensee. Are there problems with receiving the required reports? If so, what could be done to correct the problems?
33. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases were lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

Cite and Fine

34. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and last time regulations were updated. Has the board increased its maximum fines to the \$5,000 statutory limit?
35. How is cite and fine used? What types of violations are the basis for citation and fine?
36. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals in the last 4 fiscal years?
37. What are the 5 most common violations for which citations are issued?
38. What is average fine pre and post appeal?
39. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

Cost Recovery and Restitution

40. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.
41. How many and how much is ordered for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.
42. Are there cases for which the board does not seek cost recovery? Why?
43. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.
44. Does the board have legal authority to order restitution? If so, describe the board's efforts to obtain restitution for individual complainants, the board's formal restitution program, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Discuss any changes since last review.

Table 11. Cost Recovery

	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Total Enforcement Expenditures				
Potential Cases for Recovery *				
Cases Recovery Ordered				
Amount of Cost Recovery Ordered				
Amount Collected				

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation(s) of the license practice act.

Table 12. Restitution

	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/11
Amount Ordered				
Amount Collected				

Section 6 – Public Information Policies

45. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?
46. Does the board webcast its meetings? How far in advance does the board post future meeting dates?
47. Are the board's complaint disclosure policy consistent with DCAs complaint disclosure and public disclosure policies?
48. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?
49. What methods are used by the board to provide consumer outreach and education?

Section 7 – Online Practice Issues

50. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate Internet business practices or believe there is a need to do so?

Section 8 – Workforce Development and Job Creation

51. What actions has the board taken in terms of workforce development?
52. Describe any assessment the board has conducted on the impact of licensing delays on job creation.
53. Describe any efforts that the board takes to alleviate negative impact of its regulatory mission on California business, including small and micro business.
54. Describe any partnering or information sharing the board has with other government agencies, such as Workforce Investment Boards or Office of Statewide Health Planning and Development.
55. Describe the board's outreach to schools.
56. Provide any workforce development data collected by the board, such as:
- Workforce shortages and staffing needs
 - Successful training programs
 - Number of jobs created by its licensure program

Section 9 – Current Issues

57. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?
58. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?
59. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.
60. Describe the board's efforts to comply with OSHPD data collection efforts.
61. Describe the board's efforts to address unlicensed activity and the underground economy.
62. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

Section 10 – Board Action and Response to Prior Sunset Issues

Include the following:

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committee/Joint Committee during prior sunset review.
3. What action the board took pursuant to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue.

Section 11 – New Issues

List new issues raised in this report. Give a short discussion of the issues, recommendations, or actions which could be taken by the board, Department of Consumer Affairs, or Legislature to deal with issues discussed in this report, i.e., legislative changes, policy direction, budget changes.

1. New issues raised by the Committee to be addressed by the board in this report.
2. New issues identified by the board that are previously addressed in this report or by prior Sunset Review. Include new proposals for legislation, policy direction or budget changes.

Section 12 – Attachments

Please provide the following attachments:

- A. Board's administrative manual
- B. Current organizational chart showing relationship of committees to the board and membership of each committee
- C. Major studies, if appropriate
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.)
- E. Board's records retention schedule.