



MEMORANDUM

MEETING DATE	October 25, 2013
TO	Acupuncture Board
FROM	Board Staff
SUBJECT	Consumer Protection Enforcement Initiative / SB 1441 Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation Informational Memo

Issue:

Enforcement regulatory package.

Proposal:

The California Acupuncture Board (Board) proposes to provide the board with tools to improve the enforcement process and replace its disciplinary guidelines with the Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation. This proposal would reflect changes in current law and the current probationary environment by clarifying existing language and making technical changes.

Consumer Protection Enforcement Initiative-

In July 2009, the Los Angeles Times published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. These articles exposed the need for healing arts boards within the Department of Consumer Affairs (Department) to improve the enforcement process to ensure patient safety. As a result of the article, the Department held an informational hearing and investigated the problems that were addressed in the Los Angeles Times article. The Department developed a report (Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010") regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009 - 2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to be enacted. When the bill failed to be enacted into law, the Department encouraged the healing arts boards to pursue regulatory action to assist the

boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

Specifically, the proposed language does the following:

- Would delegate to the Board's Executive Officer (EO) the authority to approve settlement agreements for revocation, surrender, or interim suspension of an acupuncturist license. (Amends CCR section 1399.405)
- Would require an applicant for an acupuncturist license to undergo an evaluation and/or examination if it appears the applicant may be unable to practice due to mental and/or physical illness. (Amends CCR section 1399.419)
- Prohibits sexual acts and erotic behavior when premises used in connection with an acupuncturist license (Amends CCR section 1399.450)
- Abolishes the Disciplinary Guidelines and replaces it with the Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation that are incorporated by reference in section 1399.469. (Amends CCR section 1399.469)
- Specifies that the Board will deny or revoke a license if an individual is required to register as a sex offender pursuant to Penal Code Section 290 1111 (Adds CCR section 1399.469.1)
- Specifies additional acts that constitute unprofessional conduct. (Adds CCR section 1399.469.2)

SB 1441 Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation -

On September 28, 2008, Senate Bill 1441 (Chapter 548, Statutes of 2008) was enacted, which required the Department of Consumer Affairs (Department) to establish a Substance Abuse Coordination Committee (SACC). The SACC was charged with the task of developing uniform standards in sixteen specific areas for use in dealing with substance abusing licensees. In April 2010, the SACC developed a document named Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, which contained the sixteen uniform standards as required by SB 1441.

Purpose:

The Board's highest function is protection and well-being of the public. In this function, the Board uses disciplinary guidelines as a source of penalty, conditions of probation, evidence of mitigation, and language recommendations for Board members, Office of the Attorney General, and administrative law judges to consider when taking action against a license or applicant. The proposed changes would abolish the Disciplinary Guidelines and replace it with the Uniform Standards Related to Substance Abuse and Recommended Guidelines for Disciplinary Orders and Conditions of Probation. Such changes are necessary due to statutory and regulatory changes that have occurred since 1996. Additionally, the proposed

changes will provide more guidance, remove outdated and unnecessary terms and conditions of probation, and incorporate new changes necessary to ensure the Board's ability to meet its consumer protection mandate.

Discussion:

This proposed regulatory language is the same language used by other boards implementing this statutory provision. Because of this similarity, this language provides clarity for licensees to understand what specifically could apply to them, and for judges, Board staff and Attorney Generals in drafting a decision as it will be clearer which standards are penalties for the licensee, and which standards are for administrative use.

These standards also allow for a reduction in delays due to legal, procedural, and inadequate resources that limit the Board's ability to investigate and act on cases in a timely manner.

A very small percentage of investigations involving Acupuncturists will sometimes result in cases involving prostitution or illegal massage performed at an acupuncturist's office. While rare, there is still a need for an investigator and the Board to have an ability to investigate and penalize a licensee if necessary for these actions.

The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incompetent practice by licensees. Also, the Board is authorized to investigate and discipline licensees who may jeopardize the health, safety and welfare of the consumer. These proposed regulations will give staff further tools and guidelines to accomplish these two mandates if the applicant or current licensee is a registered sex offender.

Code sections modified or added:

The Board proposes to amend § 1399.405, 1399.419, 1339.450 and 1399.469 and add to sections 1399.469.1 and 1399.469.2 of Chapter 13.7 of Title 16 of the California Code of Regulations.

Authority:

Authority for the Board to adopt, amend or repeal regulations in accordance with the Administrative Procedures Act (Chapter 3.5, Government code section 11340) is provided under California Business and Professions code section 4933.

Rulemaking package status:

As of 9/17/2013, regulatory rulemaking process is underway. Board to vote on language in October, with Office of Administrative Law submission by end of November.