

# California Acupuncture Board Meeting

June 28-29, 2018

Department of Consumer Affairs  
Handlery Hotel San Diego  
Tower Room  
950 Hotel Circle North,  
San Diego, CA 92108



## **Board Members**

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

## **Legal Counsel**

Salwa Bojack, Esq.

## **Staff**

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



**Members of the Board**

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

**NOTICE OF ACUPUNCTURE BOARD MEETING**  
**June 28 & 29, 2018**

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

**AGENDA – 9:30 a.m., Thursday, June 28, 2018**

- 1. Call to Order, Roll Call, and Establishment of Quorum (Dr. Matecki)**
- 2. President's Remarks (Dr. Matecki)**  
Welcoming message and meeting information
- 3. Public Comment on Items Not on the Agenda (Dr. Matecki)**  
*The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code §§ 11125, 11125.7(a).)*
- 4. Petition for Reinstatement of Acupuncture License –**  
**Brian Kim (aka Byung Chang Kim) –9:30 a.m.**
- 5. Petition for Early Termination of Probation –**  
**Kyung Kim (AC# 14723) – 11:00 a.m.**

**CLOSED SESSION**

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

**RECONVENE OPEN SESSION**

- 7. Review and Approval of October 20, 2017 Board Meeting Minutes (Marc Johnson)**
- 8. Review and Approval of November 17, 2017 Board Meeting Minutes (Marc Johnson)**
- 9. Review and Approval of December 15, 2017 Board Meeting Minutes (Marc Johnson)**
- 10. Review and Approval of March 30, 2018 Board Meeting Minutes (Marc Johnson)**
- 11. Review and Approval of April 13, 2018 Board Meeting Minutes (Marc Johnson)**
- 12. Recess until Friday, June 29, 2018 at 9:00 a.m.**

**AGENDA – 9:00 a.m., Friday, June 29, 2018**

- 13. Call to Order, Roll Call, and Establishment of Quorum (Dr. Matecki)**
- 14. President’s Report (Dr. Matecki)**
- 15. Public Comment on Items Not on the Agenda (Dr. Matecki)**  
*The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code §§ 11125, 11125.7(a).)*
- 16. Executive Officer’s Report (Ben Bodea)**
  - (A) Staff Update
  - (B) Budget Update
  - (C) Outreach Update
- 17. Enforcement Report (Kristine Brothers)**
  - (A) Q1 17-18 Enforcement Report
  - (B) Q2 17-18 Enforcement Report
  - (C) Q3 17-18 Enforcement Report
- 18. Education Report (Jay Herdt)**
  - (A) Status of Curriculum Reviews
  - (B) Continuing Education and Audit Update
  - (C) Sunset Review Recommendations
- 19. Examination Report (Tammy Stadley)**
  - (A) Examination Statistics
  - (B) Transition to Computer-Based Testing for the California Acupuncture Licensing Exam
- 20. Regulatory Update (Marc Johnson)**
  - (A) Title 16, CCR §1399.451(a) –  
Hand Hygiene Requirements
  - (B) Title 16, CCR §1399.455 –  
Advertising Guidelines: Display of License Number in Advertising
  - (C) Title 16, CCR §1399.469.4 –  
Prohibited Sexual Acts
  - (D) Title 16, CCR §1399.482.2 –  
Continuing Education Ethics Requirement
- 21. Discussion and Possible Board Action on Current Legislation (Marc Johnson)**
  - (A) **AB 767 (Quirk-Silva)**  
Master Business License Act
  - (B) **AB 1659 (Low)**  
Healing arts boards: inactive licenses

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

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

(D) **AB 3142 (Committee on Business and Professions) -**

Acupuncture Licensure Act: Acupuncture Board

(E) **SB 762 (Hernandez)**

Healing arts licensee: license activation fee: waiver

(F) **SB 1448 (Hill) –**

Healing arts licensees: probation status: disclosure

**22. Discussion and Possible Board Action on 2018-2021 Acupuncture Board Strategic Plan (Ben Bodea)**

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

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

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

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

**24. Future Agenda Items (Dr. Matecki)**

**25. Adjournment**

Informational Notes:

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

In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast this meeting at: <https://thedcapage.wordpress.com/webcasts/>. Webcast availability cannot, however, be guaranteed due to limitations on resources or other technical difficulties that may arise. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board or prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issues before the Board, but the Board President may, at his or her discretion, apportion available time

among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting. (Government Code sections 11125, 11125.7(a)).

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

**#7**

**Review & Approval of  
October 20, 2017 Board  
Meeting Minutes**



**ACUPUNCTURE BOARD**  
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834  
(916) 515-5200 FAX (916) 928-2204 [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

#### **Members of the Board**

**Dr. Amy Matecki**, M.D., L.Ac,  
President, Licensed Member  
**Kitman Chan**, Vice President,  
Public Member  
**Francisco Hsieh**, Public  
Member  
**Jeannie Kang**, L.Ac, Licensed  
Member  
**Ruben Osorio**, Public Member  
**Vacant**, Licensed Member  
**Vacant**, Public Member

## **CALIFORNIA ACUPUNCTURE BOARD DRAFT MEETING MINUTES Friday, October 20, 2017**

**LOCATION:  
Department of Consumer Affairs  
HQ2 Hearing Room  
1747 North Market Blvd  
Sacramento, CA 95834**

#### **Board Members Present**

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member  
Kitman Chan, Public Member  
Jeannie Kang, L.Ac, Licensed Member  
Ruben Osorio, Public Member

#### **Board Member Absent**

Francisco Hsieh, Public Member

#### **Staff Present**

Benjamin Bodea, Executive Officer  
Kristine Brothers, Enforcement Coordinator  
Marc Johnson, Policy Coordinator  
Terry Sinkovich, Exam Coordinator  
Salwa Bojack, Legal Counsel

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

### **FULL BOARD MEETING**

#### **1. Call to Order, Roll Call and Establishment of a Quorum**

Board President Amy Matecki (Matecki) called the meeting to order at 9:00am. Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 4 – Matecki, Chan, Kang, Osorio. Member absent: 1 – Hsieh. *4-0 Quorum established with two licensed members present.*

#### **2. Opening Remarks**

President Matecki welcomed everyone to the meeting, and announced that per the Board's Administrative Manual, she has appointed Kitman Chan (Chan) as Board Vice-President. She also noted the Board has two vacancies and encouraged any interested

parties to apply.

### **(Moved up) 16. Public Comment on Items Not on the Agenda**

President Matecki announced that public comments would be limited to two minutes or less. She introduced Christopher Castrillo, the new Deputy Director, Board and Bureau Services for Department of Consumer Affairs (DCA). Mr. Castrillo provided a brief background on himself and explained his goal to implement DCA's strategic plan. He also introduced several new staff members from Board and Bureau Services, and reminded the Board of upcoming training available for Board members.

There were no public comments made on this item.

### **3. President's Report (Amy Matecki)**

President Matecki reported she was part of an ad-hoc committee with Board Member Jeannie Kang who reviewed the Sunset Review Report, which will be presented to the Board later in the meeting.

There were no public comments made on this item.

### **4. Presentation on Medical Waste Management and the Role of Acupuncture Licensees by the California Department of Public Health**

Johnson introduced Matt Sheehan (Sheehan), a staff scientist with the California Department of Health (CDPH), who presented on the Medical Waste Management Act (Act) and how it applies to Acupuncture licensees. Sheehan outlined why acupuncturists are considered medical waste generators; why acupuncture needles are considered medical waste; containment and disposal options for sharps waste, and finally, registration requirements for acupuncturists.

There were no public comments made on this item.

### **5. Executive Officer's Report (Ben Bodea)**

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

#### **(A) Staff Update**

Executive Officer Bodea noted the Board has one vacancy in the Licensing unit, and that the Board has held interviews but the position has not been filled. He also noted the Board was recruiting subject matter experts and potential candidates can fill out their applications via the Board's website.

#### **(B) Budget Update**

Matt Nishimine (Nishimine) with the Department of Consumer Affairs (DCA) budget office, provided a budget update. He noted that he would normally be providing year-to-date expenditure and revenue projections at this board meeting, but due to changes in DCA systems the information was not available for the meeting. Vice President Kitman Chan (Chan) was concerned about the expenditures of the Board over the revenues, and that the Board was going to have a shortage of cash flow. He wanted this to be



analyzed. Nishimine agreed that the Board was operating with a structural imbalance, with a fund reserve of nine months which is considered healthy but would come up with a plan going forward. He also noted they were beginning to build the 2018 budget. Vice President Chan asked about changes and revisions to the Budget if needed; Nishimine replied they could do so, and that the Board had flexibility to increase enforcement related costs. Discussion continued about the Board's ability to raise fees. Nishimine said the Board could increase fees via a statutory change or regulatory moves. He noted a statutory change would be a two year process, and recommended a fee analysis be completed.

**(C) Outreach Update**

Executive Officer Bodea reported on outreach items, such as a stakeholders meeting to review curriculum requirements and an updated professional associations list on the Board's website.

**(D) Strategic Plan Update**

Executive Officer Bodea noted the Board completed Item 3.1 (evaluation of curriculum standards) with a stakeholder meeting, and Board staff was reviewing Item 3.4 (TOEFL requirements for foreign applicants).

There were no public comments made on this item.

**6. Enforcement Report (Kristine Brothers)**

Enforcement Coordinator Kristine Brothers (Brothers) gave her report to the Board.

**(A) Q3 16-17 Enforcement Report**

Brothers reported that during the quarter, the Board received a total of 96 complaints, and closed and referred to investigation 78 complaints. She also reported the average intake time was three days, and that 27 criminal charges and convictions were received, 18 were received on applicants, and nine were received on licensees. Seven disciplinary actions were requested with 16 pending at the attorney general's office, and the Board filed five accusations and statements of issues. For formal participant trends, Brothers noted the current quarter shows a 75 percent increase in complaints referred to the Office of the Attorney General for discipline, going from four complaints referred in last year's quarter four to seven complaints in this year's quarter four.

A public comment was made wondering about an increase in complaints; Brothers replied the increase was from unprofessional conduct complaints. There were no further public comments made on this item.

**7. Education Report (Jay Herdt)**

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

**(A) Status of Curriculum Reviews**

Herdt reported there were 34 approved acupuncture training programs, and three programs had completed their clinical corrective actions and have had their curriculum approved by staff. He also reported ten training programs which have submitted their curriculum and clinical corrective actions that are pending staff review.

**(B) Bureau for Private Postsecondary Education (BPPE) and American College of Acupuncture and Oriental Medicine (ACAOM) Collaboration**

Due to an error in spelling on the agenda, this item was not taken up. The title should have read 'Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

**(C) Continuing Education Update**

Herdt reported a total of 2,089 continuing education course applications were processed through the end of quarter three, and there were 540 approved education providers and 33 approved acupuncture tutorials in process. Board Member Jeannie Kang (Kang) asked how the 2,089 applications compared to other Boards; Herdt did not know but said the number was very typical of Board numbers compared to last year.

Public comment was taken on the item. A commenter was concerned about the number of classes taught per day at 10, and wondered how live courses taught over the internet were able to improve a licensee's skillset. There were no further public comments made on this item.

**8. Examination Update (Terry Sinkovich)**

Exam Coordinator Terry Sinkovich (Sinkovich) provided the Examination update.

**(A) August 23, 2017 California Acupuncture Licensing Examination (CALE) Statistics**

Sinkovich reviewed the recent exam statistics. She noted there were a total of 229 first time test-takers, with the overall pass rate of 75 percent.

**(B) Re-taker Test Statistics**

Sinkovich reported there were 382 repeat test takers, with an overall pass rate of 27 percent.

Overall, the pass rate was 56 percent for English, 56 percent for Chinese, and 60 percent for Korean. Sinkovich then noted the pass rates by schools. Member Kang asked about several schools which had a pass rate of zero; Sinkovich replied that several schools did not have applicants for the exam. Vice President Chan wondered why the pass rate was so low for re-takers. He felt the schools needed to address the issue.

Public Comment was taken on the item. A commenter felt Member Chan had brought up an important point and noted his school offered courses to review for free, and did everything they could to help students pass again. A second commenter agreed with the first comment and wondered what happened to the five-failure rule, and that his school had a limit internally to four times in taking their exams. He felt the Board should explore a remediation process. Another commenter wondered about the national exam versus the California exam.

Dr. LeOndra Clark-Harvey, from the Assembly Committee on Business and Professions, observed that the Board meeting was run very well and appreciated the reports from staff. She asked the Board for a breakdown of spending on the CALE for the upcoming Sunset Review. Executive Officer Bodea replied that the breakdown was

located in the Sunset Report in the CALE exam section.

### **9. Regulatory Update (Marc Johnson)**

Johnson provided a regulatory update. He noted most of the regulatory packages were being worked on at a staff level, except the revision of Disciplinary Guidelines, which the Board previously approved. He hoped the Guidelines would be submitted to the Office of Administrative Law (OAL) early next year, and stated the SB 1246 regulatory package was in effect and the Board was working under the process now. He also noted OAL had approved the Free and Sponsored Health Care events rulemaking package and the regulation was now in effect.

Public Comment was taken on the item. One commenter wondered if institutions could apply on behalf of students under the free and sponsored health care events regulations. Another commenter asked what the requirements were under the new regulation. Johnson referred her to Board's website, which describes the process.

### **10. Legislative Update (Marc Johnson)**

Johnson reviewed a list of legislative bills the Board is tracking. He noted most of them were dead for the year, and a legislative update would be provided at the Spring 2018 Board meeting.

There were no public comments made on this item.

### **11. Review and Approval of May 26, 2017 Board Meeting Minutes (Marc Johnson)**

Johnson presented the draft May 26, 2017 Board meeting minutes for approval. There were no changes made.

**MOTION:** Member Kang motioned to approve the February 24, 2017 Board meeting minutes as presented here today. Vice President Chan seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes. **4-0-1 motion passes.**

There were no public comments made on this item.

### **12. Review and Approval of August 4, 2017 Board Meeting Minutes (Marc Johnson)**

Johnson presented the draft August 4, 2017 Board meeting minutes for approval. There were no changes made.

**MOTION:** Member Kang motioned to approve the August 4, 2017 Board meeting minutes as presented here today. Vice President Chan seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes. **4-0-1 motion passes.**

There were no public comments made on this item.

### **13. Presentation of Comments Received at the July Stakeholder Meeting (Marc Johnson)**

Johnson provided an overview of comments received at a Board stakeholder meeting, which was facilitated by DCA's SOLID unit. He noted the Board organized the meeting by notifying all licensees, schools and associations via the Board's mailing list and over 20 individuals attended. He felt it was a very collaborative meeting, which covered two ongoing issues. Letters on the issues, as well as a summary of comments made at the meeting, are posted on the Board's website.

The first item discussed was the clinical hours required for acupuncture training program approval. Johnson reported several stakeholders felt the hours were too prescriptive, or should align with ACAOM's standards. He also noted there was a lot of discussion about the term physically present. The second item discussed was the use of online education for acupuncture training programs, which Johnson pointed out as an emerging issue for the industry. Stakeholders have commented on the need for clarification on the grey areas and increase in demand in those types of delivery systems. Member Kang felt the stakeholder meetings were very healthy and important. She noted some of the related statutes and regulations were very old and more discussion needed to happen.

Public comment was taken. The first commenter thanked the Board for holding the meetings and felt it was a positive experience. She noted several letters have been sent encouraging the Board to be in line with other Boards and commission standards. She wanted to make sure the Board was going to action on the feedback and asked the board to provide clear communication on what the next steps were. Legal Counsel Salwa Bojack (Bojack) reminded the Board that the stakeholder meeting was just information gathering, and the Board would need to put the information and discussion of it as a future agenda item. A second commenter agreed with the first comment made and thanked the Board for holding the meeting.

### **14. Review of the Draft Sunset Report (Ben Bodea)**

Executive Officer Bodea presented the Board's 2017 Sunset Report for the upcoming 2018 legislative hearing. He noted that board staff has been working on the document since May, and the formatting was similar to past Sunset Reports.

Executive Officer Bodea began reviewing the document going page by page. He noted a minor change to page six; minor changes on page seven; on page eight Vice President Chan was concerned about ending balances on budget chart. Executive Officer Bodea replied he would have budgets look into it and also recommended a change to table four and a typo on page 13. On page 22, Vice President Chan raised concerns about the continuing education audit numbers; discussion commenced on the audits. Executive Officer Bodea noted changes to the spacing of tables; listing enforcement definitions on page 30; adding bullet points to question 48.

Executive Officer Bodea moved on to section ten, which addresses previous background papers. He suggested adding the Board's current list of professional

associations as an attachment. On page 51, Board Member Kang suggested capitalization changes and margin changes; and reminded of Dr. Clark's comment about CALE exam costs on page 53. Executive Officer Bodea replied he would show more clarity for the Board's costs. On page 48, Brothers proposed changes to percent of cases closed for discipline for the 2017 update. Moving to section 11, Executive Officer Bodea noted the issues identified by Board Staff were not voted on by the Board for policy. He suggested agendaizing the items for the November Board meeting, so the Board can adopt positions on the issues; Board agrees.

Executive Officer Bodea noted one of the attachments was the new Board administrative manual, which was also listed as an agenda item for Board approval. He asked to begin review of the manual now ahead of the next agenda item; President Matecki agreed. Executive Officer Bodea began review of changes, noting that page two had an updated list of Board Members, staff, and titles; multiple formatting and grammar changes; and additional recent history on the Board. He highlighted a new section on page ten which asks that future agenda items be submitted two weeks after the prior Board meeting, in order for staff not to have a rush to prepare; Board agrees. He noted a change on page 11; multiple formatting and spacing issues on subsequent pages; and listing all the required training in separate sections on page 22.

Executive Officer Bodea returned to the appendices from the Sunset report, reviewing the Board members meeting attendance; a list of legislation; regulation list; enforcement performance measures; and consumer satisfaction survey results. Brothers noted the enforcement chart was a summary but asked if the full report should be included; Board agrees the full report should be included. Vice President Chan asked for better clarity with colors of tables. Executive Officer Bodea next referred to the charts listing employee training. Discussion commenced on moving certain charts to the appendices for better readability.

Returning to the attachments, Executive Officer Bodea noted the Board's organizational charts, including committee memberships, and current organizational charts for Board staff. The final item reviewed was the OPES review of the NCCAOM exam. President Matecki asked the conclusions from the OPES review be included; Board agrees. President Matecki also asked the costs to administer the CALE exam be included; Board agrees. Executive Officer Bodea concluded his review of the Sunset Report. The Board then asked him to complete the changes and bring back the report to the November Board meeting for final approval. Legal Counsel Bojack explained the process to bring the report back for final approval by adding it as an agenda item for the next meeting.

Public comment was taken. The first commenter was happy with the report, but was concerned about the NCCAOM exam coming to California, and was not ready to accept that happening. She asked the Board to postpone the national examination, and was concerned about the education hours and highlighted that as a concern. The second commenter was concerned about the herbal formulas on the national exam, and wanted to make sure the exam was in line with those requirements.

## **15. Review and Approval of Changes to the Board Administrative Manual (Ben Bodea)**

This item was reviewed as part of the draft Sunset Report. There were no public comments made on this item.

**MOTION:** Vice President Chan motioned to approve Board Administrative Manual with the changes outlined in the packet today. Board Member Ruben Osorio seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Absent; Kang – Yes; Osorio – Yes. **4-0-1 motion passes.**

Executive Officer Bodea asked that the updated administrative manual be placed in the Sunset Report; Board agrees.

### **17. Agenda Items for Future Meeting**

The first commenter had concerns about the national exam and its content, specifically the Worlsey school of acupuncture, and felt it had nothing to do with TCM. He felt an SME from California should look at the content, and also noted to herb section was not in line with current California requirements. He wanted it reviewed as a future agenda item.

Legal Counsel Bojack commented that the Board may want to discuss what they want to see on future agenda items taken from today's discussion. She highlighted the national versus the California exam as one item. Executive Officer Bodea pointed out OPES still needed to review the NCCAOM job-task analysis, which may inform future discussion. He also noted the new issues raised by the Board from the Sunset review and asked if the Board wanted to discuss those. Member Kang asked those items be placed on the agenda. President Matecki asked that new assignments for the committee members be added to the agenda.

Public comment was taken. The first commenter wanted the discussion of the two exams placed on the agenda, including exam quality and customer concerns. The second commenter also wanted discussion of the national exam placed on the agenda, and a discussion of dry needling. The third commenter also wanted discussion of the national versus the California exam placed on the agenda, and how to merge the two together. She also wanted discussion of manual therapy within the scope of practice.

There were no further agenda items offered.

### **18. Adjournment**

Adjournment at 1:17 p.m.

#8

Review & Approval of  
November 17, 2017 Board  
Meeting Minutes



**ACUPUNCTURE BOARD**

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834  
(916) 515-5200 FAX (916) 928-2204 [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

**Members of the Board**

**Dr. Amy Matecki**, M.D., L.Ac,  
President, Licensed Member  
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Vice President, Public Member  
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Public Member  
**Jeannie Kang**, L.Ac,  
Licensed Member  
**Ruben Osorio**,  
Public Member  
**Vacant**, Licensed Member  
**Vacant**, Public Member

**CALIFORNIA ACUPUNCTURE BOARD**  
***DRAFT MEETING MINUTES***  
***Friday, November 17, 2017***

**LOCATION:**  
**Department of Consumer Affairs**  
**HQ 2 Hearing Room**  
**1747 North Market Blvd**  
**Sacramento, CA 95834**

**Board Members Present**

Dr. Amy Matecki, M.D., L.Ac, President, Licensed Member  
Francisco Hsieh, Public Member  
Jeannie Kang, L.Ac, Licensed Member  
Ruben Osorio, Public Member

**Board Member Absent**

Kitman Chan, Public Member

**Staff Present**

Benjamin Bodea, Executive Officer  
Kristine Brothers, Enforcement Coordinator  
Marc Johnson, Policy Coordinator  
Anthony Pane, Legal Counsel  
Kelsey Pruden, Legal Counsel

**Guest List on File**

**FULL BOARD MEETING**

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

Board President Amy Matecki (Matecki) called the meeting to order at 10:05am.  
Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 4 – Matecki, Hsieh, Kang, Osorio. Member absent: 1 – Chan. *4-0*  
*Quorum established with two licensed members present.*

**2. Welcome and Opening Remarks (Dr. Matecki)**

President Matecki welcomed everyone to the meeting. She introduced Anthony Pane (Pane), Assistant Chief Counsel for DCA, who would be acting as legal counsel for the meeting. Pane said he was glad to be in attendance and also introduced Kelsey Pruden, Legal Counsel, who would be sitting in the meeting as well.



### **3. President's Report (Dr. Matecki)**

President Matecki had nothing to report.

### **4. Public Comment on Items Not on the Agenda (Dr. Matecki)**

The first commenter invited the Board to hold a meeting at its school campus. Three comments were made in support of the existing California exam. Another comment was made in support of the California exam and asking the Board to postpone the decision made on the national exam. Three more comments were made in support of the California exam. A further comment was made in support of the California exam, and also felt concern for educational standards if California went to the national exam. Another commenter wanted higher standards for Acupuncture.

### **5. Discussion and Possible Board Action - Sunset Report (Ben Bodea)**

President Matecki thanked Board Member Jeannie Kang (Kang) and staff for the hard work on the report. Executive Officer Ben Bodea (EO Bodea) noted this was the second review of the Sunset Report, incorporating changes made from the last Board meeting. On page three, attachments were labeled and Executive Officer Bodea mentioned that the production unit would be creating tabs with labels. Additional changes were made to font sizes on some of the tables; confirmation of appointment dates for Board members; grammar corrections on page five and reworded sentences for clarity on page six.

EO Bodea noted changes to tables on pages eight and nine; changes to licensing tables on page 12; removal of detail on ACAOM on page 18; additional page break and grammar changes to several pages and bulleting out on pages 31. He updated changes to page 32 and confirmed the numbers listed. Johnson pointed out several changes to the response to question 48 which enforcement confirmed. Executive Officer Bodea detailed on page 33 the change in spelling out penal code; spacing changes on page 43; clarification of wording regarding Item 4.4.4 on page 47 and correctly listed costs of the CALE on page 49. He noted the addition of a new table which the Board requested on page 52; discussion commenced on how much the table may need to be modified before final submission.

Executive Officer Bodea read aloud a change made on page 52 regarding OPES's review of the NCCAOM; Board agrees with the change. He reviewed page 57, in which the new issues were identified and not previously discussed, were removed from the revised draft of the Sunset Review as he felt the Board should not take positions on issues without Board discussion. He moved onto the attachments and appendices in the report, noting that the full NCCAOM report was included as appendix D. President Matecki asked for reappointment dates to be included in Board Member lists. Johnson also suggested consistency with table coloring as a global change; Board agrees.

There was no public comment made on the item.

**MOTION:** Member Kang motioned to approve the Sunset Report dated November 17, 2017 with the changes made here today and to delegate to the Executive Officer to make any non-substantive changes. Board Member Ruben Osorio seconded the motion. Vote: Matecki – Yes; Chan – Absent; Hsieh – Yes; Kang – Yes; Osorio – Yes. **4-0-1 motion passes.**

## **6. Future Agenda Items**

Member Kang asked that NCCAOM and ACAOM make presentations on their process at a future Board meeting and Board committees be formed and meeting dates set.

There was no public comment made on the item.

## **7. Closed Session**

The Board went into closed session at 11:33am.

## **8. Reconvene Open Session**

The Board returned from closed session at 12:30 pm.

## **9. Adjournment**

Adjournment at 12:35 pm.

#9

Review & Approval of  
December 15, 2017 Board  
Meeting Minutes



**ACUPUNCTURE BOARD**  
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834  
(916) 515-5200 FAX (916) 928-2204 [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

**Members of the Board**

- Dr. Amy Matecki**, M.D., L.Ac.,  
President, Licensed Member
- Kitman Chan**, Vice President,  
Public Member
- Francisco Hsieh**,  
Public Member
- Jeannie Kang**, L.Ac.,  
Licensed Member
- Ruben Osorio**,  
Public Member
- Vacant**, Licensed Member
- Vacant**, Public Member

**California Acupuncture Board  
Public Board Meeting  
Strategic Planning Session  
DRAFT Meeting Minutes  
Friday, December 15, 2017**

**LOCATION:**  
Department of Consumer Affairs  
Emerald Room, Suite 184  
1747 North Market Blvd  
Sacramento, CA 95834

**Board Members Present**

- Dr. Amy Matecki, M.D., L.Ac., President, Licensed Member
- Kitman Chan, Public Member
- Francisco Hsieh, Public Member
- Jeannie Kang, L.Ac, Licensed Member
- Ruben Osorio, Public Member (Excused from meeting at 11:20am)

**Legal Counsel Present**

Salwa Bojack

**Staff Present**

- Benjamin Bodea, Executive Officer
- Erica Bautista, Administrative Coordinator
- Kristine Brothers, Enforcement Coordinator
- Kristen Borges, Enforcement Analyst
- Jay Herdt, Education Coordinator
- Tammy Graver, Office Technician
- Marc Johnson, Policy Coordinator
- Van Martini, Education Analyst
- Terry Sinkovich, Exam Coordinator
- Tammy Stadley, Exam Analyst
- Beck Untalasco, Seasonal Clerk
- Sandra Wilson, Office Technician

**Guest List on File**

**FULL BOARD MEETING – STRATEGIC PLAN MEETING**

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

Board President Amy Matecki (Matecki) called the meeting to order at 8:30am. Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 5 – Matecki, Chan, Hsieh, Kang, Osorio. *5-0 Quorum established.*

## **2. President's Remarks (Matecki)**

President Matecki welcomed everyone to the meeting and noted the purpose of the meeting was for the Board to begin development of its 2018-2021 strategic plan.

## **3. Public Comment for Items Not on the Agenda (Matecki)**

Several public comments were made asking the Board to re-review the issue of the CALE and not going to the NCCAOM exam. Another comment was made asking the Board to look at raising the curriculum hours requirement to 4,000 hours.

Christopher Castrillo, DCA's Deputy Director of Board Relations, noted upcoming trainings for board members.

## **4. Committee Assignments (Matecki)**

President Matecki announced the following Committee assignments:

Executive: Hsieh (Chair), Chan, Kang  
Enforcement: Osorio (Chair), Chan, Matecki  
Education: Kang (Chair), Chan, Osorio  
Exam: Chan (Chair), Kang, Matecki  
Research: Matecki (Chair), Osorio, Hsieh

There was no public comment made.

## **5. Strategic Planning Overview (SOLID)**

Elizabeth Coronel and Lusine Sarkisyan, from the Department of Consumer Affairs (DCA) Office of Strategic, Organizational, Leadership and Individual Development (SOLID), introduced themselves as the moderators. They laid out the procedures to be used during the strategic plan and provided an overview of the process.

The Board reviewed the Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis provided by SOLID.

Board Member Ruben Osorio was excused at 11:20am. New roll call taken:

Members Present: 5 – Matecki, Chan, Hsieh, Kang. Member Absent: 1 – Osorio. *4-0 Quorum established.*

The Board reviewed the Environmental Scan provided by SOLID.

Public comment was taken on this item and included in the discussion.

Lunch break was taken at 12:35pm. Meeting resumed at 1:35pm.

#### **6. Objective Development (SOLID)**

The Board discussed objective development for the strategic plan in the following categories:

- Licensing
- Enforcement
- Education
- Legislative/Regulatory

Public comment was taken on this item and included in the discussion of objectives.

The following items were tabled until the next strategic plan meeting:

- Outreach
- Board Administration

#### **7. Re-establish Mission, Vision, and Values (SOLID)**

This item was tabled until the next strategic plan meeting. There was no public comment made.

#### **8. Agenda Items for Future Meeting (Matecki)**

There were no future agenda items. There was no public comment made.

#### **9. Adjournment (Matecki)**

Adjournment at 4:25pm.

#10

Review & Approval of  
March 30, 2018  
Board Meeting Minutes



**ACUPUNCTURE BOARD**

1747 North Market Boulevard, Suite 180, Sacramento, CA 95834  
(916) 515-5200 FAX (916) 928-2204 [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

**Members of the Board**

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

**California Acupuncture Board  
Public Board Meeting  
Strategic Planning Session  
DRAFT Meeting Minutes  
Friday, March 30, 2018**

**LOCATION:**

Department of Consumer Affairs  
Emerald Room, Suite 184  
1747 North Market Blvd  
Sacramento, CA 95834

**Board Members Present**

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

**Board Member Absent**

Jeannie Kang, L.Ac., Licensed Member

**Legal Counsel Present**

Salwa Bojack

**Staff Present**

Benjamin Bodea, Executive Officer  
Erica Bautista, Administrative Coordinator  
Kristine Brothers, Enforcement Coordinator  
Kristen Borges, Enforcement Analyst  
Jay Herdt, Education Coordinator  
Tammy Graver, Office Technician  
Marc Johnson, Policy Coordinator  
Van Martini, Education Analyst  
Terry Sinkovich, Exam Coordinator  
Tammy Stadley, Exam Analyst  
Beck Untalasco, Seasonal Clerk  
Sandra Wilson, Office Technician

**Guest List on File**



## FULL BOARD MEETING – STRATEGIC PLAN MEETING

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

Board President Amy Matecki (Matecki) called the meeting to order at 8:37am. Policy Coordinator Marc Johnson (Johnson) called the roll.

Members Present: 5 – Matecki, Chan, Harabedian, Hsieh, Osorio. Member Absent: 1 – Kang. *5-1 Quorum established.*

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

President Matecki did not have any comments.

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

Three public comments were made. The first comment wanted a review of the Board's credit transfer policy. The second comment has numerous concerns with the Continuing Education (CE) process and felt it was out of control. She asked for random inspections of CE providers and also wanted the Board to review the issue of dry needling. A third comment was made with concerns about the live versus online portions of CE.

### 4. Review and Select New Board Logo (Bodea)

Executive Officer Ben Bodea (EO Bodea) presented three options for the Board's new logo. After a short discussion, the Board chose option 'C' for the logo, showing leaves growing out of acupuncture needles. The Board requested the needles be redrawn to show them tapering to a point.

There was no public comment made on this item.

**MOTION:** Board Member John Harabedian (Harabedian) motioned to approve option 'C' for the Board's new logo with pointier needles. Board Member Ruben Osorio (Osorio) seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Yes; Harabedian – Yes; Kang – Absent; Osorio – Yes. **5-0-1 motion passes.**

### 5. Establishment of 2018 Board Meeting Dates (Matecki)

The Board tentatively set the following meeting dates for 2018: June 28 and 29 in San Diego; August 23 and 24 in San Francisco; and December 13 and 14 in Los Angeles.

There was no public comment made on this item.

**MOTION:** Board Member John Harabedian (Harabedian) motioned to approve the proposed 2018 meeting dates and to delegate to the Executive Officer the ability to make reservations. Member Osorio seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Yes;

Harabedian – Yes; Kang – Absent; Osorio – Yes.

**5-0-1 motion passes.**

## **6. Election of Officers**

The Board made nominations for Board President and Board Vice-President.

**MOTION:** Board Member Francisco Hsieh (Hsieh) nominated Dr. Amy Matecki as Board President. Member Osorio seconded the nomination. President Matecki accepted the nomination. Vote: Matecki – Abstain; Chan – Yes; Harabedian – Yes; Hsieh – Yes; Kang – Absent; Osorio – Yes. **4-0-1-1 motion passes.**

**MOTION:** Member Hsieh nominated Kitman Chan as Board Vice President. Member Osorio seconded the nomination. Vice President Chan accepted the nomination. Vote: Matecki – Yes; Chan – Abstain; Harabedian – Yes; Hsieh – Yes; Kang – Absent; Osorio – Yes. **4-0-1-1 motion passes**

There was no public comment made on this item.

## **7. Strategic Planning Overview (SOLID)**

### (A) Introductions

Elizabeth Coronel and Trish St, Clair, from SOLID, introduced themselves as the moderators. They laid out the procedures to be used during the strategic plan and provided an overview of the process.

Recess was taken at 9:18 a.m. Meeting resumed at 9:39 a.m.

Ms. Coronel, as the moderator, moved up the objective development from Agenda Item #8 in order to develop the following objectives:

- Outreach
- Board Administration

Recess was taken at 11:10 a.m. Meeting resumed at 11:25 a.m.

### (B) Review of Previously Established Objectives

The Board reviewed the previously established objectives from the December 2016 strategic plan meeting in the following areas:

- Licensing
- Enforcement
- Education
- Legislation and Regulation

Public comment was taken on this item and included in the discussion of previously established objectives.

**8. Objective Development (SOLID) (included as agenda item #7)**

Public comment was taken on this item and included in the discussion of objectives.

Lunch was taken at 12:01 p.m. Meeting resumed at 1:13 p.m.

**9. Re-establish Mission, Vision, and Values (SOLID)**

The Board reviewed the previously established Mission, Vision and Value statements.

No public comment was taken on this item.

Recess was taken at 2:45 p.m. Meeting resumed at 2:55 p.m.

**10. Future Agenda Items (Matecki)**

There were no future agenda items. There was no public comment made on this item.

**11. Adjournment (Matecki)**

Meeting adjourned at 4:30pm.

#11

Review & Approval of

April 13, 2018

Board Meeting Minutes



**ACUPUNCTURE BOARD**  
1747 North Market Boulevard, Suite 180, Sacramento, CA 95834  
(916) 515-5200 FAX (916) 928-2204 [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov)

**Members of the Board**

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

**California Acupuncture Board**  
**Public Board Meeting**  
***DRAFT Meeting Minutes***  
**Friday, April 13, 2018**

**TELECONFERENCE LOCATIONS:**

Department of Consumer Affairs  
Emerald Room, Suite 184  
1747 North Market Blvd  
Sacramento, CA 95834

The Gas Company Tower  
555 West 5th Street, Suite 3310  
Los Angeles, CA 90013

Sutter Health  
Alta Bates Summit Medical Center - Herrick Campus  
First Floor Administrative Conference Room Entrance #1311  
2001 Dwight Way  
Berkeley, CA 94704

**Board Members Present in Berkeley, CA**

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

**Board Members Present in Los Angeles, CA**

John Harabedian, Public Member  
Ruben Osorio, Public Member  
Jeannie Kang, L.Ac., Licensed Member

**Board Member Absent**

Francisco Hsieh, Public Member

**Staff Present in Berkeley, CA**

Jay Herdt, Education Coordinator

**Staff Present in Los Angeles, CA**

Marc Johnson, Policy Coordinator

**Staff Present in Sacramento, CA**

Benjamin Bodea, Executive Officer  
Salwa Bojack, Legal Counsel  
Cricket Borges, Enforcement Analyst  
Tammy Graver, Office Technician

## Guest Lists on File

### FULL BOARD MEETING

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

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

Members present in Los Angeles, CA: 3 – Harabedian, Kang, Osorio. Members present in Berkeley, CA: 2 – Chan, Matecki. Member absent: 1—Hsieh. 5-1 Quorum established.

#### **2. Public Comment for Items Not on the Agenda (Matecki)**

There were no public comments made.

#### **3. Discussion and Possible Board Action – Proposed Board Response to the Background Paper for the California Acupuncture Board (Ben Bodea)**

Executive Officer Benjamin Bodea (Bodea) opened on the item, which is the Board's official response to questions raised by the Legislative Joint Committee as a result of the Board's 2018 Sunset Review. It contains the actual Board response and an addendum to address enforcement related questions asked by members of the Committees at the Sunset Hearing on February 26. Bodea noted that the Board needed to approve these responses since these responses, as submitted to the Legislature, are considered official Board positions.

Executive Officer Bodea began review of the Board response page by page. A global change was made removing spaces after each section symbol. On page five, 'Board staff' was added and a semicolon was removed. On page seven, 'Board staff' was added in two locations. On page eight, Board Member Jeannie Kang (Kang) was concerned about the use of the words "national standards". She pointed out there were no national standards in Acupuncture, but each state had different standards. Legal Counsel Salwa Bojack (Bojack) suggested clarifying language which noted each state sets their own standards; Board agrees.

Member Kang had concerns with Response 8.2, specifically the reference to the national exam costs and number of modules required. She wondered if it could be discussed further in the response, pointing out the extensive discussions and the vote the Board took on the issue in 2016. Executive Officer Bodea proposed including a reference to one module for the national exam, and the words 'and remain unresolved' to refer to other issues. Board agrees. Minor changes were made to spacing and the abbreviation of 'OAL' in Issue #11.

Executive Officer Bodea then referred to the Enforcement addendum, which was added to the Board response as a result of questions raised by the Legislative Joint Committee members. Member Kang asked the wording in the graphs be centered in the addendum. Board Member John Harabedian raised the concern about what immediate actions that could be taken against a licensee who have committed a more egregious violation. He wanted to highlight the importance of interim suspension orders as a tool to further public protection in the response and suggested wording to be added. Board agrees. Executive Officer Bodea concluded review

of the document.

Public comment was taken. A public comment in Los Angeles wanted further discussion on minimum competence for professional licensees. A public comment in Sacramento was made wanting the Board to have school approval again.

**MOTION:** Member Kang motioned to approve the proposed Board response to the Background Paper for the Board and its addendum with the changes made here today, and to allow the Executive Officer to make technical, non-substantive changes prior to submission to the Committee. Board Member Ruben Osorio seconded the motion. Vote: Matecki – Yes; Chan – Yes; Hsieh – Absent; Harabedian – Yes; Kang – Yes; Osorio – Yes. **5-0-1 motion passes.**

#### **4. Future Agenda Items (Matecki)**

Member Kang requested NCCAOM and ACAOM be invited back for a Board presentation to the new members.

A public comment was made asking for the Board to review the issue of clinical training for licensure and another look at doctorate degrees and scope of practice. A second comment was made asking for review of the knowledge and skill needed for the profession.

Member Kang announced she was not seeking re-appointment to the Board and this would be her last meeting. She thanked the Board and staff for all their hard work over the years. President Matecki and Vice President Chan thanked Member Kang for her hard work and contributions to the Board.

#### **5. Adjournment (Matecki)**

Meeting adjourned at 11:41 a.m.

#16 b

Budget Update



**CALIFORNIA ACUPUNCTURE BOARD - 0108  
BUDGET REPORT  
FY 2017-18 EXPENDITURE PROJECTION  
FISCAL MONTH 10**

OBJECT DESCRIPTION	FY 2016-17		FY 2017-18				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	STONE	EXPENDITURES			
(MONTH 13)	4/30/2018	2017-18	4/30/2018	SPENT	TO YEAR END	BALANCE	
<b>PERSONNEL SERVICES</b>							
Salary & Wages (Staff)	487,887	389,242	557,000	428,992	77%	574,489	(17,489)
Statutory Exempt (EO)	65,868	43,483	80,000	72,640	91%	87,168	(7,168)
Temp Help Reg (Seasonals)	59,236	45,213	19,000	58,843	310%	78,457	(59,457)
Temp Help (Exam Proctors)			7,000	1,800	26%	2,400	4,600
Board Member Per Diem	9,800	840			0%	9,800	(9,800)
Overtime	161	0	5,000	9,502	190%	12,669	(7,669)
Staff Benefits	286,026	234,924	377,000	229,736	61%	275,683	101,317
<b>TOTALS, PERSONNEL SVC</b>	<b>908,978</b>	<b>713,702</b>	<b>1,045,000</b>	<b>801,513</b>	<b>77%</b>	<b>1,040,667</b>	<b>4,333</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	54,854	39,669	57,000	12,605	22%	15,126	41,874
Fingerprint Reports	1,029	686	20,000			2,000	18,000
Minor Equipment	2,016		2,000			2,000	0
Printing	17,998	16,120	17,000	6,736	40%	8,083	8,917
Communication	9,060	7,338	17,000	2,441	14%	2,929	14,071
Postage	24,925	21,153	27,000	1,260	5%	1,512	25,488
Insurance	15	15		3,243		3,892	(3,892)
Travel In State	34,315	27,361	32,000	16,204	51%	19,445	12,555
Travel, Out-of-State	2,073					0	0
Training	469	469	3,000	420	N/A	504	2,496
Facilities Operations	112,769	112,169	65,000	99,683	153%	119,620	(54,620)
C & P Services - Interdept.	0		9,000	43	0%	57	8,943
C & P Services - External	18	18	4,000		0%	0	4,000
<b>DEPARTMENTAL SERVICES:</b>							
OIS Pro Rata	144,573	124,170	169,000	140,833	83%	169,000	0
Administration Pro Rata	187,272	150,930	159,000	132,500	83%	159,000	0
DOI - ISU Pro Rata	4,600	4,170	4,000	3,333	83%	4,000	0
Communications Division	80,897	68,330	13,000	10,833	83%	13,000	0
PPRD Pro Rata	1,308	1,670	83,000	69,167	83%	83,000	0
<b>INTERAGENCY SERVICES:</b>							
IA w/ OPES	272,208	157,803	334,000	334,000	100%	334,000	0
Consolidated Data Center	890	605	3,000	2,076	69%	2,768	232
DP Maintenance & Supply	3,973	3,973	5,000		0%	0	5,000
<b>Exam Site Rental</b>							
C/P Svcs-External Expert Administrative	305,491	305,491	287,000	315,768		421,024	(134,024)
C/P Svcs-External Expert Examiners	39,530	15,539	84,000	64,502		86,003	(2,003)
C/P Svcs-External Subject Matter	1,459	673					
<b>ENFORCEMENT:</b>							
Attorney General	214,240	129,461	386,000	100,095	26%	120,114	265,886
Office Admin. Hearings	26,504	15,757	107,000	14,745	14%	16,745	90,255
Court Reporters	1,054	475					
Evidence/Witness Fees	13,614	6,462	11,000	17,817		23,756	(12,756)
DOI - Investigations	772,549	686,670	414,000	(552,000)		414,000	0
<b>MISC:</b>							
Major Equipment				1,650		1,650	
Special Items of Expense						3,000	
Other (Vehicle Operations)			3,000				0
<b>TOTALS, OE&amp;E</b>	<b>2,329,703</b>	<b>1,897,177</b>	<b>2,315,000</b>	<b>797,955</b>	<b>34%</b>	<b>2,026,227</b>	<b>290,423</b>
<b>TOTAL EXPENSE</b>	<b>3,238,681</b>	<b>2,610,879</b>	<b>3,360,000</b>	<b>1,599,468</b>	<b>111%</b>	<b>3,066,895</b>	<b>294,755</b>
Sched. Reimb. - External/Private	(1,410)		(1,000)			(1,000)	0
Sched. Reimb. - Fingerprints	(441)		(22,000)			(22,000)	0
Sched. Reimb. - Other							
Sched Interdepartmental							
Unsched. Reimb. - Other	(130,413)						
<b>NET APPROPRIATION</b>	<b>3,106,417</b>	<b>2,610,879</b>	<b>3,337,000</b>	<b>1,599,468</b>	<b>48%</b>	<b>3,043,895</b>	<b>294,755</b>
<b>SURPLUS/(DEFICIT):</b>							<b>8.8%</b>

# 0108 - Acupuncture

## Analysis of Fund Condition

Prepared 6/19/18

(Dollars in Thousands)

### 2018-19 Governor's Budget with Projected CY Revenues and Expenditures

	ACTUAL 2016-17	CY 2017-18	BY 2018-19
<b>BEGINNING BALANCE</b>	\$ 1,340	\$ 4,858	\$ 4,184
Prior Year Adjustment	\$ 46	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,386	\$ 4,858	\$ 4,184
<b>REVENUES AND TRANSFERS</b>			
Revenues:			
4129200 Other regulatory fees	\$ 53	\$ 58	\$ 66
4129400 Other regulatory licenses and permits	\$ 651	\$ 681	\$ 734
4127400 Renewal fees	\$ 1,925	\$ 1,850	\$ 2,048
4121200 Delinquent fees	\$ 13	\$ 14	\$ 15
4163000 Income from surplus money investments	\$ 11	\$ 9	\$ 10
4163000 Interest Income From Interfund Loans	\$ 87	\$ -	\$ -
4171400 Escheat of unclaimed checks and warrants	\$ 2	\$ 2	\$ 2
Totals, Revenues	\$ 2,742	\$ 2,614	\$ 2,875
Transfers from Other Funds			
Proposed GF 11-12 Loan Repayment, 1110-011-0108 Budget Act	\$ 4,000	\$ -	\$ -
Totals, Revenues and Transfers	\$ 6,742	\$ 2,614	\$ 2,875
Totals, Resources	\$ 8,128	\$ 7,472	\$ 7,059
<b>EXPENDITURES</b>			
Disbursements:			
1111 - Department of Consumer Affairs Regulatory Boards, Bureaus, I	\$ 3,086	\$ 3,044	\$ 3,331
8880 - Financial Information System for California	\$ 4	\$ 6	\$ -
9892 - Supplemental Pension Payment	\$ -	\$ -	\$ 20
9900 - Statewide General Administrative Expenditures (ProRata)	\$ 180	\$ 238	\$ 259
Total Disbursements	\$ 3,270	\$ 3,288	\$ 3,610
<b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 4,858	\$ 4,184	\$ 3,449
<b>Months in Reserve</b>	17.7	13.9	11.3

#17 (A)

Q1 17 – 18

Enforcement Report



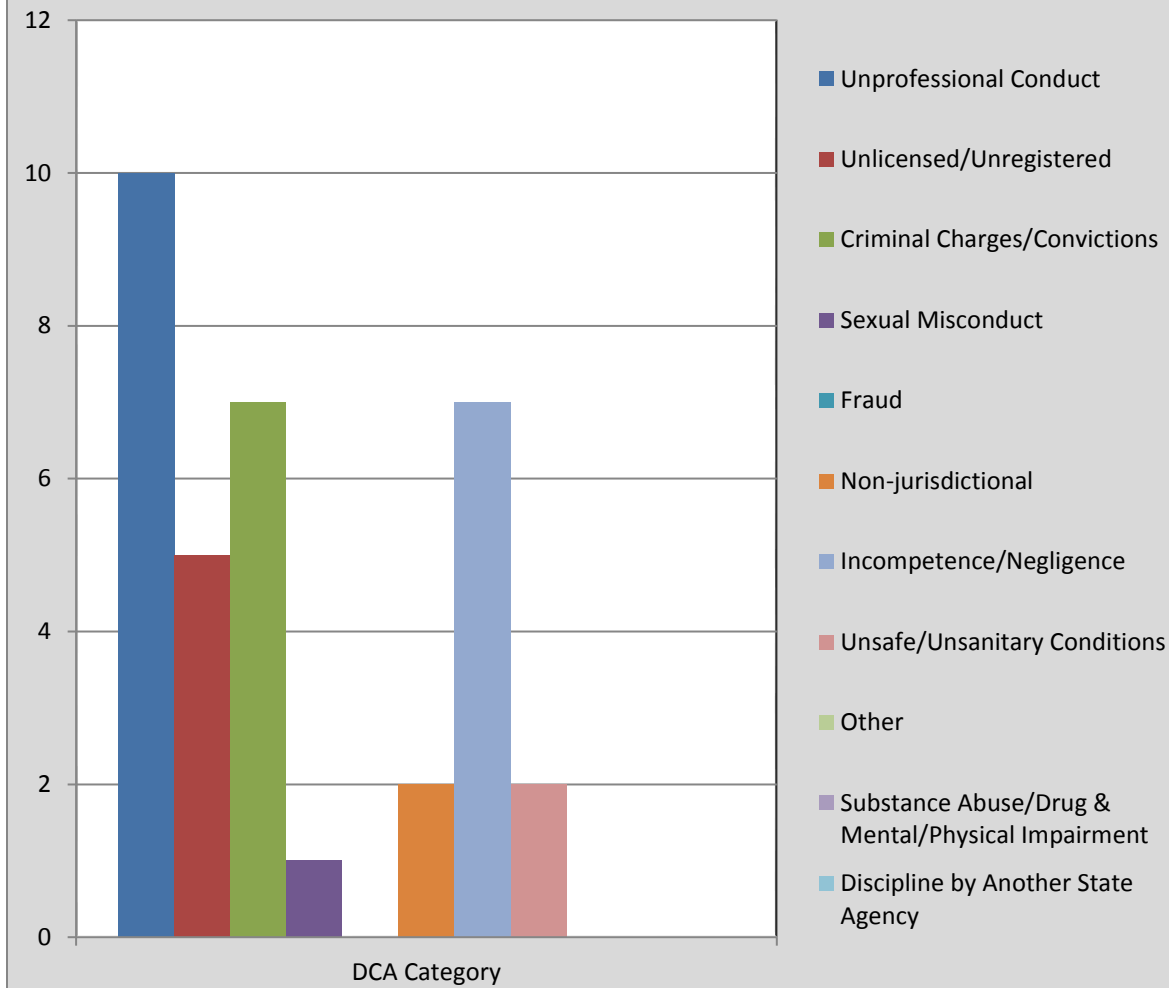
<b>DATE</b>	June 29, 2018
<b>TO</b>	All Board Members
<b>FROM</b>	Kristine Brothers Enforcement Coordinator
<b>SUBJECT</b>	<b>Enforcement Update for Quarter (Q1) FY 2017/2018: July 1, 2017 to September 30, 2017</b>

**COMPLAINTS/CONVICTIONS & ARRESTS**

<b>DCA Category</b>	<b>Received</b>	<b>Closed/Referred to Investigation</b>
Unprofessional Conduct	10	24
Unlicensed/Unregistered	5	5
Criminal Charges/Convictions*	7	9
Sexual Misconduct	1	1
Fraud	0	0
Non-jurisdictional	2	2
Incompetence/Negligence	7	8
Unsafe/Unsanitary Conditions	2	2
Other	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	0	0
<b>Total</b>	<b>34</b>	<b>51</b>
<b>Average Intake Time: 5 days</b>		

\*Of the 7 Criminal Charges/Convictions, 1 was received on an Applicant and 6 were received on Licensees.

## Complaint Volume from Q1 FY 17/18



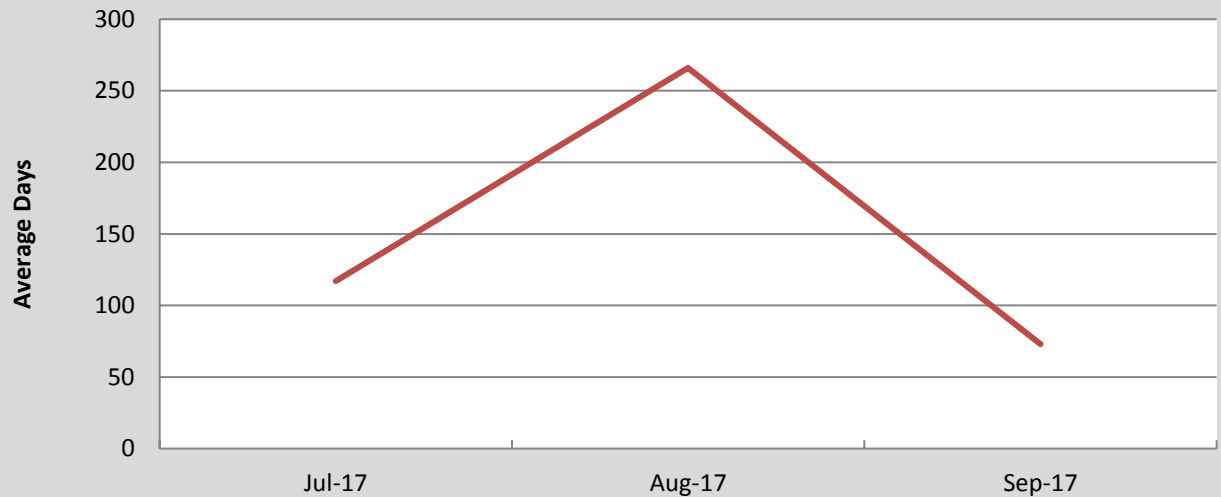
The bar graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

### INVESTIGATIONS

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

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	24	29	21
Unlicensed/Unregistered	5	21	8
Criminal Charges/Convictions (includes pre-licensure)	9	39	14
Sexual Misconduct	1	6	4
Fraud	0	13	1
Non-jurisdictional	1	1	1
Incompetence/Negligence	8	25	6
Unsafe/Unsanitary Conditions	2	2	2
Other	0	2	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	0	1	0
<b>Total</b>	<b>50</b>	<b>139</b>	<b>57</b>
<b>Average days</b>			<b>154</b>

## Case Aging for Closed Investigations



	Jul-17	Aug-17	Sep-17
Average Days	117	266	73
# of Cases	17	20	20

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

### DISCIPLINARY ACTIONS

<b>Requested</b>	<b>1</b>
<b>Pending</b>	<b>14</b>
<b>Accusation/SOI Filed</b>	<b>1</b>
<b>Decisions</b>	<b>5</b>
• Revoked	0
• Voluntary Surrender	1
• Probation	4
• License Denied	0
• Public Reprimand	0
<b>Avg. Overall Process Time</b>	<b>482 days*</b>
<b>Citations Issued</b>	<b>24</b>
<b>Open Probation Cases</b>	<b>37</b>

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

## **QUARTER 1 FY 17/18 TREND ANALYSIS**

### **Complaint Trends**

This quarter's data is better understood when we use last year's FY 16/17 quarter 1 (Q1) data as a point of reference. In comparing the same quarter from last year to this year, the Board can assess the performance and progression of the Board's Enforcement program.

This quarter saw a decrease in complaints compared to this time last year from 41 to 34. This represents a 17% decrease in volume. The average complaint intake time has remained the same at five days from complaint receipt to assignment to an analyst. When looking at the complaint types from last year to this year, there is not any one complaint type that changed. There are only slight increases with most of the complaint categories.

### **Investigation Trends**

Although complaint volume decreased, the total investigations initiated increased by 32%. The reason for this increase is that 15 complaints for failure to register an address change were received the last day of FY 16/17 in June and were all assigned for investigation in July 2017, Q1. There was also a 21% increase in pending investigations at the close of Q1, mainly attributed to a 50 % decrease in investigations closed which went from 113 investigations closed last year to 57 investigations closed this year in Q1. When staff gets redirected to other projects or deadlines, such as the Sunset Review Report, which was being prepared in Q1, enforcement statistics will often reflect this. However, even with the extra duties, the average investigation time was not affected and went down from 193 days to 154 days – a 20% decrease. This is well under the Board's 200-day target for the performance measure on the average number of days to complete an investigation.

### **Formal Discipline Trends**

This year's Q1 also continues to show decreases in enforcement statistics. Complaints referred to the Attorney General's Office for discipline went from 4 cases last year to just one case this year, which is a 75% decrease. Accusations and Statement of Issues filed went from six last year to one this year – an 83% decrease. However, the average overall process time from complaint receipt to the effective date of a Decision went from 900 days to 482 days. This is a significant achievement of a reduction in days by 46%. In addition, the Board is well under the Department performance measure target of 540 days. Being that the average of five disciplinary cases closed within the performance measure timeframe, indicates that cases are being processed from intake to closure at a more rapid pace overall.

#17 (B)

Q2 17 – 18

Enforcement Report





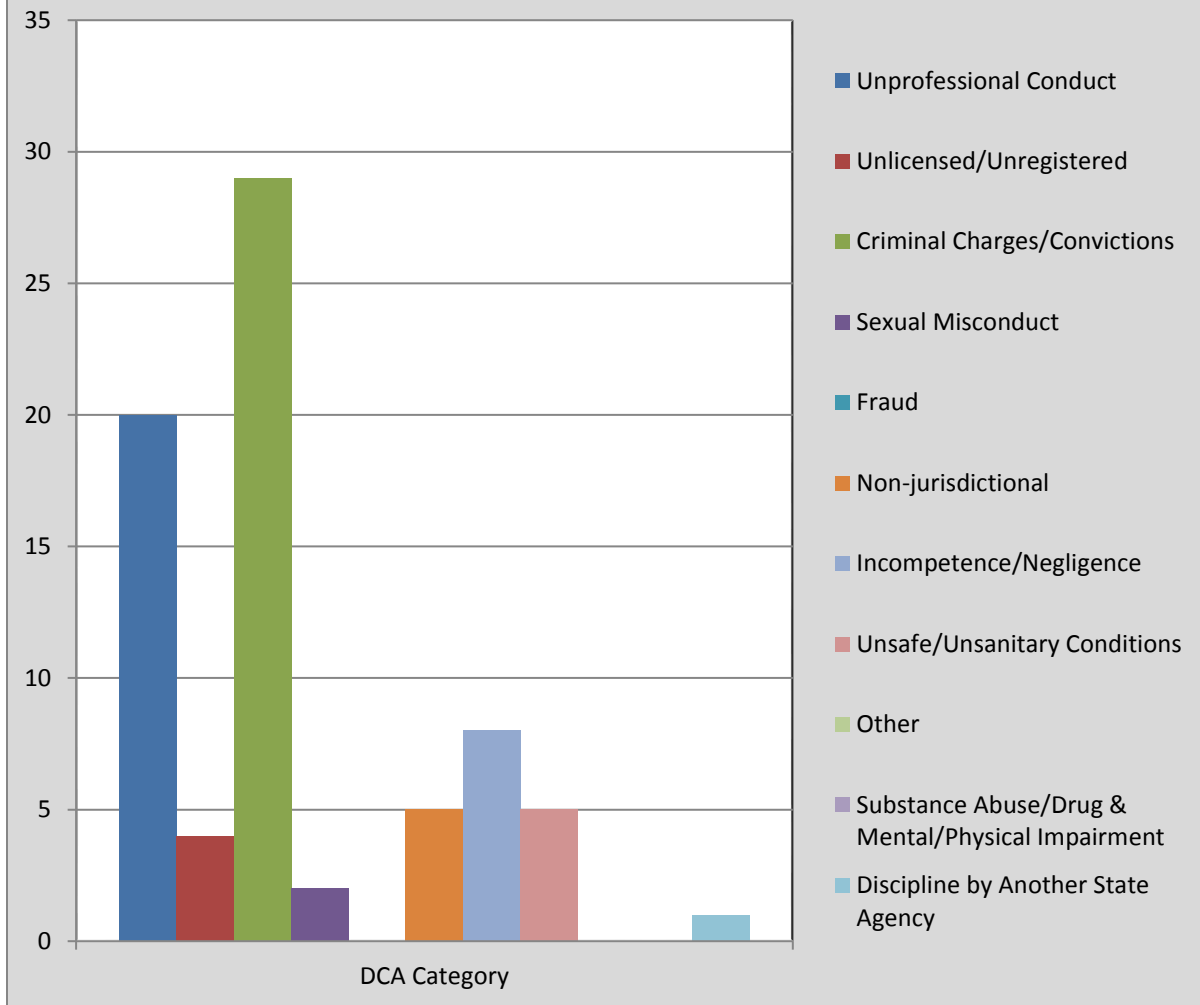
<b>DATE</b>	June 29, 2018
<b>TO</b>	All Board Members
<b>FROM</b>	Kristine Brothers Enforcement Coordinator
<b>SUBJECT</b>	<b>Enforcement Update for Quarter (Q2) FY 2017/2018: October 1, 2017 to December 31, 2017</b>

**COMPLAINTS/CONVICTIONS & ARRESTS**

<b>DCA Category</b>	<b>Received</b>	<b>Closed/Referred to Investigation</b>
Unprofessional Conduct	20	19
Unlicensed/Unregistered	4	4
Criminal Charges/Convictions*	29	30
Sexual Misconduct	2	2
Fraud	5	5
Non-jurisdictional	5	5
Incompetence/Negligence	8	8
Unsafe/Unsanitary Conditions	5	5
Other	0	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	1	1
<b>Total</b>	<b>79</b>	<b>79</b>
<b>Average Intake Time: 3 days</b>		

\*Of the 29 Criminal Charges/Convictions, 24 were received on Applicants and 5 were received on Licensees.

## Complaint Volume from Q2 FY 17/18



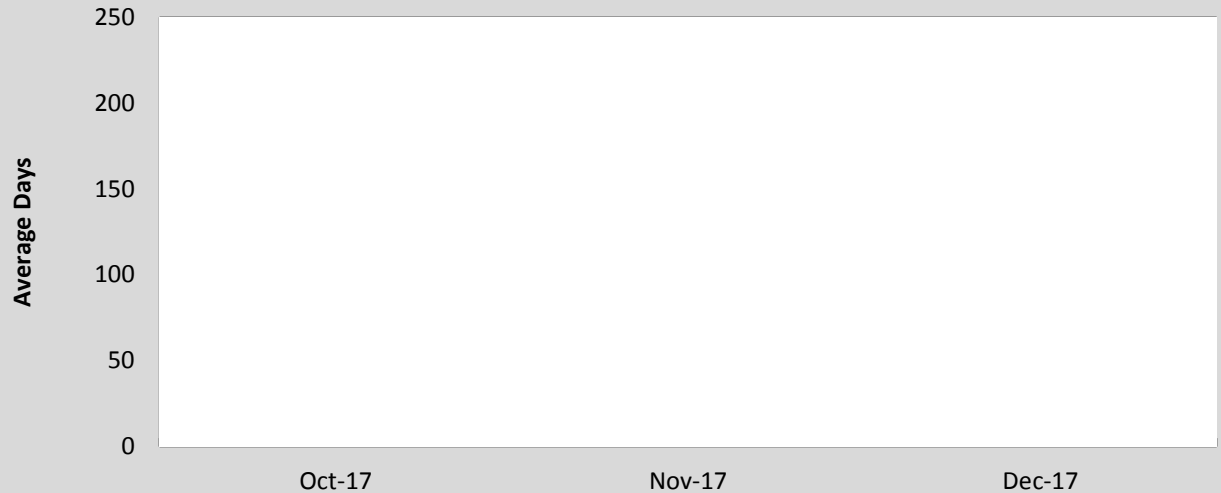
The bar graph above shows the number of complaints received by complaint type for this quarter. When each complaint is logged into the database it is assigned a complaint type based upon the primary violation.

### INVESTIGATIONS

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

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	19	26	22
Unlicensed/Unregistered	4	17	8
Criminal Charges/Convictions (includes pre-licensure)	30	45	24
Sexual Misconduct	2	8	0
Fraud	5	17	1
Non-jurisdictional	4	0	5
Incompetence/Negligence	8	27	6
Unsafe/Unsanitary Conditions	5	7	0
Other	0	2	0
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	1	0	2
<b>Total</b>	<b>78</b>	<b>149</b>	<b>68</b>
<b>Average days</b>			<b>172</b>

## Case Aging for Closed Investigations



	Oct-17	Nov-17	Dec-17
Average Days	143	139	200
# of Cases	15	17	36

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

### DISCIPLINARY ACTIONS

<b>Requested</b>	<b>3</b>
<b>Pending</b>	<b>11</b>
<b>Accusation/SOI Filed</b>	<b>0</b>
<b>Decisions</b>	<b>4</b>
• Revoked	0
• Voluntary Surrender	0
• Probation	4
• License Denied	0
• Public Reprimand	0
<b>Avg. Overall Process Time</b>	<b>479 days*</b>
<b>Citations Issued</b>	<b>12</b>
<b>Open Probation Cases</b>	<b>38</b>

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

## **QUARTER 2 FY 17/18 TREND ANALYSIS**

### **Complaint Trends**

This quarter's data is better understood when we use last year's FY 16/17 quarter 2 (Q2) data as a point of reference. In comparing the same quarter from last year to this year, the Board can assess the performance and progression of the Board's Enforcement program.

This quarter saw less complaints received compared to this time last year from 85 to 79. No other notable differences are observed. When statistics follow a similar pattern from year to year, it is considered a strong sign that the Board's enforcement program is operating well, and certain violations are not rising such that further analysis is required.

### **Investigation Trends**

Although complaints had a slight decrease in this year's Q2, the total investigations pending increased by 20% from 124 to 149. This year is also showing a 19% increase in the average investigation time when compared to last year. Last year's Q2 shows an average investigation time of 145 days whereas this year shows 172 days on average to process an investigation. There are a number of factors that can influence the increase in the investigation time, such as fewer investigators or vacant positions within DOI, more complex cases to investigate versus last year, or a higher volume of cases referred to investigation in prior quarters. Regardless, the Board is still meeting its 200-day performance measure target indicating that the Enforcement program is running well.

### **Formal Discipline Trends**

This quarter shows a couple of notable changes from last year to this year. There has been a 27% decrease in pending AG cases going from 15 pending cases last year to 11 this year. With five Decisions becoming effective in the previous quarter (Q1) along with only two cases being referred for discipline this Q2, the number of cases pending has gone down. This shows that disciplinary cases getting processed more rapidly means a lower volume of cases sitting with the AG's. The other noteworthy change from last year's Q2 to this year's Q2 is the average overall process time for Decisions going from 695 days to 479, which is a 31% decrease. Complaints, investigations, and discipline are being worked more efficiently.

#17 (C)

Q3 17 – 18

Enforcement Report



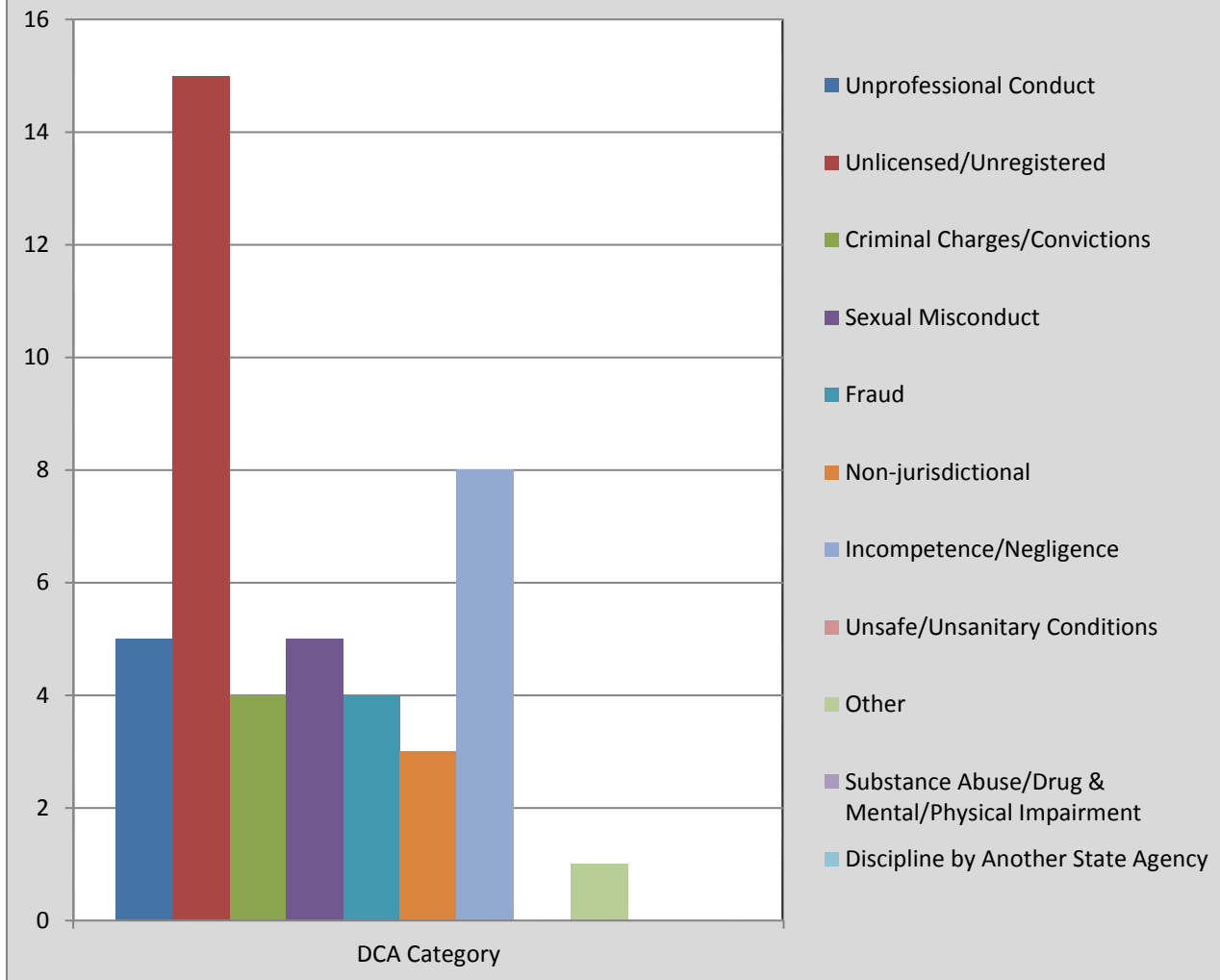
<b>DATE</b>	June 29, 2018
<b>TO</b>	All Board Members
<b>FROM</b>	Kristine Brothers Enforcement Coordinator
<b>SUBJECT</b>	<b>Enforcement Update for Quarter (Q3) FY 2017/2018: January 1, 2018 to March 31, 2018</b>

**COMPLAINTS/CONVICTIONS & ARRESTS**

<b>DCA Category</b>	<b>Received</b>	<b>Closed/Referred to Investigation</b>
Unprofessional Conduct	5	5
Unlicensed/Unregistered	15	15
Criminal Charges/Convictions*	4	4
Sexual Misconduct	5	5
Fraud	4	4
Non-jurisdictional	3	3
Incompetence/Negligence	8	6
Unsafe/Unsanitary Conditions	0	0
Other	1	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0
Discipline by Another State Agency	0	0
<b>Total</b>	<b>45</b>	<b>43</b>
<b>Average Intake Time: 6 days</b>		

\*Of the 4 Criminal Charges/Convictions, 0 were received on Applicants and 4 were received on Licensees.

## Complaint Volume from Q3 FY 17/18



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

### INVESTIGATIONS

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

DCA Category	Initiated	Pending	Closed
Unprofessional Conduct	5	20	11
Unlicensed/Unregistered	15	25	7
Criminal Charges/Convictions (includes pre-licensure)	4	30	19
Sexual Misconduct	5	8	5
Fraud	4	16	5
Non-jurisdictional	3	0	3
Incompetence/Negligence	6	28	5
Unsafe/Unsanitary Conditions	0	5	2
Other	1	2	1
Substance Abuse/Drug & Mental/Physical Impairment	0	0	0
Discipline by Another State Agency	0	0	0
<b>Total</b>	<b>43</b>	<b>134</b>	<b>58</b>
<b>Average days</b>			<b>240</b>

## Case Aging for Closed Investigations



	Jan-18	Feb-18	Mar-18
Average Days	264	200	248
# of Cases	23	17	18

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

### DISCIPLINARY ACTIONS

<b>Requested</b>	<b>5</b>
<b>Pending</b>	<b>14</b>
<b>Accusation/SOI Filed</b>	<b>3</b>
<b>Decisions</b>	<b>1</b>
• Revoked	0
• Voluntary Surrender	0
• Probation	1
• License Denied	0
• Public Reprimand	0
<b>Avg. Overall Process Time</b>	<b>669 days*</b>
<b>Citations Issued</b>	<b>4</b>
<b>Open Probation Cases</b>	<b>40</b>

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



## QUARTER 3 FY 17/18 TREND ANALYSIS

### Complaint Trends

This quarter's data is better understood when we use last year's FY 16/17 quarter 3 (Q3) data as a point of reference. In comparing the same quarter from last year to this year, the Board can assess the performance and progression of the Board's Enforcement program.

This quarter saw a significant decrease in complaints compared to this time last year from 68 to 45. This represents a 34% decrease in volume. The most notable changes in the types of complaints received were found in unprofessional conduct complaints, which decreased from 22 to five. There was also a major change in complaints involving discipline by another State Agency which went from seven last year to zero this year. The other complaint types only had slight differences from last year's Q3 to this year's Q3.

### Investigation Trends

In line with the lower volume in complaints received, there was also a decrease in investigations initiated this quarter versus last year from 79 to 43 – a 46% decrease. The total investigations closed also has gone down from 78 closed last year to 58 closed this year, which is a 26% decrease. The average investigation time has risen significantly from 119 days last year to 240 days this year, representing a 102% increase. This is the result of a few older more complex investigations getting closed out. There may be some outlier cases in any given quarter that skew the typical pattern of a statistic from time to time given the complex and varied nature of each complaint.

### Formal Discipline Trends

This quarter shows a 67% increase in complaints referred to the Office of the Attorney General for discipline, going from three complaints referred last Q3 to five complaints referred this year's Q3. Similarly, there has been an increase in Accusations and Statement of Issues filed this year, going from only one filed last year to three filed this year. Despite the increase of first-time filings on disciplinary cases, the volume of Decisions that went effective this year decreased by 83%, going from six Decisions last year to one this year. The average overall process time for Decisions went from 820 days last year to 669 days this year's Q3, which is an 18% decrease. Being that there was only one Decision that closed this quarter, the sample size is not very indicative of a true average. In this year's prior quarters, the improvement in process time has been very apparent. Therefore, the slight elevation over the Board's performance measure target during this quarter is best described as an anomaly.

**#18**

# Education Report



<b>DATE</b>	June 29, 2018
<b>TO</b>	Board Members
<b>FROM</b>	Jay Herdt – Education Coordinator
<b>SUBJECT</b>	Education Staff Report

**Acupuncture Training Programs:**

There are currently 34 approved acupuncture training programs as defined by Business and Professions Code section (BPC§) 4927.5(a).

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

23 programs are in full compliance:

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

- South Baylo University, Anaheim, CA
- Southern California University School of Oriental Medicine and Acupuncture, Los Angeles, CA
- University of East West Medicine, Sunnyvale, CA
- University of South Los Angeles, Gardena, CA
- Yo San University, Los Angeles, CA
- Yuin University, Compton, CA

The following two (2) programs have completed clinical corrective actions and have had their curriculum reviewed by staff. These programs are now in the process of submitting corrective actions to address the issues of noncompliance identified by staff.

- Golden State University, Downey, CA
- Acupuncture and Integrative Medicine College, Berkeley, CA

The following program is in the curriculum review process by staff.

- Academy of Chinese Culture and Health Sciences, Oakland, CA

Seven (7) training programs have submitted curriculum and clinical corrective actions and are pending staff review of their curriculum. All the remaining programs requiring Board staff curriculum compliance reviews are out of state programs which were the last site visits to be completed by Board staff.

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

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

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

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

Presently, the Board has completed a total of 12 Applications for Board Approval of Curriculum within the mandated 30-day statutory reporting requirement during the 2017/2018 fiscal year. Programs have averaged 3 application submissions to reach full compliance. The following three (3) new programs received curriculum approval after demonstrating full compliance with the Board's requirements:

- The College of Eastern Medicine at Southern California University of Health Sciences (CEM at SCUHS), Whittier, CA. The DACM program at CEM at SCUHS curriculum is approved and is also recognized as an approved training program per BPC 4927.5(a) as of August 9, 2017.
- The University of Herbal Medicine (UHM), Hayward, CA. The MSTCM program at UHM curriculum is approved and is also recognized as an approved training program per BPC 4927.5(a) as of September 29, 2017.
- The University of Bridgeport Acupuncture Institute (UBAI), Bridgeport Connecticut. The DTCM (doctoral) program at UBAI curriculum is approved and is also recognized as an approved training program per BPC 4927.5(a) as of May 25, 2018.

### **Continuing Education and Audit Update:**

The Continuing Education Unit has resumed the FY 15/16 CE audit process starting with July 31, 2015. To date; 6 months of CE Audit letters had been processed with the December 31, 2015 as the final month for FY 2015. Board staff are randomly selecting 10% of the renewing population of licensees every month. Board staff are resuming the selection process where it had left off in 2015. In the interest of managing workload, Board staff are selecting two months' worth of Auditees for every month moving forward until the back log is addressed. Once current, the CE audit process will be conducted on a monthly basis.

- Continuing Education Applications processed FY17-18 (July 1, 2017- June 06, 2018): **3196**
- Number of Continuing Education Providers with current and valid approval status: **548**.

### **Acupuncture Tutorials:**

- Currently there are 43 active tutorials in progress.
- 11 tutorials were completed during the fiscal year 17-18.
- Exam results for the August 2017 and April 2018 test dates for tutorial training program students are as follows:
  - Eight (8) – first-time test takers (no re-testers)
  - Three (3) passed the exam

## Sunset Review Recommendations - Education Statutes and Regulations:

Board staff has identified issues to be considered by the Board pertaining to the changes and impact of the language of Business and Professions Code Section (BPC §) 4927.5 resulting from the language in SB 1246. Additionally, regulations contained in Article 3.5 Acupuncture Training Programs that have the statutory authority in BPC §4927.5 have also been impacted by the implementation of this statute. The following items have been identified in the Board's 2017 Sunset Report and the Board's Responses to the 2018 Background Paper as possible ways to address gaps that have formed in the Board's ability to protect the public and regulate the practice of acupuncture in California.

- Clarifying the statutory text of BPC §4927.5(3)(B) to be consistent with the current terminology used by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).
  - This item has been addressed in AB 3142 by the legislature.
- Staff has observed confusion on the part of new training programs about the process necessary to complete BPC §4927.5(3)(C), and the absence of a requirement of this statute to include a completed site visit by ACAOM for programs pursuing initial accreditation. Staff recommendation is that the standard necessary to meet BPC §4927.5(3)(C) be set at a later point in the existing ACAOM accreditation process to include a completed site visit by ACAOM.
  - The ACAOM Accreditation process consists of three stages: qualifying, pre-accreditation, and accreditation. Pre-accreditation and Accreditation satisfy the first two possible statuses for approval under BPC §4927.5(3) (A&B). However, BPC §4927.5(3)(C) is a status within the first stage of ACAOM accreditation, which we will refer to as the Qualifying stage. This is broken down into the following steps:
    - Step 1 - Submit initial inquiry to ACAOM office
    - Step 2 - Pay the required fees/expenses and host a one-day "Orientation Visit"
      - Timing between submission of initial inquiry and completion of an orientation visit may be up to 6 months or longer.*
    - Step 3 - Submit a Letter of Intent officially notifying the Commission of the institution's commitment to pursue accreditation
      - This is the current statutory requirement.*
    - Step 4 - Attend or complete Self-Study Report–Pre-accreditation training
    - Step 5 - Complete and submit a Self-Study Report–Pre-accreditation and the required Self-Study Report Review Fee
    - Step 6 - Pay for and host a site visit. **This is the staff recommendation.**

*Timing between a program's submission of a Self Study report and the site visit is dependent on the institution's and ACAOM's staff availability. This step can take as long as three years. Longer if there are any appeals to the Commission's determinations.*

Step 7 - Submit a Formal Institutional Response (FIR) to the Site Visit Report - Pre-accreditation

Step 8 - Undergo Commission review

Reference:

(Ed.). (2018, May 14). Accreditation Procedures. Retrieved June/July, 2018, from <http://acaom.org/policies/accreditation-procedures/>

- The Commission review determines if the program can attain pre-accreditation status - BPC §4927.5(a)(3)(b). The time between Step 1 and receiving pre-accreditation status can last up to three years. Once a program has attained pre-accreditation status, it has three years to attain the full accreditation status. It is important to note that institutions in the qualifying stage are not subject to ACAOM oversight.
- Statute provides that meeting the three approval requirements of BPC §4927.5 constitutes the requirements to become an “approved educational and training program.” Currently, there is no authority assigned to any one agency to verify all three approvals required of programs to have their students be eligible for the licensing examination. With all three approvals, an approved training program now can allow for enrolled students to engage in the pre-licensure practice of acupuncture (with the required supervision). However, this creates the possibility that a training program may begin operating prior to completing all necessary approvals as described in BPC §4927.5. Since the January 1, 2017, implementation of BPC §4927.5, Board staff has observed programs that have begun operating in this manner. This highlights the need for appropriate oversight necessary to meet the Board’s mandate for public protection.
  - Staff has recommended that the Board consider working with the legislature to amend this statute to give the Board the authority to verify that acupuncture training programs have met all three requirements in BPC §4927.5. Once this verification has been completed, training programs would be officially recognized by the Board, as ‘Board approved training programs’.
- To further support the full enactment of BPC §4927.5, the Board is aware of the need for changes to the regulations in 16 CCR §§ 1399.435, 1399.438-1399.439 that address a program’s required documentation, enforcement and monitoring. There are items that may be eliminated that are currently being monitored by ACAOM and BPPE. There is also a need to revise or promulgate regulations to address training program accountability in response to enforcement actions to include training program ownership. Under current law, the jurisdiction for training

program enforcement of the practice of acupuncture falls on the clinic supervisors (as licensees) and students (as unlicensed practice).

- In the Sunset Report and Background Paper responses, the Board communicated that it will keep the Committees updated on its discussion on seeking statutory authority to charge curriculum review fees.
  - A curriculum review takes approximately 40 hours of staff time to complete; subsequent applications (if not compliant on the first submission) may take less time depending on the number of non-compliances found.
  - In the 2017-2018 Fiscal Year, the Board reviewed 12 curriculum applications. This cost is now borne by the licensees and no longer a cost to the training programs as there is no charge required to process the Application for Board Approval of Curriculum.



#19 (A)

April 10, 2018 Exam Results  
Statistics – First-Time,  
Retaker and Overall  
Test Results

**APRIL 10, 2018 EXAMINATION RESULTS STATISTICS - FIRST TIME, RETAKER AND OVERALL**

<b>SCHOOL</b>	<b>1st TIME TAKERS</b>			<b>Retakers</b>			<b>OVERALL (includes re-examinees)</b>		
	<b># Passed</b>	<b># Failed</b>	<b>PASS %</b>	<b># Passed</b>	<b># Failed</b>	<b>PASS %</b>	<b># Passed</b>	<b># Failed</b>	<b>PASS %</b>
<i>Academy of Chinese Culture &amp; Health Sciences</i>	9	4	69%	2	8	20%	11	12	48%
<i>Acupuncture &amp; Integrative Medicine College, Berkeley</i>	2	0	100%	1	4	20%	3	4	43%
<i>Alhambra Medical University</i>	13	0	100%	2	2	50%	15	2	88%
<i>American College of Traditional Chinese Medicine (CIIS)</i>	10	3	77%	3	1	75%	13	4	76%
<i>Atlantic Institute of Oriental Medicine</i>	1	0	100%	0	0	N/A	1	0	100%
<i>Bastyr University</i>	2	1	67%	0	0	N/A	2	1	67%
<i>California Trinity University</i>	0	0	N/A	0	2	0%	0	2	0%
<i>Dong-guk University, California</i>	10	5	67%	5	13	28%	15	18	45%
<i>Emperor's College of Traditional Oriental Medicine</i>	12	1	92%	0	1	0%	12	2	86%
<i>Five Branches University</i>	20	4	83%	2	7	22%	22	11	67%
<i>Golden State University</i>	1	0	100%	0	0	N/A	1	0	100%
<i>Kingston University</i>	0	0	N/A	0	2	0%	0	2	0%
<i>Maryland University of Integrative Health</i>	0	0	N/A	1	0	100%	1	0	100%
<i>National University of Natural Medicine</i>	2	0	100%	1	0	100%	3	0	100%
<i>New England School of Acupuncture</i>	0	0	N/A	0	1	0%	0	1	0%
<i>Nine Star University of Health Sciences</i>	1	0	100%	3	0	100%	4	0	100%
<i>Oregon College of Oriental Medicine</i>	2	1	67%	0	0	N/A	2	1	67%
<i>Pacific College of Oriental Medicine</i>	33	5	87%	3	3	50%	36	8	82%
<i>Samra University</i>	0	0	N/A	0	1	0%	0	1	0%
<i>South Baylo University</i>	36	17	68%	10	37	21%	46	54	46%
<i>Southern California University of Health Sciences</i>	7	1	88%	0	5	0%	7	6	54%
<i>Southern CA Univ. School of OM &amp; Acupuncture</i>	4	2	67%	0	2	0%	4	4	50%
<i>Southwest Acupuncture College</i>	1	0	100%	0	0	N/A	1	0	100%
<i>Stanton University</i>	0	4	0%	1	6	14%	1	10	9%
<i>University of East West Medicine</i>	28	4	88%	5	8	38%	33	12	73%
<i>University of South Los Angeles</i>	1	0	100%	0	2	0%	1	2	33%
<i>YoSan University of TCM</i>	10	4	71%	1	1	50%	11	5	69%
<i>Tutorials</i>	1	4	20%	0	0	N/A	1	4	20%
<i>Foreign Equivalency</i>	5	1	83%	5	6	45%	10	7	59%
<b>GRAND TOTAL</b>	<b>211</b>	<b>61</b>	<b>78%</b>	<b>45</b>	<b>112</b>	<b>29%</b>	<b>256</b>	<b>173</b>	<b>60%</b>

<b>California Acupuncture Board</b>				
<b>April 2018 Examination Results</b>				
<b>Statistics by Language</b>				
<b>FIRST TIME TAKERS ONLY</b>				
	<b>ENGLISH</b>	<b>CHINESE</b>	<b>KOREAN</b>	<b>TOTAL</b>
<b>PASSED</b>	125	57	29	211
<b>FAILED</b>	44	10	7	61
<b>TOTAL</b>	169	67	36	272
<b>PASS RATE</b>	74%	85%	81%	78%
<b>RE-EXAMINEES ONLY</b>				
	<b>ENGLISH</b>	<b>CHINESE</b>	<b>KOREAN</b>	<b>TOTAL</b>
<b>PASSED</b>	22	19	4	45
<b>FAILED</b>	68	24	20	112
<b>TOTAL</b>	90	43	24	157
<b>PASS RATE</b>	24%	44%	17%	29%
<b>OVERALL</b>				
	<b>ENGLISH</b>	<b>CHINESE</b>	<b>KOREAN</b>	<b>TOTAL</b>
<b>PASSED</b>	147	76	33	256
<b>FAILED</b>	112	34	27	173
<b>TOTAL</b>	259	110	60	429
<b>PASS RATE</b>	57%	69%	55%	60%

#19 (B)

Memo to the Board

Transition to Computer-  
Based Testing for the  
California Acupuncture  
Licensing Exam

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<b>DATE</b>	June 29, 2018
<b>TO</b>	Board Members
<b>FROM</b>	Tammy Stadley – Examination Analyst
<b>SUBJECT</b>	Agenda Item #19B – Computer Based Testing (CBT)

The California Acupuncture Board (Board) will be changing the administration of the California Acupuncture Licensing Examination (CALE) to Computer-Based Testing beginning in October 2018. Although the exam method will change, the qualification process will remain the same. The exam will be available on an ongoing basis for applicants who have been approved to take the exam. The only thing that will change is the way the test is administered. The examination will no longer be available in the pencil and paper format; the CALE will only be administered in the computer-based format. Scheduling for the exam is set to be available in early October.

The CALE will be available at Psychological Services, LLC (PSI) testing centers six days a week. Once an applicant is approved for examination by the Board, they will be able to call PSI directly, or use their on-line registration process, to schedule the exam. There are 17 test sites in California and 22 additional sites nationwide. Currently, 20 DCA Boards and Bureaus contract with PSI for Computer-Based Testing for licensing examinations. The exam will continue to be offered in the same format, with five hours total testing time for 200 questions. The exam is divided into two sessions, with a half hour break in between.

Exam Applications should be sent 120 days prior to the date applicants wish to take the exam. Applicants may submit exam applications immediately for the first available computerized exams in October 2018. Initial exam applications for the CALE will be accepted on a continuous basis.

If the application is incomplete, applicants will be notified of what is required to complete the application. Deficiency notices will be sent to the e-mail provided on the application. Applicants that resolve the deficiencies within 180 days of receipt of their application, will be approved once all documentation has been received and confirmed. If the applicant fails to achieve approval within 180 days, the application will be considered abandoned and the applicant will need to re-apply.

The Board will notify the applicant when their application is approved and provide a payment form to return to the Board with the \$550 exam fee. After the Board has

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received and processed the \$550 exam fee, the Board will e-mail the applicant a Preparation Guide in their language of choice. Applicants will also receive instructions from PSI with details on how applicants may schedule their test date and location.

**Eligibility Process:**

1. Applicants will have to be confirmed eligible by the Board
2. Once confirmed, applicants will need to pay the \$550 exam fee to the Board
3. The Board will confirm payment and e-mail applicant a Preparation Guide
4. The Board notifies PSI of applicants that are eligible to schedule (no sooner than 10/2018)
5. A handbook will be mailed from PSI to applicant within 48 hours with details on how to schedule the exam
6. Once an applicant receives the PSI handbook, they can schedule the exam with PSI for the date of their choosing (assuming availability at the chosen test site location). They can schedule the examination any available date within 90 days from the day they call PSI.
7. If applicant fails the exam, they must wait 6 months to take the exam again.

There will be a demo for Board members and Board staff prior to the launch on October 1, 2018. Test sites have individual cubicles with computers and noise cancelling headphones. A separate ADA room is available for applicants requiring reasonable accommodations that have received prior approval. Applicants are advised that the testing session will be taped for security purposes. Exam staff have verified and approved of the security protocols implemented by PSI.

#20

Regulatory Update



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## Acupuncture Board – Approved and Pending Regulations

**Updated: June 18, 2018**

Set out below are a list of currently pending and adopted regulations. Please note this list may be incomplete and subject to change depending upon Legislative or Executive action. Due date reflects the final due date when regulatory filing is required to be submitted for rulemaking to Office of Administrative Law (OAL).

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

<b>Pending regulations</b>					
	<b>Subject</b>	<b>Title 16, California Code of Regulations (CCR) Section referred</b>	<b>Date of original authorizing vote / subsequent vote</b>	<b>Current Status</b>	<b>Due Dates / Anticipated Filing Date</b>
1	Continuing Education Ethics Requirement	Adopt new Section 1399.489.2	11/15/2012; 12/14/2016	Education committee approved proposed text at 12/14/2016 public meeting and made several changes. Rulemaking package to be reviewed by the Board at a future public meeting to determine status.	To be determined.
2	Advertising Guidelines – Display of License Number in Advertising	Adopt new Section 1399.455	2/19/2013	Rulemaking package to be reviewed by the Board at a future public meeting to determine status.	To be determined.
3	Hand Hygiene Requirements	Amend existing Section 1399.451(a)	2/14/2014	Rulemaking package to be reviewed by the Board at a future public meeting to determine status.	To be determined.
4	Prostitution Enforcement and Condition of Office	Adopt new Section 1399.469.4	2/14/2014; 12/14/2016	Board approved amended text at 12/14/2016 public meeting. Rulemaking package to be reviewed by the Board at a future public meeting to determine status.	To be determined.



5	2017 Update of Disciplinary Guidelines	Amend existing Section 1399.469	2/24/2017	Board approved text and Guidelines at 2/24/2017 public meeting. Revised package to be presented to the Board at 6/29/2018 meeting.	To be determined.
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Adopted Regulations			
	Subject	Title 16, CCR Sections referred	Date approved by Office of Administrative Law; date in effect with link to text of regulation
1	Consumer Protection Enforcement Initiative (CPEI)	Amends Sections 1399.405, 1399.419, 1399.469.1, 1399.468.2	Approved by OAL 9/1/15; in effect 10/1/2015 <a href="https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I45A8F9C0D48E11DEBC02831C6D6C108E&amp;originationContext=documenttoc&amp;transitionType=Default&amp;contextData=(sc.Default)">https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I45A8F9C0D48E11DEBC02831C6D6C108E&amp;originationContext=documenttoc&amp;transitionType=Default&amp;contextData=(sc.Default)</a>
2	Display of Licensure by Acupuncture Board (BPC 138)	Adopt section 1399.463.3	Approved by OAL 7/12/16; in effect 10/1/2016 <a href="http://www.acupuncture.ca.gov/pubs_forms/laws_regs/bpc138_orderofadoption.pdf">http://www.acupuncture.ca.gov/pubs_forms/laws_regs/bpc138_orderofadoption.pdf</a>
3	Curriculum Standards for Board Approval of Curriculum; Requirements for Board Approval of Curriculum. (SB 1246)	Amend Section 1399.434, Repeal Section 1399.436, Amend Section 1399.437	Approved by OAL 5/24/17, in effect 5/24/2017 <a href="http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art35.shtml#1399434">http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art35.shtml#1399434</a>
4	Sponsored Free Health-Care Events (AB 2699)	Adopt Article 8 and Sections 1399.407, 1399.407.1, 1399.407.2, 1399.407.3	Approved by OAL 6/17/17, in effect 10/1/2017 <a href="http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art15.shtml#1399407">http://www.acupuncture.ca.gov/pubs_forms/laws_regs/art15.shtml#1399407</a>

**#21**

**Memo to the Board**

**Legislation Update**

**June 2018**

**ACUPUNCTURE BOARD**

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<b>DATE</b>	June 29, 2018
<b>TO</b>	Board Members
<b>FROM</b>	Marc Johnson – Policy Coordinator
<b>SUBJECT</b>	Agenda Item #21 – Discussion and Possible Board Action on Current Legislation

Set out below is a list of Legislative Bills which Acupuncture Board staff has been tracking from the current 2018 legislative session. Bills with any fiscal impact must be passed out of a policy committee by June 29, and bills without a fiscal impact must be passed out of a policy committee by July 6. Subsequently, any fiscal bills must be passed out of fiscal committees by August 17. The last day for the Legislature to pass bills is August 31 at midnight, and the Governor has until September 30 to sign or veto bills passed by the Legislature prior to the September 1 deadline.

Each bill listed has the full text and latest legislative analysis as attachments. Below is a short introduction and analysis of the bill, staff comments and staff recommendation for a position if desired. Generally, the following positions are taken:

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

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

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

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Once the position is taken, staff will communicate the Board's adopted position (except for a 'watch' position, as noted above) to the Legislature for each bill. This support/opposition will be noted in subsequent legislative analysis and may be taken in consideration by the Legislature.

**A. Assembly Bill 767 (Quirk-Silva) – Master License Business Act**

Current Status:

In Senate Business, Professions and Economic Development Committee. Set for hearing June 25, 2018.

Last Amended Date: In the Senate on June 18, 2018.

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

Staff Recommended Position: **Watch**

Comments:

It is unclear if the bill would mandate Board participation in the new system. There are concerns about implementation and the costs involved for each Board, and it has not been determined how the Board's existing licensing systems would be modified by this bill. Staff recommends watching the bill for further impact.

**B. Assembly Bill 1659 (Low) – Healing arts boards: inactive licenses**

Current status:

Passed out of Senate Business, Professions and Economic Development Committee on 8-0 vote on June 11, 2018. In Senate Appropriations committee on consent calendar.

Last amended date: In Assembly on January 3, 2018.

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

Staff recommended position: **Support**

Comments:

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

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

Current status:

Passed out of Senate Business, Professions and Economic Development Committee on a 6-3 vote on June 19, 2018. Referred to Senate Public Safety Committee and set for hearing on June 26, 2018.

Last amended date: In Senate on June 20, 2018

Current law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding seven (7) years, except for serious felonies, and would require the crime to be substantially related to the qualifications, functions, or duties of the business or profession. The bill would also prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has provided evidence of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. This bill would also require the Board to develop criteria for determining whether a crime is substantially related to the qualifications, functions and duties of the business or profession, and would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed. This bill would also make other conforming and process changes.

Staff recommended position: **Oppose**

Comments:

At present, this bill appears to facilitate assisting individuals who have criminal or arrest records, have been rehabilitated, and are looking to obtain an occupational/healing arts license issued by DCA. Staff has numerous concerns about this bill:

1. The Board would be prohibited from denying, revoking, or suspending a license on the grounds an applicant had been convicted of a crime unless the conviction occurred in the past seven (7) years (this does not apply to a serious felony) and has not been expunged. The crime must be substantially related to the qualifications, functions, or duties of the profession.
2. The Board would lose the ability to thoroughly review a licensee's criminal history, since the bill prohibits the Board from requiring a licensee or applicant to disclose their criminal history.

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3. The Board would lose the flexibility to impose certain probationary options on applicants who have committed certain crimes.
4. Board workload would increase due to legal reviews, process changes and additional new data reporting requirements.
5. There are numerous potential conflicts with existing Board enforcement laws and regulations, which would require revision and potential statutory changes.

Although the number of licensees impacted would be minimal due the Board's low licensing population, the bill would narrow the Board's ability to deny licenses, issue licenses with probationary conditions, and take disciplinary action for convictions. This bill is not in line with the Board's primary mission of consumer protection, and as such, staff recommends an oppose position on the bill. Several boards, including Behavioral Sciences, Medical, Psychology and Veterinary Medical, have already taken oppose positions on this bill.

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

Current status:

Set for hearing on June 25, 2018 in the Senate Business, Professions and Economic Development Committee.

Last amended date: In Senate on June 19, 2018.

Extends the operation of the Board and the authority to appoint an executive officer from January 1, 2019 to January 1, 2021. Additionally, it replaces the term "candidacy" with "pre-accreditation" to match the terms used by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), and clarifies the use of titles and representations, including that the prohibition against holding oneself out as an expert in acupuncture only applies if the person making the representation also conveys the idea that the person is qualified to practice. This bill deletes an outdated and inconsistent reference to the number of required clinical training hours, and clarifies that, consistent with the Board's current policies, the Board should consult with all necessary healing arts boards for purposes of developing infection control guidelines. Finally, this bill clarifies that a licensee must hang a wall license in each practice location, not a pocket card license.

Staff recommended position: **Support**

Comments:

This is the Board's Sunset Bill for 2019 and does not propose any major changes to Board operations. Original versions of the bill allowed for a four-year extension of the Board's operations to January 1, 2023, but subsequent amendments shortened it to January 1, 2021. A support position is strongly recommended.

**E. Senate Bill 762 (Hernandez) – Healing arts licensee: license activation fee: waiver**

This original subject of the bill was regarding licensee fee waivers and was included in the posted Board agenda of June 8, 2018. Amendments dated June 11 now have the bill subject

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with Optometry: administration of immunizations. Thus, this bill is no longer of interest to the Board.

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

Current status:

Passed out of the Assembly Business and Professions Committee on 16-1 vote on June 19, 2018. In Assembly Appropriations Committee; hearing date not set.

Last amended date: In Assembly on June 11, 2018.

This bill establishes the Patients Right to Know Act of 2018 which requires physicians and surgeons, osteopathic physicians and surgeons, podiatrists, acupuncturists, chiropractors and naturopathic doctors to notify patients of their probationary status. Information disclosed includes probationary status, length of probation, practice restrictions and Board contact info. Probationers would be required to obtain a signed copy of this disclosure, and the Board would be required to post specific information about licensees on probation on its website.

Staff recommended position: **Watch**

Comments:

This bill would have a minor impact on Board operations but a potential impact on licensees on probation. For example, the internet posting requirements for licensees on probation as set out by the bill are already done by the Board as normal practice. However, the requirement for all licensees to notify their patients about probation is only done as part of the practice/billing monitor condition under the Board's Disciplinary Guidelines. That condition requires that a license on probation notify all patients that a monitor will have access to their records. At present, the Board has approximately 36 licensees on active probation; this bill would make the patient notification by the practitioner a mandatory requirement for all licensees on any kind of probation. Due to the minor impact, staff recommends watching the bill.

#21 (A)

AB 767 (Quirk-Silva)

Master Business License Act



AMENDED IN SENATE JUNE 18, 2018

AMENDED IN SENATE APRIL 5, 2018

AMENDED IN ASSEMBLY MAY 3, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 767**

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**Introduced by Assembly Member Quirk-Silva**

February 15, 2017

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An act to add Part 12.5 (commencing with Section 15930) to Division 3 of Title 2 of amend Section 12096.3 of, to amend, renumber, and add Section 12097.1 of, to add Section 12097.2 to, and to add Article 4.3 (commencing with Section 12096.6) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of, the Government Code, and to repeal Sections 71040 and 71041 of the Public Resources Code, relating to economic development.

LEGISLATIVE COUNSEL'S DIGEST

AB 767, as amended, Quirk-Silva. ~~Master Business License Act. GO-Biz Information Technology.~~

Existing law authorizes various state agencies to issue permits and licenses in accordance with specified requirements to conduct business within this state. Existing law establishes the Governor's Office of Business and Economic Development (*GO-Biz*) to serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth. Existing law creates within the Governor's Office of Business and Economic Development the Office of Small Business Advocate to advocate for the causes of small businesses and to provide small businesses with the information they need to survive in the marketplace.

~~This bill would create within the Governor's Office of Business and Economic Development, or its successor, a business license center to develop and administer an online master business license system to simplify the process of engaging in business in this state. The bill would set forth the duties and responsibilities of the business license center. The bill would require each state regulatory agency to cooperate and provide reasonable assistance to the office to implement these provisions, except as specified.~~

~~This bill would authorize a person that applies for 2 or more business licenses that have been incorporated into the master business license system to submit a master application to the office requesting the issuance of the licenses. The bill would require the office to develop and adopt an Internet-based platform that allows the businesses to electronically submit the master application to the office, as well as the payment of every fee required to obtain each requested license and a master application fee, which would be deposited into the Master License Fund, which would be created by the bill. The bill would authorize the office to borrow up to \$140,000 from the General Fund, as specified. The bill would authorize a state agency that the office has determined to have a license and fee that is appropriate for inclusion in the master business license system to borrow money as needed from the General Fund to support the reasonable costs of integrating into the system, as specified. The bill would require these General Fund moneys to be deposited into the Master License Fund. The bill would authorize moneys in the fund, upon appropriation, to be expended only to administer this bill or be transferred to the appropriate licensing agencies. The bill would also require, upon issuance of the license or licenses, the office to transfer the fees, except for the master license fee, to the appropriate accounts under the applicable statutes for those regulatory agencies' licenses.~~

~~The bill would require the office, in consultation with other regulatory agencies, to establish a uniform business identification number for each business that would be recognized by all affected state agencies and used to facilitate the information sharing between state agencies and to improve customer service to businesses.~~

~~The bill would also require the office, including the Director of Small Business Advocate, to work with small business owners and all regulatory agencies to ensure the state's implementation of a consolidated business license and permit system.~~

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

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

The bill would recast provisions related to CalGold, renaming the center the Master Business License Center, and requiring GO-Biz Information Technology to establish an electronic online permit assistance center. The bill would establish, beginning in the 2018–19 fiscal year, 2 state civil service positions for the purposes of supporting the ongoing enhancement of the functionality of the California Business Development Portal, including the Master Business License Center, the California Business Navigator, the California Business Mapping Tool, digital resources, and other online products that improve the state government’s digital ecosystem.

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

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The Information Technology unit of GO-Biz develops,
- 3 maintains, and updates information technology solutions for
- 4 GO-Biz programs aimed at furthering GO-Biz’s goal of economic
- 5 growth for California.
- 6 (b) Since September 2013, the GO-Biz Information Technology
- 7 Application Portfolio has grown from one information technology
- 8 staff member and four supported applications to six information
- 9 technology staff members and sixteen supported applications.
- 10 (c) Each new GO-Biz application needs to be regularly updated
- 11 and fourteen of the sixteen applications are public facing and play

1 *an important role in supporting business development in California*  
 2 *including, but not limited to, all of the following:*

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

14 (d) *According to an Accenture survey, more than 65% of public*  
 15 *service leaders have cited creating a personalized citizen*  
 16 *experience as a priority.*

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

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

26 12096.3. The office shall serve the Governor as the lead entity  
 27 for economic strategy and the marketing of California on issues  
 28 relating to business development, private sector investment, and  
 29 economic growth. In this capacity, the office may:

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

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

39 (c) Market the business and investment opportunities available  
 40 in California by working in partnership with local, regional, federal,

1 and other state public and private institutions to encourage business  
2 development and investment in the state.

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

4 (1) Economic and demographic data.

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

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

9 (4) Transportation and infrastructure information.

10 (5) Assistance in obtaining state and local permits.

11 (6) Information on tax credits and other incentives.

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

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

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

21 (g) In cooperation with ~~the federal government~~, *other state*,  
22 *federal, and local governments*, foster relationships with ~~overseas~~  
23 *foreign and domestic* entities to improve the state’s image as a  
24 destination for *global* business investment and expansion.

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

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

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

34

35 *Article 4.3. GO-Biz Information Technology*

36

37 *12096.7. (a) There shall be within the office, the GO-Biz*  
38 *Information Technology Unit, which shall create an online Internet*  
39 *platform, called the California Business Development Portal.*

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

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

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

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

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

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

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

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

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

1 12096.8. *Beginning in the 2018–19 fiscal year, there shall be*  
2 *two additional state civil service positions in the GO-Biz*  
3 *Information Technology Unit for the purposes of supporting the*  
4 *ongoing enhancement of the functionality of the California Business*  
5 *Development Portal, including the Master Business License Center,*  
6 *the California Business Navigator, the California Business*  
7 *Mapping Tool, digital resources, and other online products that*  
8 *improve the state government’s digital ecosystem.*

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

11 ~~12097.1.~~

12 12097.2. (a) The director shall ensure that the office’s Internet  
13 Web site contains information on the licensing, permitting, and  
14 registration requirements of state agencies, and shall include, but  
15 not be limited to, information that does all of the following:

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

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

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

23 (b) The director shall ensure that the office’s Internet Web site  
24 contains information on the fee requirements and fee schedules of  
25 state agencies, and shall include, but not be limited to, information  
26 that does all of the following:

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

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

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

33 (c) The office shall ensure that the Internet ~~Web site~~ *platform*  
34 is user-friendly and provides accurate, updated information.

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

39 (2) A state agency shall not use the Internet ~~Web site~~ *platform*  
40 established under this section as the exclusive source of information

1 for the public to access licensing requirements and fees for that  
 2 agency.

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

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

9 *12097.1. (a) The GO-Biz Information Technology Unit shall*  
 10 *establish an electronic online government permit and license*  
 11 *assistance center through the Internet, which shall be known as*  
 12 *the Master Business License Center. The Master Business License*  
 13 *Center shall be available for use by any business or other entity*  
 14 *subject to a law or regulation implemented by an agency, authority,*  
 15 *bureau, board, commission, conservancy, council, department, or*  
 16 *office, and shall provide a business or other entity with assistance*  
 17 *in complying with those laws and regulations.*

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

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

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

29 ~~71040.—The Governor’s Office of Business and Economic~~  
 30 ~~Development shall establish an electronic online permit assistance~~  
 31 ~~center through the Internet. The electronic online permit assistance~~  
 32 ~~center shall be available for use by any business or other entity~~  
 33 ~~subject to a law or regulation implemented by an agency, authority,~~  
 34 ~~bureau, board, commission, conservancy, council, department,~~  
 35 ~~state district, or office, and shall provide a business or other entity~~  
 36 ~~with assistance in complying with those laws and regulations. The~~  
 37 ~~center, which shall be called the “California Government-On-Line~~  
 38 ~~to Desktops” or “CALGOLD” program, shall provide special~~  
 39 ~~software, “hotlinks,” and other online resources and tools that may~~  
 40 ~~be used by a business or other entity to streamline and expedite~~



1 compliance with laws and regulations implemented by an agency,  
2 authority, bureau, board, commission, conservancy, council,  
3 department, state district, or office. The CALGOLD program shall,  
4 to the extent feasible, incorporate permit assistance activities of  
5 local and federal entities and of other entities of the state into its  
6 operations.

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

9 71041. The CALGOLD program shall be reviewed periodically  
10 and, when necessary, updated to assist businesses in the state that  
11 would benefit from information on permitting and regulatory  
12 compliance, including emerging industries and life sciences  
13 industries.

14 SECTION 1. Part 12.5 (commencing with Section 15930) is  
15 added to Division 3 of Title 2 of the Government Code, to read:

16  
17 PART 12.5. MASTER BUSINESS LICENSE ACT

18  
19 CHAPTER 1. GENERAL PROVISIONS

20  
21 15930. This part may be known, and may be cited as, the  
22 Master Business License Act.

23 15931. As used in this part, the following words shall have the  
24 following meanings:

25 (a) "Business license center" means the business registration  
26 and licensing center established by this part and located in and  
27 under the administrative control of the office.

28 (b) "Director" means the Director of the Governor's Office of  
29 Business and Economic Development.

30 (c) "License information packet" means a collection of  
31 information about licensing requirements and application  
32 procedures custom assembled for each request.

33 (d) "License" means the whole or part of any state agency  
34 permit, license, certificate, approval, registration, charter, or any  
35 form or permission required by law, including agency regulation,  
36 to engage in any activity.

37 (e) "Master application" means a document incorporating  
38 pertinent data from existing applications for licenses covered under  
39 this part.

1 (f) ~~“Master business license system” or “system” means the~~  
2 ~~mechanism by which licenses are issued, license and regulatory~~  
3 ~~information is disseminated, and account data is exchanged by~~  
4 ~~state agencies.~~

5 (g) ~~“Office” means the Governor’s Office of Business and~~  
6 ~~Economic Development or its successor.~~

7 (h) ~~“Person” means any individual, sole proprietorship,~~  
8 ~~partnership, association, cooperative, corporation, nonprofit~~  
9 ~~organization, state or local government agency, and any other~~  
10 ~~organization required to register with the state to do business in~~  
11 ~~the state and to obtain one or more licenses from the state or any~~  
12 ~~of its agencies.~~

13 (i) ~~“Regulatory” means all licensing and other governmental or~~  
14 ~~statutory requirements pertaining to business activities.~~

15 (j) ~~“Regulatory agency” means any state agency, board,~~  
16 ~~commission, or division that regulates one or more industries,~~  
17 ~~businesses, or activities.~~

18

19 ~~CHAPTER 2. BUSINESS LICENSE CENTER~~

20

21 ~~15932. (a) There is created within the office a business license~~  
22 ~~center.~~

23 (b) ~~The duties of the center shall include, but not be limited to,~~  
24 ~~all of the following:~~

25 (1) ~~Developing and administering an online master business~~  
26 ~~license system capable of storing, retrieving, and exchanging~~  
27 ~~license information with due regard to privacy statutes.~~

28 (2) ~~Providing a license information service detailing~~  
29 ~~requirements to establish or engage in business in this state.~~

30 (3) ~~Identifying types of licenses appropriate for inclusion in the~~  
31 ~~master business license system.~~

32 (4) ~~Incorporating licenses into the master business license~~  
33 ~~system.~~

34 ~~15933. (a) The office shall adopt regulations as may be~~  
35 ~~necessary to effectuate the purposes of this part.~~

36 (b) ~~The director shall encourage state regulatory agencies to~~  
37 ~~participate in the online master business license system.~~

38 (c) ~~The office shall adopt and periodically update a schedule~~  
39 ~~for the buildout and upgrading of the master business license~~  
40 ~~system to allow for the integration of additional licenses into the~~

1 ~~Internet-based platform of the system. The office shall integrate~~  
2 ~~additional licenses to the Internet-based platform after the director~~  
3 ~~determines that funding for this project is available and the project~~  
4 ~~is in alignment with required elements of the state planning~~  
5 ~~practices for the development of state information technology~~  
6 ~~projects.~~

7 ~~15934. Each state regulatory agency shall cooperate and provide~~  
8 ~~reasonable assistance to the office in the implementation of this~~  
9 ~~part, except that a state regulatory agency may deny or limit the~~  
10 ~~ability of the office to establish an application to obtain multiple~~  
11 ~~licenses from that state regulatory agency through the system.~~

12  
13 ~~CHAPTER 3. MASTER LICENSE~~  
14

15 ~~15935. (a) Any person that applies for two or more business~~  
16 ~~licenses that have been incorporated into the master business~~  
17 ~~license system may submit a master application to the office~~  
18 ~~requesting the issuance of the licenses. The office shall develop~~  
19 ~~and adopt an Internet-based platform that allows the business to~~  
20 ~~electronically submit the master application to the office, as well~~  
21 ~~as the payment of every fee required to obtain each requested~~  
22 ~~license and a master application fee established pursuant to Section~~  
23 ~~15936.~~

24 ~~(b) Irrespective of any authority delegated to the office to~~  
25 ~~implement this part, the authority for approving the issuance and~~  
26 ~~renewal of any requested license that requires a precicensing or~~  
27 ~~renewal investigation, inspection, testing, or other judgmental~~  
28 ~~review by the regulatory agency otherwise legally authorized to~~  
29 ~~issue the license shall remain with that agency.~~

30 ~~(c) Upon receipt of the application and proper fee payment for~~  
31 ~~any license for which issuance is subject to regulatory agency~~  
32 ~~action under subdivision (a), the office shall immediately notify~~  
33 ~~the business of receipt of the application and fees.~~

34 ~~15936. (a) The office shall establish a fee for each master~~  
35 ~~application that does not exceed the reasonable costs of~~  
36 ~~administering this part and collect that fee.~~

37 ~~(b) Subject to subdivision (d), the office may borrow up to one~~  
38 ~~hundred forty thousand dollars (\$140,000) from the General Fund~~  
39 ~~in the State Treasury.~~

1 (e) Subject to subdivision (d), a state agency that the office has  
 2 determined to have a license and fee that is appropriate for  
 3 inclusion in the master business license system may borrow money  
 4 from the General Fund in the State Treasury in an amount  
 5 necessary to support the reasonable cost of integrating into the  
 6 system.

7 (d) Before the office or a state agency may request a loan  
 8 pursuant to this section, the director shall make a determination  
 9 that both the project to integrate a license into the system is ready  
 10 to be moved forward and that with the addition of the loan funds  
 11 there is sufficient funding to implement the project. The loans  
 12 made pursuant to subdivisions (b) and (c) shall be repaid with  
 13 interest, calculated at the rate earned by the Pooled Money  
 14 Investment Account at the time of the transfer from the General  
 15 Fund, from the fees collected pursuant to this section.

16 15937. All fees collected under the master business license  
 17 system, including the master license application fee and the fees  
 18 of the regulatory agencies, and all moneys borrowed under Section  
 19 15936 shall be deposited into the Master License Fund, which is  
 20 hereby created in the State Treasury. Moneys in the fund from  
 21 master application fees may, upon appropriation by the Legislature,  
 22 be expended only to administer this part or be transferred to the  
 23 appropriate licensing agencies. Moneys in the fund from other fees  
 24 shall be transferred to the appropriate accounts under the applicable  
 25 statutes for those regulatory agencies' licenses.

26  
 27 CHAPTER 4. UNIFORM BUSINESS IDENTIFICATION NUMBER  
 28

29 15940. (a) The office, in consultation with other regulatory  
 30 agencies, shall establish a uniform business identification number  
 31 for each business. The uniform business identification number  
 32 shall be recognized by all affected state agencies and shall be used  
 33 by state agencies to facilitate information sharing between state  
 34 agencies and to improve customer service to businesses.

35 (b) It is the intent of the Legislature that the uniform business  
 36 number would permit the office to do both of the following:

- 37 (1) Register a business with multiple state agencies electronically
- 38 as licenses and permits are processed.

1     ~~(2) Input and update information regarding a business once,~~  
2     ~~thereby reducing the number of duplicate or conflicting records~~  
3     ~~from one state agency to another.~~

4

5

~~CHAPTER 5. OVERSIGHT~~

6

7     ~~15945. The office, including the Director of Small Business~~  
8     ~~Advocate from the Governor's Office of Business and Economic~~  
9     ~~Development shall work with small business owners and all~~  
10    ~~regulatory agencies to ensure the state's implementation of a~~  
11    ~~consolidated business license and permit system under this part.~~

O

## ASSEMBLY THIRD READING

AB 767 (Quirk-Silva)

As Amended May 3, 2017

Majority vote

Committee	Votes	Ayes	Noes
<b>Jobs</b>	7-0	Quirk-Silva, Travis Allen, Berman, Cervantes, Grayson, Rodriguez, Steinorth	
<b>Appropriations</b>	17-0	Gonzalez Fletcher, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Eggman, Fong, Friedman, Gallagher, Eduardo Garcia, Jones-Sawyer, Obernolte, Quirk, Reyes	

**SUMMARY:** Establishes the Master Small Business License Center (Center), within the Governor's Office of Business and Economic Development (GO-Biz), for the purpose of developing and administering an Internet-based platform that allows a business to electronically submit a master application that includes two or more permits, including the submittal of all required fees.

**FISCAL EFFECT:** According to the Appropriations Committee, implementation of this bill would cost:

- 1) Over \$140,000 in General Fund cost pressures for loans to GO-Biz and other state agencies to integrate their licensing and permit processes to an online platform.
- 2) Approximately \$1.7 million annually in costs to GO-Biz to develop and administer an internet platform for agencies impacting small businesses, as specified.
- 3) Approximately \$18.7 million in administrative and system modifications for the Department of Consumer Affairs (DCA), and on-going cost of \$240,000 annually to DCA, as specified.

**COMMENTS:** Starting and maintaining a business in California often requires an entrepreneur to apply for and annually renew a range of permits and licenses. Identifying which applications need to be completed, where to file, and what fees are necessary can be a significant challenge.

The Internet offers a useful tool for assisting businesses in navigating the required federal, state, and local permit requirements. This bill leverages an existing GO-Biz web-based platform to become a single access point for applying to and meeting existing permitting and licensing requirements.

The policy analysis includes background on the small business economy, GO-Biz and its existing permit assistance activities, and costs of regulatory compliance.

**Existing Business Assistance:** The Permit Assistance Unit within GO-Biz provides businesses with comprehensive permit, regulatory, and compliance assistance. Among other services, the

unit schedules pre-application meetings between businesses and the appropriate regulatory agencies to help streamline the permitting process. In some instances, GO-Biz can assign a project manager to personally guide an applicant through the entire permit process. Services are confidential and provided without cost. The goal of the unit is to help businesses solve permitting and regulatory challenges.

The Office of Permit Assistance works in partnership with the California Business Investment Service, and other GO-Biz units in serving employers, corporate executives, business owners, and site location consultants who are considering California for business investment and expansion.

Among other duties, the Permit Assistance Unit is responsible for maintaining the California Government Online to Desktops (CalGOLD) web site. At [www.calgold.ca.gov](http://www.calgold.ca.gov), businesses can obtain a list of the required federal, state, and local permits, webpage links, addresses, and other contact information.

In July 2015, GO-Biz launched the California Business Portal which expanded on the utility and availability of a searchable online application that could provide individualized information to businesses, including application forms and links to fee information.  
<http://www.business.ca.gov/Programs/Permits.aspx>

This bill would build on these efforts by allowing a business to complete an initial list of core information, which would populate the various permit and licensing forms. Fees would be itemized, aggregated, and could be paid in a single transfer from the business. Unique information to a particular permit would then be completed by the business. From the state agency's perspective, it would receive completed forms and the payment of fees, while retaining full authority for the approval or disapproval of the application.

**Cost of Regulations on Business:** There are two major sources of data on the cost of regulatory compliance on businesses, the federal Small Business Administration (SBA) and the Office of the Small Business Advocate (OSBA). For the last 10 years, the federal SBA has conducted a peer reviewed study that analyzes the cost of federal government regulations on different size businesses. This research shows that small businesses continue to bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs about \$2,400, or 45% more, for small firms to comply with federal regulations than their larger counterparts.

The first study on the impact of California regulations on small businesses was released by the OSBA in 2009. This first in-the-nation study found that the total cost of regulations to small businesses averaged about \$134,000 per business in 2007. Of course, no one would advocate that there should be no regulations in the state. The report, however, importantly identifies that the cost of regulations can provide a significant cost to the everyday operations of California businesses and should therefore be a consideration among the state's economic development policies.

Regulatory costs are driven by a number of factors including the lack of e-commerce solutions to address outdated paperwork requirements. Implementation of this bill provides an opportunity for the state to use technology to reduce the real cost of regulatory compliance.

#21 (B)

AB 1659 (Low)

Healing arts boards:  
inactive licenses



AMENDED IN ASSEMBLY JANUARY 3, 2018

AMENDED IN ASSEMBLY APRIL 4, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1659**

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**Introduced by Assembly Member Low**

February 17, 2017

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~~An act to add Sections 43020.2 and 43020.3 to, and to add Chapter 6 (commencing with Section 42370) to Part 3 of Division 30 of, the Public Resources Code, relating to recycling. An act to amend Sections 701, 702, and 703 of the Business and Professions Code, relating to healing arts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, as amended, Low. ~~Food Service Plastic Packaging Recovery and Recycling Stewardship Act. Healing arts boards: inactive licenses.~~

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

*This bill would prohibit the holder of an inactive license from representing that he or she has an active license. The bill would also*

*authorize a healing arts board to establish a lower inactive license renewal fee.*

~~(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, generally regulates the disposal, management, and recycling of solid waste.~~

~~Existing law requires a manufacturer of carpets sold in the state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the Department of Resources Recycling and Recovery for approval that would, among other things, increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products. Existing law requires the carpet stewardship plan to include a funding mechanism that provides sufficient funding to carry out the plan and requires a manufacturer or carpet stewardship organization to pay the department an annual administrative fee. Existing law requires the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of the carpet stewardship plans, and to establish a fee in an amount adequate to cover these costs, that is paid by a carpet stewardship organization. Existing law imposes administrative civil penalties on a person who violates these provisions.~~

~~This bill, the Food Service Plastic Packaging Recovery and Recycling Stewardship Act, would authorize a city, county, or city and county to establish and implement a residential curbside collection program for the collection and recycling of a particular type of plastic packaging, defined to mean a container or single-use food service packaging product labeled with the same resin code. The bill would require a residential curbside collection program to impose certain requirements on the transportation of plastic packaging collected as a part of the program and on material recovery facilities to which waste that includes that plastic packaging is delivered.~~

~~The bill would require, by June 30, 2018, a manufacturer of plastic packaging sold in this state, individually or through a plastic packaging stewardship organization, to submit to the department one or more plastic packaging stewardship plans, similar to the carpet stewardship plans described above, collectively covering each particular type of plastic packaging distributed, sold, or used in the state by that manufacturer. The bill would require the plan to include a funding mechanism similar to that required in the carpet stewardship law. The bill would require the manufacturer or organization to, among other~~

~~things, establish a plastic packaging stewardship fee that would be imposed on members of the organization and to determine the appropriate projects and programs to be funded by the stewardship fee that would further the efforts to recycle the particular type of plastic packaging. The bill would require each plastic packaging stewardship organization to make reasonable efforts to achieve specified rate of community access to residential curbside collection programs for each type of plastic packaging covered by the organization's plan, with an overall goal of a 75% rate of community access for each type of plastic packaging on or before January 1, 2043.~~

~~Similar to the carpet stewardship organization, a manufacturer or plastic packaging stewardship organization would be required to pay the department an annual administrative fee, as determined by the department. The bill would require the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of plastic packaging stewardship plans and to establish a fee in an amount adequate in aggregate to cover those costs, to be paid by each plastic packaging stewardship organization that submits a plastic packaging stewardship plan. The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill. The bill would establish the Plastic Packaging Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Plastic Packaging Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.~~

~~(2) Existing law requires the department to adopt regulations relating to waste management, including standards for the design, operation, maintenance, and ultimate reuse of solid waste facilities, and for solid waste handling, transfer, composting, transformation, and disposal.~~

~~This bill would authorize a material recovery facility to send residual materials containing plastic packaging to a secondary sorting facility with the capacity of sorting or separating plastic packaging material from the residual material for recycling. The bill would encourage a solid waste landfill that receives solid waste that contains plastic~~

packaging to send the plastic packaging to a material recovery facility, secondary sorting facility, or to a recycling facility that has the capability to sort, separate, or recycle plastic packaging material.

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

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

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

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

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

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

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

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

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

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

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

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

32     The

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

5 SECTION 1. This act shall be known, and may be cited, as the  
6 ~~Food Service Plastic Packaging Recovery and Recycling~~  
7 ~~Stewardship Act.~~

8 SEC. 2. Chapter 6 (commencing with Section 42370) is added  
9 to Part 3 of Division 30 of the Public Resources Code, to read:

10

11 CHAPTER 6. ~~FOOD SERVICE PLASTIC PACKAGING STEWARDSHIP~~  
12 ~~PROGRAM~~

13

14 Article 1. ~~General Provisions~~

15

16 42370. The Legislature finds and declares the following:

17 (a) ~~It is the intent of the Legislature, in adopting this chapter,~~  
18 ~~to reduce the amount of food service packaging that is littered and~~  
19 ~~improperly disposed of, to reduce the amount of food service~~  
20 ~~plastic packaging that is disposed of in landfills, to increase~~  
21 ~~opportunities for businesses or multifamily complexes to save~~  
22 ~~money, to create jobs in California by providing materials for~~  
23 ~~recycling manufacturing facilities, to reduce greenhouse gas~~  
24 ~~emissions, to keep valuable materials out of landfills, and to create~~  
25 ~~a healthy environment for the community and future generations~~  
26 ~~by recovering natural resources by increasing the recycling rate~~  
27 ~~of food service plastic packaging.~~

28 (b) ~~California is home to a number of food service packaging~~  
29 ~~manufacturers that produce a variety of products. These facilities~~  
30 ~~employ thousands of Californians and are important components~~  
31 ~~of the state's economy.~~

32 (c) ~~All food service packaging, regardless of the material from~~  
33 ~~which it is made, has environmental impacts, including, but not~~  
34 ~~limited to, raw material acquisition, energy use, greenhouse gas~~  
35 ~~emissions and other emissions associated with its manufacture,~~  
36 ~~transportation, and disposal, consumption of increasingly scarce~~  
37 ~~landfill capacity, and unsightly and environmentally damaging~~  
38 ~~consequences of littering and other improper disposal.~~

39 (d) ~~Manufacturers, distributors, and users of food service~~  
40 ~~packaging have a shared responsibility to identify, finance, and~~

1 implement food service packaging materials life-cycle management  
2 solutions that are both environmentally responsible and  
3 economically sustainable. These solutions include, but are not  
4 limited to, reduction of food service packaging, reuse of food  
5 service packaging materials, enhanced material collection, sorting  
6 and recycling programs, antilitter, pollution prevention, and other  
7 public education programs, and developing and supporting  
8 emerging material recycling and conversion technologies to  
9 facilitate greater reuse and recycling of food service packaging  
10 materials.

11 (e) Manufacturers of each type of food service packaging  
12 material, transporters, solid waste haulers, recyclers, the State of  
13 California, local governments, and other stakeholders should work  
14 together to develop and implement programs to ensure all food  
15 service packaging materials are managed in an environmentally  
16 sound and economically sustainable manner.

17 (f) With the enactment of this chapter, the Legislature intends  
18 to encourage the development of recycling technologies for food  
19 service plastic packaging materials without favoring one type of  
20 food service packaging material, whether plastic or otherwise, over  
21 another. It is anticipated that the methods and programs that will  
22 be developed pursuant to this chapter will serve as models for  
23 similar programs addressing other types of food service packaging  
24 materials.

25 42370.1. The purpose of this chapter is to increase the amount  
26 of food service plastic packaging waste that is diverted from  
27 landfills and recycled into new products or otherwise managed in  
28 a manner that is consistent with the state's hierarchy for waste  
29 management practices pursuant to Section 40051.

30 42370.2. (a) For purposes of this chapter, and unless the  
31 context otherwise requires, the following definitions shall apply:

32 (1) "Community recycling access rate," for a particular type of  
33 plastic packaging, means the number of residents that have access  
34 to a residential curbside collection program that accepts that type  
35 of plastic packaging for recycling divided by the total number of  
36 residents in the State of California.

37 (2) "Department" means the Department of Resources Recycling  
38 and Recovery.

39 (3) "Manufacturer" means either of the following:

1 ~~(A) The person or entity in the state that manufactures plastic~~  
2 ~~packaging that is sold, offered for sale, or distributed for use in~~  
3 ~~the state.~~

4 ~~(B) If there is no person or entity that is a manufacturer of plastic~~  
5 ~~packaging for purposes of subparagraph (A), the person or entity~~  
6 ~~that imports the plastic packaging into the state for sale,~~  
7 ~~distribution, or use in the state.~~

8 ~~(4) “Material recovery facility” means a facility that sorts~~  
9 ~~residential solid waste that includes recyclable materials for the~~  
10 ~~purpose of separating recyclable materials from materials destined~~  
11 ~~for disposal at a landfill.~~

12 ~~(5) “Particular type of plastic packaging” or “type of plastic~~  
13 ~~packaging” means all plastic packaging labeled with the same resin~~  
14 ~~code pursuant to Section 18015.~~

15 ~~(6) “Plastic packaging” means a container or other single-use~~  
16 ~~food service packaging product labeled with a resin code pursuant~~  
17 ~~to Section 18015 that is used by a food service provider to carry~~  
18 ~~or contain food or beverages that are prepared onsite so that a~~  
19 ~~customer may consume the food offsite if the customer wishes to~~  
20 ~~do so.~~

21 ~~(7) “Plastic packaging stewardship organization” or~~  
22 ~~“organization” means either of the following:~~

23 ~~(A) An organization appointed by one or more manufacturers~~  
24 ~~of a particular type of plastic packaging to act as an agent on behalf~~  
25 ~~of the manufacturer to design, submit, and administer a plastic~~  
26 ~~packaging stewardship plan pursuant to this chapter.~~

27 ~~(B) A plastic packaging manufacturer that complies with this~~  
28 ~~chapter as an individual manufacturer.~~

29 ~~(8) “Recycle” means to take a product or material that has been~~  
30 ~~used and discarded and divert it from disposal in a landfill for the~~  
31 ~~purpose of being transformed, regenerated, or reused in the~~  
32 ~~production of a useful product.~~

33 ~~(b) A term not specifically defined in this chapter shall be~~  
34 ~~interpreted consistent with its meaning in this division.~~

35  
36 ~~Article 2. Food Service Plastic Packaging Stewardship~~  
37 ~~Organization~~  
38

39 ~~42371. On or before June 30, 2018, a manufacturer of plastic~~  
40 ~~packaging distributed, sold, or used in this state shall, individually~~

1 or through a plastic packaging stewardship organization formed  
2 pursuant to Section 42371.2, submit to the department one or more  
3 plastic packaging stewardship plans, collectively covering each  
4 particular type of plastic packaging distributed, sold, or used in  
5 this state by that manufacturer, that will do all of the following:

6 (a) Achieve the purposes of this chapter, as described in Section  
7 42370.1, and meet the requirements of Section 42372.4.

8 (b) Establish goals that, to the extent feasible based on available  
9 technology and information, increase the recycling of plastic  
10 packaging, increase the diversion of plastic packaging from  
11 landfills, increase the recyclability of plastic packaging, and  
12 provide incentives for the market growth of secondary products  
13 made from recycled plastic packaging.

14 (c) Describe proposed measures that will be implemented by  
15 the organization that reduce the disposal of plastic packaging  
16 manufactured by the organization's members in a manner  
17 consistent with the state's solid waste management hierarchy,  
18 including, but not limited to, source reduction, source separation  
19 and processing to segregate and recover recyclable materials, and  
20 environmentally sound management of materials that cannot  
21 feasibly be recycled.

22 (d) Include a funding mechanism consistent with subdivision  
23 (b) of Section 42371.2.

24 (e) Include a process by which the financial activities of the  
25 plastic packaging stewardship organization that are related to  
26 implementation of the plastic packaging stewardship plan will be  
27 subject to an independent audit.

28 42371.2. Manufacturers of one or more than one particular  
29 type of plastic packaging may form an organization known as a  
30 plastic packaging stewardship organization. A plastic packaging  
31 stewardship organization may address a stewardship plan to more  
32 than one type of plastic packaging only if all of the manufacturers  
33 of that organization manufacture all of the types of plastic  
34 packaging to be covered by the plan. A plastic packaging  
35 stewardship organization shall do all of the following:

36 (a) Prepare a plastic packaging stewardship plan that meets the  
37 requirements of Section 42371.

38 (b) Establish a funding mechanism, consistent with Article 4  
39 (commencing with Section 42374), that provides sufficient funding  
40 to carry out the plastic packaging stewardship plan, including the



1 administrative, operational, and capital costs of the plan, payment  
2 of fees pursuant to Section 42374.6, and incentive payments that  
3 will advance the purposes of this chapter.

4 (e) ~~Set the plastic packaging stewardship fee in accordance  
5 with Article 4 (commencing with Section 42374).~~

6 (d) ~~Determine the projects and programs to be funded by the  
7 plastic packaging stewardship fee collected pursuant to Section  
8 42374.4.~~

9  
10 Article 3. Food Service Plastic Packaging Recycling Program

11  
12 ~~42372. (a) A city, county, or city and county may establish  
13 and implement a residential curbside collection program pursuant  
14 to this article for the collection and recycling of a particular type  
15 of plastic packaging. If a city, county, or city and county establishes  
16 and implements a residential curbside collection program, the city,  
17 county, or city and county shall notify the department for purposes  
18 of tracking community access rates to residential curbside  
19 collection programs for each particular type of plastic packaging.~~

20 (b) ~~To help ensure statewide consistency, the department may  
21 collaborate with any city, county, or city and county on the  
22 establishment and implementation of a residential curbside  
23 collection program for a particular type of plastic packaging, and  
24 may develop a list that identifies by resin code the particular types  
25 of plastic packaging materials accepted for recycling by each  
26 program.~~

27 ~~42372.2. (a) A residential curbside collection program  
28 established pursuant to this article shall include the following  
29 requirements:~~

30 (1) ~~Postconsumer untreated plastic packaging that is collected  
31 as part of a residential curbside collection program for a particular  
32 type of plastic packaging shall be transported only to a facility  
33 where it is feasible to recycle that type of plastic packaging or to  
34 a material recovery facility for the purpose of sorting that particular  
35 type of plastic packaging before recycling.~~

36 (2) ~~A material recovery facility that receives material from a  
37 residential curbside collection program for a particular type of  
38 plastic packaging that is unable to separate at least 75 percent of  
39 that particular type of plastic packaging from the mixture of solid  
40 waste and recyclable materials collected in the residential curbside~~

1 collection program shall send its residual material to a secondary  
2 sorting facility if the secondary sorting facility is reasonably  
3 available and willing to accept the residual material.

4 (b) For purposes of this section, the following definitions apply:

5 (1) “Reasonably available” means available at a cost, including  
6 the cost of transporting the residual material and any fee charged  
7 by the secondary sorting facility receiving the material, that does  
8 not exceed the cost of transporting the residual material to a landfill  
9 and disposing of the material at that landfill.

10 (2) “Residual material” means any material collected through  
11 a residential curbside collection program by, or material delivered  
12 through a drop-off program to, a material recovery facility that  
13 remains after processing by the material recovery facility.  
14 “Processing” means the removal of recyclable material from other  
15 material to the extent a material recovery facility is equipped to  
16 do so.

17 (3) “Secondary sorting facility” means a facility equipped to  
18 sort a particular type of plastic packaging from other recyclable  
19 material and solid waste in residual material.

20 (e) The department shall adopt regulations establishing a  
21 mechanism by which the department will resolve disputes regarding  
22 whether a secondary sorting facility is reasonably available and  
23 under what circumstances the department may direct a residential  
24 curbside collection program, a recycling facility, or a solid waste  
25 facility to transfer residual material containing plastic packaging  
26 to a secondary sorting facility in order to further the purposes of  
27 this act.

28 42372.4. (a) On and before January 1, 2023, each plastic  
29 packaging stewardship organization shall make reasonable efforts  
30 to achieve a 15-percent rate of community access to residential  
31 curbside collection programs for each type of plastic packaging  
32 covered by the organization.

33 (b) On and before January 1, 2028, each plastic packaging  
34 stewardship organization shall make reasonable efforts to achieve  
35 a 30-percent rate of community access to residential curbside  
36 collection programs for each type of plastic packaging covered by  
37 the organization.

38 (c) On and before January 1, 2033, each plastic packaging  
39 stewardship organization shall make reasonable efforts to achieve  
40 a 45-percent rate of community access to residential curbside

1 collection programs for each type of plastic packaging covered by  
2 the organization.

3 ~~(d) On and before January 1, 2038, each plastic packaging~~  
4 ~~stewardship organization shall make reasonable efforts to achieve~~  
5 ~~a 60-percent rate of community access to residential curbside~~  
6 ~~collection programs for each type of plastic packaging covered by~~  
7 ~~the organization.~~

8 ~~(e) On and before January 1, 2043, each plastic packaging~~  
9 ~~stewardship organization shall make reasonable efforts to achieve~~  
10 ~~a 75-percent rate of community access to residential curbside~~  
11 ~~collection programs for each type of plastic packaging covered by~~  
12 ~~the organization.~~

13  
14 **Article 4. Plastic Packaging Stewardship Fees and**  
15 **Administrative Fees**

16  
17 ~~42374. Each plastic packaging stewardship organization shall~~  
18 ~~establish a plastic packaging stewardship fee for each particular~~  
19 ~~type of plastic packaging covered by the organization, to be paid~~  
20 ~~by members of the organization based on the amount of that~~  
21 ~~particular type of plastic packaging of each member that is covered.~~  
22 ~~The plastic packaging stewardship fee shall be calculated on a per~~  
23 ~~pound basis by type of plastic packaging as follows:~~

24 ~~(a) For each type of plastic packaging, if manufactured in the~~  
25 ~~state, the organization member shall pay the applicable amount~~  
26 ~~for its plastic packaging to be sold or used in the state.~~

27 ~~(b) For each type plastic packaging, if manufactured out of state,~~  
28 ~~the organization member shall pay the applicable amount for plastic~~  
29 ~~packaging introduced into the state by the organization member.~~

30 ~~42374.2. Each plastic packaging stewardship organization shall~~  
31 ~~determine the rules and procedures that are necessary and proper~~  
32 ~~to implement the collection of the charge in a fair, efficient, and~~  
33 ~~lawful manner.~~

34 ~~42374.4. The plastic packaging stewardship fee for each~~  
35 ~~particular type of plastic packaging shall be collected by a plastic~~  
36 ~~packaging stewardship organization and deposited in accounts,~~  
37 ~~segregated by the type of plastic packaging, that are maintained~~  
38 ~~and disbursed by the organization. Moneys collected pursuant to~~  
39 ~~this article shall be used by a plastic packaging stewardship~~  
40 ~~organization only for purposes of carrying out its duties under this~~

1 ~~chapter and for appropriate projects and programs that would~~  
2 ~~further the efforts to recycle the particular type of plastic packaging~~  
3 ~~for which the moneys were collected, pursuant to the plastic~~  
4 ~~packaging stewardship plan. Those projects or programs may~~  
5 ~~include, but are not limited to, investments in infrastructure that~~  
6 ~~promote the recycling of the particular type of plastic packaging~~  
7 ~~for which the moneys were collected, pursuant to the plastic~~  
8 ~~packaging stewardship plan.~~

9 ~~42374.6. (a) A plastic packaging stewardship organization~~  
10 ~~submitting a plastic packaging stewardship plan shall pay the~~  
11 ~~department a quarterly administrative fee. The department shall~~  
12 ~~set the fee at an amount that, when paid by every plastic packaging~~  
13 ~~stewardship organization that submits a plastic packaging~~  
14 ~~stewardship plan, is adequate to cover the department's full costs~~  
15 ~~of administering and enforcing this chapter, including any program~~  
16 ~~development costs or regulatory costs incurred by the department~~  
17 ~~prior to plastic packaging stewardship plans being submitted. The~~  
18 ~~department may establish a variable fee based on relevant factors,~~  
19 ~~including, but not limited to, the portion of a particular type of~~  
20 ~~plastic packaging sold in the state by members of the organization~~  
21 ~~compared to the total amount of the same type of plastic packaging~~  
22 ~~sold in the state by all organizations submitting a plastic packaging~~  
23 ~~stewardship plan.~~

24 ~~(b) The total amount of fees collected annually pursuant to this~~  
25 ~~section shall not exceed the amount necessary to recover costs~~  
26 ~~incurred by the department in connection with the administration~~  
27 ~~and enforcement of the requirements of this chapter.~~

28 ~~(c) The department shall identify the direct development or~~  
29 ~~regulatory costs it incurs pursuant to this chapter prior to the~~  
30 ~~submittal of a plastic packaging stewardship plan and shall~~  
31 ~~establish a fee in an amount adequate to cover those costs, which~~  
32 ~~shall be paid by a plastic packaging stewardship organization that~~  
33 ~~submits a plastic packaging stewardship plan. The fee established~~  
34 ~~pursuant to this subdivision shall be paid pursuant to the schedule~~  
35 ~~specified in subdivision (d).~~

36 ~~(d) A plastic packaging stewardship organization subject to this~~  
37 ~~section shall pay a quarterly fee to the department to cover the~~  
38 ~~administrative and enforcement costs of the requirements of this~~  
39 ~~chapter pursuant to subdivision (a) on or before July 1, 2019, and~~  
40 ~~every three months thereafter. The plastic packaging stewardship~~

1 organization shall pay the applicable portion of the fee pursuant  
2 to subdivision (c) on July 1, 2019, and every three months  
3 thereafter through July 1, 2043. After the initial year of payment,  
4 the total amount of the administrative fees paid for a calendar year  
5 shall not exceed 5 percent of the total amount of stewardship fees  
6 collected for the preceding calendar year.

7 (e) The department shall deposit the fees collected pursuant to  
8 this section into the Plastic Packaging Stewardship Account created  
9 pursuant to Section 42377.

10  
11 Article 5. Member Reporting

12  
13 ~~42375.~~ (a) Each plastic packaging stewardship organization  
14 shall submit annual reports on their efforts to recycle plastic  
15 packaging to the department. A plastic packaging stewardship  
16 organization submitting an annual report on behalf of its members  
17 shall identify the individual members of the organization but is  
18 not required to distinguish the individual recycling efforts of its  
19 members.

20 (b) A member of a plastic packaging stewardship organization  
21 shall be considered in compliance with this section with regards  
22 to the types of plastic packaging covered by the organization if  
23 the plastic packaging stewardship organization of which it is a  
24 member submits a report.

25  
26 Article 6. Enforcement

27  
28 ~~42376.~~ (a) A civil penalty up to one thousand dollars (\$1,000)  
29 per day may be administratively imposed by the department on  
30 any person who is in violation of any provision of this chapter, or  
31 up to ten thousand dollars (\$10,000) per day if the violation is  
32 intentional, knowing, or negligent.

33 (b) In assessing or reviewing the amount of a civil penalty  
34 imposed pursuant to subdivision (a) for a violation of this chapter,  
35 the department or the court shall consider all of the following:

- 36 (1) The nature and extent of the violation.  
37 (2) The number and severity of the violation or violations.  
38 (3) The economic effect of the penalty on the violator.

1 ~~(4) Whether the violator took good faith measures to comply~~  
2 ~~with this chapter and the period of time over which these measures~~  
3 ~~were taken.~~

4 ~~(5) The willfulness of the violator’s misconduct.~~

5 ~~(6) The deterrent effect that the imposition of the penalty would~~  
6 ~~have on both the violator and the regulated community.~~

7 ~~(7) Any other factor that justice may require.~~

8  
9 ~~Article 7. Financial Provisions~~

10  
11 ~~42377. (a) The Plastic Packaging Stewardship Account and~~  
12 ~~the Plastic Packaging Stewardship Penalty Subaccount are hereby~~  
13 ~~established in the Integrated Waste Management Fund.~~

14 ~~(b) All fees collected by the department pursuant to this article~~  
15 ~~shall be deposited in the Plastic Packaging Stewardship Account~~  
16 ~~and may be expended by the department, upon appropriation by~~  
17 ~~the Legislature, to cover the department’s costs to implement this~~  
18 ~~chapter.~~

19 ~~(c) All civil penalties collected pursuant to this article shall be~~  
20 ~~deposited in the Plastic Packaging Stewardship Penalty Subaccount~~  
21 ~~and may be expended by the department, upon appropriation by~~  
22 ~~the Legislature, to cover the department’s costs to implement this~~  
23 ~~chapter.~~

24  
25 ~~Article 8. Antitrust Immunity~~

26  
27 ~~42378. (a) Except as provided in subdivision (b), an action~~  
28 ~~relating to the establishment, administration, collection, or~~  
29 ~~disbursement of the funds associated with implementation of this~~  
30 ~~chapter that is taken by the plastic packaging stewardship~~  
31 ~~organization or its members is not a violation of the Cartwright~~  
32 ~~Act (Chapter 2 (commencing with Section 16700) of Part 2 of~~  
33 ~~Division 7 of the Business and Professions Code), the Unfair~~  
34 ~~Practices Act (Chapter 4 (commencing with Section 17000) of~~  
35 ~~Part 2 of Division 7 of the Business and Professions Code), or the~~  
36 ~~Unfair Competition Law (Chapter 5 (commencing with Section~~  
37 ~~17200) of Part 2 of Division 7 of the Business and Professions~~  
38 ~~Code).~~

39 ~~(b) Subdivision (a) shall not apply to an agreement that does~~  
40 ~~any of the following:~~

- 1 ~~(1) Fixes a price of or for plastic packaging.~~
- 2 ~~(2) Fixes the output or production of plastic packaging.~~
- 3 ~~(3) Restricts the geographic area in which, or customers to~~
- 4 ~~whom, plastic packaging will be sold.~~

5 ~~SEC. 3. Section 43020.2 is added to the Public Resources Code,~~  
6 ~~to read:~~

7 ~~43020.2. (a) A solid waste landfill that receives solid waste~~  
8 ~~that contains plastic packaging material may landfill the plastic~~  
9 ~~packaging material, but is encouraged to send solid waste~~  
10 ~~containing plastic packaging material received to a material~~  
11 ~~recovery facility, a secondary sorting facility, or a recycling facility~~  
12 ~~that has the capability to sort, separate, or recycle plastic packaging~~  
13 ~~material.~~

14 ~~(b) For purposes of this section, the definitions of Chapter 6~~  
15 ~~(commencing with Section 42370) of Part 3 shall apply.~~

16 ~~SEC. 4. Section 43020.3 is added to the Public Resources Code,~~  
17 ~~to read:~~

18 ~~43020.3. (a) A material recovery facility may send residual~~  
19 ~~materials containing plastic packaging to a secondary sorting~~  
20 ~~facility with the capability of sorting or separating plastic~~  
21 ~~packaging material from the residual material for recycling.~~

22 ~~(b) For purposes of this section, the definitions of Chapter 6~~  
23 ~~(commencing with Section 42370) of Part 3 shall apply.~~





This, however, is unfair, because inactive license holders do not receive the same benefits as active license holders. This bill remedies that issue by authorizing healing arts boards to charge a lower fee for inactive licenses where appropriate. The Author also notes that current law prohibits any person from practicing, attempting to practice, advertising, or holding himself or herself out as practicing any of the healing arts, but does not currently prohibit inactive license holders from representing the ability to practice the healing arts only active license holders may practice. The Author states that this bill clarifies that discrepancy.

- 2. Background.** Under current law, healing arts boards are authorized to issue inactive licenses. Inactive licenses allow a licensee to apply for an inactive license if he or she plans in discontinuing his or her practice temporarily. An inactive license does not allow the person to practice, but does allow him or her to convert the inactive license into an active license after paying a fee and completing any outstanding continuing education requirements. Inactive license holders do not need to meet continuing education requirements while inactive, but must continue to pay the full renewal fee. This bill simply clarifies that a licensee may not represent that he or she has an *active* license or certificate, when they hold an inactive license or certificate, nor are they permitted to engage or in any activity for which a license is required. Additionally, this bill allows the healing arts boards to lower the fees for an inactive license renewal.

#### **SUPPORT AND OPPOSITION:**

##### Support:

None on file as of June 5, 2018.

##### Opposition:

None on file as of June 5, 2018.

-- END --

#21 (C)

AB 2138 (Chiu and Low)

Licensing boards:

denial of application:

revocation of licensure:

criminal conviction

AMENDED IN SENATE JUNE 20, 2018

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2138**

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**Introduced by Assembly Members Chiu and Low**

February 12, 2018

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An act to amend Sections 7.5, 480, 481, 482, 488, ~~490, 492,~~ 493, and 11345.2 ~~of, and to add Section 481.5 to,~~ of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

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

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

determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding ~~5~~ 7 years, except for ~~violent~~ *serious* felonies, and would require the crime to be ~~directly and adversely~~ *substantially* related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has ~~made a showing~~ *provided evidence* of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. ~~The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.~~

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

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

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

~~Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the~~

~~licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.~~

~~This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.~~

~~Existing law authorizes a board board, after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the licensee: actions in relation to denying or granting the applicant the license.~~

~~This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days: revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.~~

~~This bill would also make necessary conforming changes.~~

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

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

- 1 SECTION 1. Section 7.5 of the Business and Professions Code
- 2 is amended to read:
- 3 7.5. (a) A conviction within the meaning of this code means
- 4 a judgment following a plea or verdict of guilty or a plea of nolo
- 5 contendere or finding of guilt. Any action which a board is
- 6 permitted to take following the establishment of a conviction may

1 be taken when the time for appeal has elapsed, or the judgment of  
 2 conviction has been affirmed on appeal or when an order granting  
 3 probation is made suspending the imposition of sentence. However,  
 4 a board may not deny a license to an applicant who is otherwise  
 5 qualified pursuant to subdivision (b) or (c) of Section 480.

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

9 (2) *The changes made to this section by the act adding this*  
 10 *paragraph do not in any way modify or otherwise affect the existing*  
 11 *authority of the following entities in regard to licensure:*

12 (A) *The State Athletic Commission.*

13 (B) *The Bureau for Private Postsecondary Education.*

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

17 SEC. 2. Section 480 of the Business and Professions Code is  
 18 amended to read:

19 480. (a) ~~(1)~~ Notwithstanding any other provision of this code,  
 20 a board may deny a license regulated by this code on the grounds  
 21 that the applicant has been convicted of a crime or has been subject  
 22 to formal discipline only if either of the following conditions are  
 23 met:

24 ~~(A)~~

25 (1) The applicant has been convicted of a crime for which the  
 26 applicant is presently incarcerated or for which the conviction  
 27 occurred within the preceding ~~five~~ *seven* years. However, the  
 28 preceding ~~five-year~~ *seven-year* limitation shall not apply to a  
 29 conviction for a ~~violent~~ *serious* felony, as defined in ~~Section 667.5~~  
 30 ~~of~~ the Penal Code.

31 The board may deny a license pursuant to this subparagraph only  
 32 if the crime is ~~directly and adversely~~ *substantially* related to the  
 33 qualifications, functions, or duties of the business or profession  
 34 for which application is made.

35 ~~(B)~~

36 (2) The applicant has been subjected to formal discipline by a  
 37 licensing board within the preceding five years based on  
 38 professional misconduct that would have been cause for discipline  
 39 before the board for which the present application is made and that  
 40 is ~~directly and adversely~~ *substantially* related to the qualifications,

1 functions, or duties of the business or profession for which the  
2 present application is made. However, prior disciplinary action by  
3 a licensing board within the preceding ~~five~~ *seven* years shall not  
4 be the basis for denial of a license if the basis for that disciplinary  
5 action was a conviction that has been dismissed pursuant to Section  
6 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable  
7 dismissal or expungement.

8 ~~(2) Denial of a license includes denial of an unrestricted license  
9 by issuance of a restricted or probationary license.~~

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

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

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

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

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

- 1 (1) A board shall not require an applicant for licensure to  
2 disclose any information or documentation regarding the  
3 applicant's criminal history.
- 4 (2) If a board decides to deny an application based solely or in  
5 part on the applicant's conviction history, the board shall notify  
6 the applicant in writing of all of the following:
- 7 (A) The denial or disqualification of licensure.
  - 8 (B) Any existing procedure the board has for the applicant to  
9 challenge the decision or to request reconsideration.
  - 10 (C) That the applicant has the right to appeal the board's  
11 decision.
  - 12 (D) The processes for the applicant to request a copy of his or  
13 her complete conviction history and question the accuracy or  
14 completeness of the record pursuant to Sections 11122 to 11127  
15 of the Penal Code.
- 16 (g) (1) For a minimum of three years, each board under this  
17 code shall retain application forms and other documents submitted  
18 by an applicant, any notice provided to an applicant, all other  
19 communications received from and provided to an applicant, and  
20 criminal history reports of an applicant.
- 21 (2) Each board under this code shall retain the number of  
22 applications received for each license and the number of  
23 applications requiring inquiries regarding criminal history. In  
24 addition, each licensing authority shall retain all of the following  
25 information:
- 26 (A) The number of applicants with a criminal record who  
27 received notice of denial or disqualification of licensure.
  - 28 (B) The number of applicants with a criminal record who  
29 provided evidence of mitigation or rehabilitation.
  - 30 (C) The number of applicants with a criminal record who  
31 appealed any denial or disqualification of licensure.
  - 32 (D) The final disposition and demographic information,  
33 including, but not limited to, voluntarily provided information on  
34 race or gender, of any applicant described in subparagraph (A),  
35 (B), or (C).
- 36 (3) (A) Each board under this code shall annually make  
37 available to the public through the board's Internet Web site and  
38 through a report submitted to the appropriate policy committees  
39 of the Legislature deidentified information collected pursuant to



1 this subdivision. Each board shall ensure confidentiality of the  
2 individual applicants.

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

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

7 ~~(i) This section supersedes any contradictory provision in a  
8 licensing act under this code or initiative act referred to in Division  
9 2 (commencing with Section 500) that authorizes license denial  
10 based on a criminal conviction, arrest, or the acts underlying an  
11 arrest or conviction.~~

12 *(i) The changes made to this section by the act adding this  
13 subdivision do not in any way modify or otherwise affect the  
14 existing authority of the following entities in regard to licensure:*

15 *(1) The State Athletic Commission.*

16 *(2) The Bureau for Private Postsecondary Education.*

17 SEC. 3. Section 481 of the Business and Professions Code is  
18 amended to read:

19 481. (a) Each board under this code shall develop criteria to  
20 aid it, when considering the denial, suspension, or revocation of  
21 a license, to determine whether a crime is ~~directly and adversely~~  
22 *substantially* related to the qualifications, functions, or duties of  
23 the business or profession it regulates.

24 (b) Criteria for determining whether a crime is ~~directly and~~  
25 ~~adversely~~ *substantially* related to the qualifications, functions, or  
26 duties of the business or profession a board regulates shall include  
27 all of the following:

28 (1) The nature and gravity of the offense.

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

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

32 (c) A board shall not deny a license based in whole or in part  
33 on a conviction without considering evidence of rehabilitation.

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

1 (e) The changes made to this section by the act adding this  
 2 subdivision do not in any way modify or otherwise affect the  
 3 existing authority of the following entities in regard to licensure:

- 4 (1) The State Athletic Commission.
- 5 (2) The Bureau for Private Postsecondary Education.

6 ~~SEC. 4.~~ Section 481.5 is added to the Business and Professions  
 7 Code, to read:

8 481.5. (a) Probationary terms or restrictions placed on a license  
 9 by a board shall be limited to two years or less. Any additional  
 10 conditions may be imposed only if the board determines that there  
 11 is clear and convincing evidence that additional conditions are  
 12 necessary to address a risk shown by clear and convincing  
 13 evidence.

14 (b) Each board under this code shall develop criteria to aid it  
 15 when considering the imposition of probationary conditions or  
 16 restrictions to determine what conditions may be imposed to  
 17 address a risk shown by clear and convincing evidence.

18 (c) (1) A licensee or registrant whose license or registration  
 19 has been placed on probation may petition the board for a change  
 20 to the probation, including modification or termination of  
 21 probation, one year from the effective date of the decision. The  
 22 board shall issue its decision on the petition within 90 days of  
 23 submission of the petition. The petition shall be deemed granted  
 24 by operation of law if the board does not file a decision denying  
 25 the petition within 90 days of submission of the petition.

26 (2) The one-year time period to petition for modification or  
 27 termination of penalty shall control over longer time periods under  
 28 a licensing act under this code or initiative act referred to in  
 29 Division 2 (commencing with Section 500).

30 ~~SEC. 5.~~

31 *SEC. 4.* Section 482 of the Business and Professions Code is  
 32 amended to read:

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

- 36 (1) Considering the denial of a license by the board under  
 37 Section 480.
- 38 (2) Considering suspension or revocation of a license under  
 39 Section 490.

1 (b) Each board shall ~~find~~ *consider* that an applicant or licensee  
2 has made a showing of rehabilitation if ~~any~~ *either* of the following  
3 are met:

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

6 ~~(2) (A) The applicant or licensee documents that he or she has~~  
7 ~~worked in a related field continuously for at least one year prior~~  
8 ~~to licensure or successfully completed a course of training in a~~  
9 ~~related field, unless the board finds a public record of an official~~  
10 ~~finding that the applicant committed professional misconduct in~~  
11 ~~the course of that work.~~

12 ~~(B) Work in a related field may include, but is not limited to,~~  
13 ~~work performed without compensation and work performed while~~  
14 ~~incarcerated.~~

15 ~~(C) "Related field," for purposes of this paragraph, means a~~  
16 ~~field of employment whose duties are substantially similar to the~~  
17 ~~field regulated by the board.~~

18 ~~(3)~~

19 (2) The applicant or licensee has satisfied criteria for  
20 rehabilitation developed by the board.

21 (c) *The changes made to this section by the act adding this*  
22 *subdivision do not in any way modify or otherwise affect the*  
23 *existing authority of the following entities in regard to licensure:*

24 (1) *The State Athletic Commission.*

25 (2) *The Bureau for Private Postsecondary Education.*

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 488 of the Business and Professions Code is  
28 amended to read:

29 488. Except as otherwise provided by law, following a hearing  
30 requested by an applicant pursuant to subdivision (b) of Section  
31 485, the board may take any of the following actions:

32 (a) Grant the license effective upon completion of all licensing  
33 requirements by the applicant.

34 ~~(b) Grant the license effective upon completion of all licensing~~  
35 ~~requirements by the applicant, grant the license and immediately~~  
36 ~~issue a public reproof pursuant to Section 495, immediately revoke~~  
37 ~~the license, stay the revocation, and impose probationary conditions~~  
38 ~~on the license, which may include suspension.~~

39 (e)

40 (b) Deny the license.

1     ~~(d)~~  
 2     (c) Take other action in relation to denying or granting the  
 3 license as the board in its discretion may deem proper.

4     (d) *The changes made to this section by the act adding this*  
 5 *subdivision do not in any way modify or otherwise affect the*  
 6 *existing authority of the following entities in regard to licensure:*

- 7     (1) *The State Athletic Commission.*
- 8     (2) *The Bureau for Private Postsecondary Education.*

9     ~~SEC. 7. Section 490 of the Business and Professions Code is~~  
 10 ~~amended to read:~~

11     ~~490. (a) (1) In addition to any other action that a board is~~  
 12 ~~permitted to take against a licensee, a board may suspend or revoke~~  
 13 ~~a license on the ground that the licensee has been convicted of a~~  
 14 ~~crime for which the applicant is presently incarcerated or for which~~  
 15 ~~the conviction occurred within the preceding five years. However,~~  
 16 ~~the preceding five year limitation shall not apply to a conviction~~  
 17 ~~for a violent felony, as defined in Section 667.5 of the Penal Code.~~

18     ~~(2) The board may suspend or revoke a license pursuant to this~~  
 19 ~~subdivision only if the crime is directly and adversely related to~~  
 20 ~~the qualifications, functions, or duties of the business or profession~~  
 21 ~~for which application is made.~~

22     ~~(b) Notwithstanding any other provision of law, a board may~~  
 23 ~~exercise any authority to discipline a licensee for conviction of a~~  
 24 ~~crime that is independent of the authority granted under subdivision~~  
 25 ~~(a) only if both of the following are met:~~

26     ~~(1) The crime is directly and adversely related to the~~  
 27 ~~qualifications, functions, or duties of the business or profession~~  
 28 ~~for which the licensee's license was issued.~~

29     ~~(2) The licensee was convicted of the crime within the preceding~~  
 30 ~~five years or is presently incarcerated for the crime. However, the~~  
 31 ~~preceding five year limitation shall not apply to a conviction for~~  
 32 ~~a violent felony, as defined in Section 667.5 of the Penal Code.~~

33     ~~(e) Notwithstanding any other provision of this code, a board~~  
 34 ~~shall not suspend or revoke a license on the basis of a conviction,~~  
 35 ~~or of the acts underlying a conviction, where that conviction has~~  
 36 ~~been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or~~  
 37 ~~1203.42 of the Penal Code or a comparable dismissal or~~  
 38 ~~expungement.~~

39     ~~(d) Notwithstanding any other provision of this code, a board~~  
 40 ~~shall not suspend or revoke a license on the basis of an arrest that~~

1 resulted in a disposition other than a conviction, including an arrest  
2 that resulted in an infraction, citation, or juvenile adjudication.

3 (e) ~~The board shall use the following procedures in requesting  
4 or acting on a licensee's criminal history information:~~

5 (1) ~~A board shall not require a licensee to disclose any  
6 information or documentation regarding the licensee's criminal  
7 history.~~

8 (2) ~~If a board chooses to file an accusation against a licensee  
9 based solely or in part on the licensee's conviction history, the  
10 board shall notify the licensee in writing of the processes for the  
11 licensee to request a copy of the licensee's complete conviction  
12 history and question the accuracy or completeness of his or her  
13 criminal record pursuant to Sections 11122 to 11127, inclusive,  
14 of the Penal Code.~~

15 (f) (1) ~~For a minimum of three years, each board under this  
16 code shall retain all documents submitted by a licensee, notices  
17 provided to a licensee, all other communications received from or  
18 provided to a licensee, and criminal history reports of a licensee.~~

19 (2) ~~Each board under this code shall retain all of the following  
20 information:~~

21 (A) ~~The number of licensees with a criminal record who received  
22 notice of potential revocation or suspension of their license or who  
23 had their license suspended or revoked.~~

24 (B) ~~The number of licensees with a criminal record who  
25 provided evidence of mitigation or rehabilitation.~~

26 (C) ~~The number of licensees with a criminal record who  
27 appealed any suspension or revocation of a license.~~

28 (D) ~~The final disposition and demographic information,  
29 including, but not limited to, voluntarily provided information on  
30 race or gender, of any applicant described in subparagraph (A),  
31 (B), or (C).~~

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

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

1 ~~(g) (1) This section supersedes any contradictory provision in~~  
2 ~~a licensing act under this code or initiative act referred to in~~  
3 ~~Division 2 (commencing with Section 500) that authorizes action~~  
4 ~~based on a criminal conviction, arrest, or the acts underlying an~~  
5 ~~arrest or conviction.~~

6 ~~(2) This section shall not prohibit any agency from taking~~  
7 ~~disciplinary action against a licensee for professional misconduct~~  
8 ~~in the course and scope of the licensee’s profession that is based~~  
9 ~~on evidence that is independent of an arrest.~~

10 ~~SEC. 8. Section 492 of the Business and Professions Code is~~  
11 ~~amended to read:~~

12 ~~492. (a) Notwithstanding any other provision of law, successful~~  
13 ~~completion of any diversion program under the Penal Code,~~  
14 ~~successful completion by a licensee or applicant of any~~  
15 ~~nonstatutory diversion program, deferred entry of judgment, or~~  
16 ~~successful completion of an alcohol and drug problem assessment~~  
17 ~~program under Article 5 (commencing with Section 23249.50) of~~  
18 ~~Chapter 12 of Division 11 of the Vehicle Code, shall prohibit any~~  
19 ~~board from taking disciplinary action against a licensee or from~~  
20 ~~denying a license for professional misconduct.~~

21 ~~(b) This section shall not prohibit any agency established under~~  
22 ~~Division 2 (commencing with Section 500) of this code, or any~~  
23 ~~initiative act referred to in that division, from taking disciplinary~~  
24 ~~action against a licensee for professional misconduct in the course~~  
25 ~~and scope of the profession, which is based on evidence that is~~  
26 ~~independent of an arrest.~~

27 ~~SEC. 9.~~

28 ~~SEC. 6. Section 493 of the Business and Professions Code is~~  
29 ~~amended to read:~~

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

1 (b) (1) Criteria for determining whether a crime is ~~directly and~~  
2 ~~adversely~~ *substantially* related to the qualifications, functions, or  
3 duties of the business or profession the board regulates shall include  
4 all of the following:

5 (A) The nature and gravity of the offense.

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

7 (C) The nature and duties of the profession.

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

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

13 (d) *The changes made to this section by the act adding this*  
14 *subdivision do not in any way modify or otherwise affect the*  
15 *existing authority of the following entities in regard to licensure:*

16 (1) *The State Athletic Commission.*

17 (2) *The Bureau for Private Postsecondary Education.*

18 ~~SEC. 10.~~

19 *SEC. 7.* Section 11345.2 of the Business and Professions Code  
20 is amended to read:

21 11345.2. (a) An individual shall not act as a controlling person  
22 for a registrant if any of the following apply:

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

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

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

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- 5) Limits a board's authority to deny a license to instances where the applicant's crime or act is substantially related to the qualifications, functions, or duties of the profession for which application is made. (*Id.*)
- 6) States that a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation. (*Id.*)
- 7) Permits a board to deny an application for a license on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. (*Id.*)
- 8) Prohibits a board from denying an application for a license solely based on a criminal conviction that has been dismissed. (*Id.*)
- 9) States that a person shall not be denied a license solely based on prior conviction of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license. (*Id.*)
- 10) Requires each board to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC § 481)
- 11) Requires each board to develop criteria to evaluate the rehabilitation of a person for purposes of considering the denial of a license application or considering suspension or revocation of a current license. (BPC § 482)
- 12) Authorizes a board to revoke or suspend a current license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (BPC § 490)
- 13) Permits a board to suspend a license in the event that an applicant is not in compliance with a child support order or judgment. (BPC § 490.5)
- 14) States that successful completion of any diversion program or successful completion of an alcohol and drug problem assessment program shall not prohibit a board from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest. (BPC § 492)
- 15) Establishes that the record of conviction of a crime shall be conclusive evidence of the fact that the conviction occurred for purposes of a board's decision to deny an application for a license or suspend or revoke a current license, except a board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. (BPC § 493)

**This bill:**

- 1) Specifies that “conviction” for purposes of board actions means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt.
- 2) Narrows a board’s discretion to deny a professional license to the following cases:
  - a) The applicant has been convicted of a crime; limits denials based on a criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding five years, except for convictions of a violent felony.
  - b) The applicant has been subjected to formal discipline by a licensing board within the preceding five years based on professional misconduct that would have been cause for discipline before the board for which the present application is made.
- 3) Requires that any criminal conviction or formal discipline be directly and adversely related to the qualifications, functions, or duties of the business or profession for which the present application is made in order to be the cause for denial of an application.
- 4) Removes the authority for a board to deny an application for licensure based on “acts” for which there has been no due process in a criminal or disciplinary proceeding.
- 5) Specifies that a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.
- 6) Prohibits a board from denying a license on the basis of an arrest that resulted in a disposition other than a conviction.
- 7) States that a board shall not deny a license based solely on an applicant’s failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.
- 8) Requires that a board follow the following procedures in requesting or acting on an applicant’s criminal history information:
  - a) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant’s criminal history.
  - b) If a board decides to deny an application based solely or in part on the applicant’s conviction history, the board shall notify the applicant in writing of the denial of the application as well as the applicant’s right to challenge or appeal the board’s decision, as well as the process by which the applicant may secure a copy of their own rap sheet.
- 9) Requires boards to retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant for a minimum of three years.

- 10) Requires boards to retain the following statistical information:
  - a) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.
  - b) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.
  - c) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.
  - d) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.
- 11) Requires boards to annually make available to the public through the board's website and through a report submitted to the Legislature deidentified information collected that ensures confidentiality of the individual applicants.
- 12) Expressly supersedes any contradictory provision in a licensing act that authorizes license denial based on a criminal conviction, arrest, or underlying acts.
- 13) Requires each board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession a board regulates, including the following:
  - a) The nature and gravity of the offense.
  - b) The number of years elapsed since the date of the offense.
  - c) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.
- 14) Requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates.
- 15) Requires a board to consider evidence of rehabilitation prior to denying or suspending or revoking a license based in whole or in part on a conviction.
- 16) Limits probationary terms or restrictions placed on a license by a board to two years or less unless the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence, per criteria developed by each board.
- 17) Requires a board to find that an applicant or licensee has made a showing of rehabilitation if any of the following are met:
  - a) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.
  - b) The applicant or licensee documents that he or she has worked in a related field continuously for at least one year prior to licensure or successfully completed a

course of training in a related field, unless the board finds a public record of an official finding that the applicant committed professional misconduct in the course of that work, including work performed without compensation and work performed while incarcerated.

- c) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.
- 18) In addition to other causes for discipline, narrows a board's discretion to revoke or suspend a professional license for criminal misconduct to cases where the licensee is presently incarcerated or the conviction occurred within the preceding five years, except for convictions of a violent felony, and the crime committed was directly and adversely related to the qualifications, functions, or duties of the business or profession.
- 19) Requires that any criminal conviction or formal discipline be directly and adversely related to the qualifications, functions, or duties of the business or profession for which the present application is made in order to be the cause for suspension or revocation of a license.
- 20) Specifies that a person shall not have his or her license suspended or revoked on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.
- 21) Requires that a board follow the following procedures in requesting or taking disciplinary action based on an applicant's criminal history information:
- a) A board shall not require a licensee to disclose any information or documentation regarding the licensee's criminal history.
  - b) If a board decides to revoke or suspend a professional license solely or in part on the licensee's conviction history, the board shall notify the licensee in writing of the processes for the licensee to request a copy of the licensee's complete conviction history and question the accuracy or completeness of his or her criminal record.
- 22) Requires boards to retain all documents submitted by a licensee, notices provided to a licensee, all other communications received from or provided to a licensee, and criminal history reports of a licensee for a minimum of three years.
- 23) Requires boards to retain all of the following information:
- a) The number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had their license suspended or revoked.
  - b) The number of licensees with a criminal record who provided evidence of mitigation or rehabilitation.
  - c) The number of licensees with a criminal record who appealed any suspension or revocation of a license.

- d) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.
- 24) Requires each board to annually make available to the public through the board's website and through a report submitted to the Legislature deidentified information, ensuring the confidentiality of the individual licensees.
- 25) Expressly supersedes any contradictory provision in a licensing act that authorizes license suspension or revocation based on a criminal conviction, arrest, or underlying acts.
- 26) States that limitations on suspending or revoking a license based on criminal convictions shall not prohibit a board from taking disciplinary action against a licensee for professional misconduct in the course and scope of the licensee's profession that is based on evidence that is independent of an arrest.

**FISCAL EFFECT:** This bill is keyed fiscal by Legislative Counsel. According to the Assembly Committee on Appropriations analysis dated May 23, 2018, this bill will result in annual special fund costs for pre-licensure and enforcement-related costs ranging from minor and absorbable to significant, to various boards of the DCA. For example, ongoing annual costs to the Contractors' State License Board of \$917,000, Medical Board of California of \$814,000, Board of Professional Engineers and Land Surveyors and Geologists of \$332,000, Board of Psychology of \$242,000, Board of Behavioral Sciences of \$203,000 and Veterinary Medical Board of \$88,000. The analysis also notes minor and absorbable costs to the Acupuncture Board, California Board of Occupational Therapy, and the Structural Pest Control Board. According to the analysis, this bill will result in annual costs to Office of the Attorney General of approximately \$200,000 in Fiscal Year 2018-19 and \$350,000 Fiscal Year 2019-20 ongoing, offset by direct billings to the client agency, for two positions to process an increased number of petitions filed by licensees for reinstatement or penalty relief within the 90-day timeframe.

#### **COMMENTS:**

1. **Purpose.** This bill is sponsored by the East Bay Community Law Center, Anti-Recidivism Coalition, Legal Services for Prisoners with Children, Root & Rebound and the Alliance for Boys and Men of Color. According to the Author, "In California, an estimated 7,955,500 people – approximately 1 in 3 adults – have arrest or conviction records. California has the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These factors play a huge role in the prison and jail overcrowding crisis that the Legislature spent the past decade attempting to address.

"One of the reasons for high rates of recidivism is an inability of prior offenders to secure gainful employment upon reentry. Like all Californians, access to secure employment is critical for these 8 million individuals with a prior conviction to support their families and communities."

“California has already adopted robust policies that break down barriers for previously incarcerated individuals to access jobs in the private sector, including “ban the box” policies. Nevertheless, there continue to be barriers to employment for Californians with prior convictions.”

“Nearly 30 percent of California jobs require licensing, certification or clearance by an oversight board or agency for approximately 1,773 different occupations. All too often, qualified people can be denied licensure or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed.

Even people who receive job-specific training while incarcerated are kept out of these occupations by licensing barriers.”

“It is in the interest of public safety to assist in the rehabilitation of criminal offenders by removing impediments and restrictions upon their ability to obtain employment.”

2. **DCA Entities and Licensure.** The DCA notes in its *Who We Are and What We Do* booklet that California’s commitment to protecting consumers began with the passage of the Medical Practice Act of 1876, which was designed to regulate the state’s medical professionals who had operated virtually unchecked. Additional professions and vocations were brought under state authority over the following 30 years so that by the late 1920s, the Department of Vocational and Professional Standards was responsible for licensing or certifying accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians, and veterinarians. The Consumer Affairs Act was passed in 1970, giving the DCA its current name. Today, DCA issues almost 3 million licenses, certificates, and approvals to individuals and businesses in over 250 categories. This involves setting the qualifications and levels of competency for the professionals regulated by the Department’s boards and bureaus which license, register, or certify practitioners; investigate complaints; and discipline violators.

Within the DCA are 38 entities, including 26 boards, eight bureaus, two committees, one program, and one commission (hereafter “boards” unless otherwise noted). Collectively, these boards regulate more than 100 types of businesses and 200 different industries and professions. As regulators, these boards perform two primary functions: Licensing—which entails ensuring only those who meet minimum standards are issued a license to practice, and Enforcement—which entails investigation of alleged violations of laws and/or regulations and taking disciplinary action, when appropriate.

DCA entities are semiautonomous regulatory bodies with the authority to set their own priorities and policies and take disciplinary action on their licensees. Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for, or in receipt of, licensure. Boards adhere to general BPC provisions outlining discretion in determining how prior criminal history may be grounds for licensure denial. For example, BPC § 480 governs the authority of regulatory boards to deny applicants for licensure. Under

BPC § 480, a board may deny a license within the purview of the DCA on the grounds that the applicant has one of the following:

- Been convicted of a crime; boards may disqualify based on criminal history if the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence.
- Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

This section of law also specifies that a license may only be denied for prior misconduct if the disqualifying crime or act is *substantially* related to the qualifications, functions, or duties of the business or profession for which application is made. The statute also states that a person may not be denied a license solely based on a conviction if he or she possesses a certificate of rehabilitation. Statute further clarifies that a dismissed conviction may not be grounds for disqualification for licensure.

These provisions are echoed in BPC § 490, which deals with the discretion of a board to take disciplinary action against a current licensee for subsequent criminal activity. This code section makes specific reference to *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, a court decision dealing with licensees convicted of criminal misconduct. The Legislature has found and declared the holding in that case has "placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes." The Legislature therefore further found and declared that "this section establishes an independent basis for a board to impose discipline upon a licensee."

3. **Criticism of the Board's Discretion To Deny Licensure and Studies on Occupational Licensing.** According to information provided by the Author, criticism has been made over the statutory authority for boards and bureaus to deny a license to an individual who has "done any act involving honesty, fraud, or deceit" for self-benefit or harm to others. Some believe that this broad discretion goes beyond criminal convictions, as well as non-criminal activity that is nevertheless afforded an element of due process, such as regulatory discipline. Interested parties have argued that this authority has opened the door for many licensure applications to be denied based purely on alleged misconduct that has not been determined to have occurred through standard due process.

The discretion for boards and bureaus to deny licensure to applicants with criminal histories has also been criticized, despite the guarantee of due process afforded to these applicants prior to a crime being reflected on their record. The National Employment Law Project (NELP) report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* highlights "a lack of

transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions” in regulatory schemes across the country. California is specifically graded as “Needs Improvement,” with recommendations including:

- Expand blanket ban prohibition to all occupations with one overarching law.
- Expand occupation-relatedness requirement to all.
- Require consideration of the time elapsed since conviction.
- Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
- Require consideration of the applicant’s rehabilitation.

Recent additional studies and reports have focused on the impacts of licensing requirements for employment and on individuals seeking to become employed. According to a July 2015 report on occupational licensing released by the White House, strict licensing creates barriers to mobility for licensed workers, citing several groups of people particularly vulnerable to occupational licensing laws, including former offenders, military spouses, veterans and immigrants.

In October 2016, the Little Hoover Commission released a report entitled *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*. The report noted that one out of every five Californians must receive permission from the government to work, and for millions of Californians that means contending with the hurdles of becoming licensed. The report noted that many of the goals to professionalize occupations, standardize services, guarantee quality and limit competition among practitioners, while well intended, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers. The study found that occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach.

The report found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. According to the report, researchers from the Institute for Justice selected 102 lower-income occupations, defined by the Bureau of Labor Statistics as making less than the national average income, ranging from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62, or 61 percent of them. According to the report, California ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: on average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam. The report specifically noted improvements



that could be made in the information licensing entities provide applicants to ensure a smoother licensing process.

During the 2016-2017 sunset review oversight of the DCA, this Committee asked what steps DCA was taking to respond to the report and how the DCA is advising entities within the DCA on best practices to assist in the licensure process. The DCA responded that it has been working with the Business, Consumer Services, and Housing Agency to identify areas where unnecessary barriers to licensure can be reduced and noted that one key area of this work has been on the examination of possible barriers to licensure for individuals reentering the workforce after incarceration. The DCA stated that it had been assessing the criteria used by boards and bureaus to determine if a past conviction is substantially related, as well as how they consider rehabilitation. The DCA reported that clarifying criteria through regulations, through FAQs, or some combination of both could assist applicants and potentially encourage more individuals with prior convictions to apply and stated that it "intends to work with the various boards and bureaus to achieve more clarity and remove unnecessary barriers to licensure. Some of the avenues the Department is exploring include: providing clear descriptions of licensing criteria on each program's website, potentially re-drafting some regulations to create some consistency and additional clarity, and providing more hands-on guidance to licensees that inquire about these processes."

4. **Arguments in Support.** Supporters believe that the Department of Consumer Affairs has overly restrictive policies that deny qualified people occupational licenses and allow for revocation or suspension of licenses for arrests or convictions not directly related to the job. Supporters note that many individuals are denied occupational licenses on the basis of judicially dismissed convictions, even applicants who gained job-specific training while incarcerated, are still barred from working in their occupational field due to barriers. According to supporters, nearly 30 percent of California jobs require licensure, certification, or clearance. However, qualified people, including individuals who receive job-specific training while incarcerated are either denied occupational licenses or even have licenses suspended on the basis of prior arrests or convictions, many of which are old or unrelated to the job. Supporters believe this bill will reduce barriers to licensure for individuals with prior convictions.
5. **Arguments in Opposition.** A number of licensing boards within DCA oppose this bill. They believe it will have the opposite effect of the goals of occupational licensure by greatly increasing the time and resources needed to process applications for licensure. Boards are concerned about the bill's narrowing of their authority take disciplinary action for criminal convictions and actions by other states into account. Many boards state that the bill decreases their ability to meet their legislative mandate of consumer protection.

The Plumbing-Heating-Cooling Contractors Association of California; the Western Electrical Contractors Association; and the San Diego, Southern and Central California Chapters of Associated Builders and Contractors are opposed unless amended and note that "the number of applicants denied licensure at CSLB because of a criminal conviction is very low" and the request the CSLB to be exempt from the provisions of this bill

**6. Policy Considerations and Suggested Amendments (as also outlined in mockup language beginning on page 15 below).**

- a) *Should this bill apply to all entities within the DCA?* While many of the entities within DCA license individuals who will ultimately engage in certain occupations, two stand out as having a very different mission and focus. The California State Athletic Commission (Commission) is responsible for protecting the health and safety of its licensees; boxers, kickboxers and martial arts athletes. Established by initiative in 1924, stemming from concerns for athletes' injuries and deaths, the Commission provides direction, management, control of and jurisdiction over professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of full contact martial arts contests, including mixed martial arts (MMA) and matches or exhibitions conducted, held or given in California. The Commission's licensure and enforcement decisions are intended to protect its licensees, not protect the public from its licensees as is the case with virtually every other entity within DCA. As such, the bill should not apply to the Commission.

Similarly, the Bureau for Private Postsecondary Education (BPPE) licenses education and training programs in order to protect consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds. BPPE licensees are not individuals attempting to meet the requirements to work in a specific occupation but rather operate schools. As such, the bill should not apply to BPPE.

- b) *Initial Licensure vs. Board Discipline Against a Licensee.* This bill applies the same standards for board discretion to decisions about initial licensure as decisions about discipline imposed on licensees. While much of the language in the bill to create clearer standards as to how boards will determine the relationship between an applicant's criminal history and his or her ability to safely be a licensed professional interacting with the public makes sense, the Legislature has taken deliberate steps to ensure timely disciplinary action for licensees who are convicted of crimes. Conviction of a crime when licensed should remain grounds for boards to consider discipline, including potential suspension and/or revocation. As such, the bill should be amended so that it only applies to initial licensure considerations and strike reference to suspension and revocation determinations.
- c) *Limitation on Time Elapsed For Consideration of a Crime.* This bill narrows a board's discretion to deny licensure to applicants convicted of a crime and limits denials based on a criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding five years, except for convictions of a violent felony. The bill also narrows discretion for boards to consider formal discipline by another licensing board within the preceding five years. To maintain conformity with the ability for employers to take criminal history into consideration which we understand to be at least seven years, as well as the statute of limitation requirements which generally don't run shorter

than seven years, this bill should be amended to only allow boards to consider an applicant's convictions for the preceding seven years.

- d) *Violent Felonies versus Serious Felonies.* This measure also requires that the board only consider convictions of "violent felonies," as defined in the Penal Code, after the preceding five years has lapsed. This is a very restrictive list of felonies and is generally used for enhancement of prison terms for new offenses and has not be used to restrict consideration of what me be considered as more serious felony convictions. As such, the bill should be amended so that serious felonies as defined in the Penal Code may be considered which is more consistent with determinations made in the sentencing of a person for prior convictions.
- e) *Probationary Terms.* This bill limits probationary terms for initial probationary licenses as well as disciplinary terms against a licensee to two years. Boards currently issue probationary licenses for longer than two years for offenses like unprofessional conduct, not to mention the significant consumer and patient safety impacts that may arise if boards are limited to probationary terms of two years for licensees. As such, language narrowing probationary terms should be removed from the bill.
- f) *Substantially Related vs. Directly and Adversely Related.* Under current law, boards consider crimes that are "substantially related to the qualifications, functions, or duties of the profession for which application is made". This bill would establish a new standard for consideration, crimes that are "directly and adversely" related to the qualifications, functions, or duties of the profession for which application is made. The Sponsors of this bill argue that this standard provides no limit and that the conviction must be job related. Sponsors note that under the bill, employers and applicants can follow one standard for both private employment and public licensing. However, case law exists that guides boards on the substantially related consideration and it is appropriate for licensure by the state to meet a higher standard than employment. As such, the bill should be amended to revert to existing law by requiring that a crime be substantially related.

**NOTE: *Double-referral to Senate Committee on Public Safety, second.***

## **SUPPORT AND OPPOSITION:**

### Support:

Anti-Recidivism Coalition (Sponsor)  
 East Bay Community Law Center (Sponsor)  
 Alliance for Boys and Men of Color (Sponsor)  
 American Federation of State, County and Municipal Employees (AFSCME)  
 Alameda County Public Defender  
 All of Us or None  
 American Civil Liberties Union

Anchor of Hope Ministries  
Because Black is Still Beautiful  
Bay Area Legal Aid  
Bayview Hunters Point Foundation  
California Immigrant Policy Center  
California Labor Federatio  
California Landscape Contractors Association  
California Pan-Ethnic Health Network  
Californians for Prop 57  
Californians for Safety and Justice  
California Workforce Organization  
Center for Employment Opportunities  
Center for Living and Learning  
Center on Juvenile and Criminal Justice  
Checkr  
City and County of San Francisco  
Courage Campaign  
Downtown Women's Center  
Ella Baker Center for Human Rights  
Five Keys School and Programs  
Hillview Mental Health Center  
Homeboy Industries  
Hunters Point Family  
Lawyer's Committee for Civil Rights  
Leadership for Urban Renewal Network  
Legal Services for Prisoners with Children  
Legal Services of Northern California  
Los Angeles Regional Reentry Partnership  
National Association of Social Workers - California Chapter  
National Employment Law Project  
New Door Ventures  
Oakland Private Industry Council  
Planting Justice  
PolicyLink  
Prisoner Reentry Network  
Project Rebound: Expanded  
REDF (Roberts Enterprise Development Fund)  
Rise Together Bay Area  
Root & Rebound  
Rubicon Programs  
San Francisco Adult Probation Department  
San Francisco Conservation Corps  
San Francisco Public Defender Jeff Adachi  
San Francisco State University Project Rebound  
San Jose State University Record Clearance Project  
The Rock Found  
The Young Women's Freedom Center

Opposition:

Board for Professional Engineers, Land Surveyors and Geologists  
Board of Barbering and Cosmetology  
Board of Behavioral Sciences  
Board of Psychology  
Board of Registered Nursing  
Board of Vocational Nursing and Psychiatric Technicians  
California Board of Accountancy  
Contractors State License Board  
Medical Board of California  
Osteopathic Medical Board of California  
Pacific Advocacy Group  
Physician Assistant Board  
Plumbing-Heating-Cooling Contractors Association of California  
San Diego, Southern and Central California Chapters of Associated Builders and Contractors  
Western Electrical Contractors Association

**-- END --**

**Mockup of AB 2138 as suggested to be amended**

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

- P3 1 SECTION 1. Section 7.5 of the Business and Professions Code  
 2 is amended to read:  
 3 7.5. (a) A conviction within the meaning of this code means  
 4 a judgment following a plea or verdict of guilty or a plea of nolo  
 5 contendere or finding of guilt. Any action which a board is  
 6 permitted to take following the establishment of a conviction may  
 7 be taken when the time for appeal has elapsed, or the judgment of  
 P4 1 conviction has been affirmed on appeal or when an order granting  
 2 probation is made suspending the imposition of sentence. However,  
 3 a board may not deny a license to an applicant who is otherwise  
 4 qualified pursuant to subdivision (b) or (c) of Section 480.  
 5 (b) Nothing in this section shall apply to the licensure of persons  
 6 pursuant to Chapter 4 (commencing with Section 6000) of Division  
 7 3.  
 8 (c) Except as provided in subdivision (b), this section controls  
 9 over and supersedes the definition of conviction contained within  
 10 individual practice acts under this code.  
 11 SEC. 2. Section 480 of the Business and Professions Code is  
 12 amended to read:  
 13 480. (a) (1) Notwithstanding any other provision of this code,  
 14 a board may deny a license regulated by this code on the grounds  
 15 that the applicant has been convicted of a crime or has been subject  
 16 to formal discipline only if either of the following conditions are  
 17 met:  
 18 (A) The applicant has been convicted of a crime for which the  
 19 applicant is presently incarcerated or for which the conviction  
 20 occurred within the preceding ~~five~~ **seven** years. However, the preceding  
 21 ~~five-**seven**~~ year limitation shall not apply to a conviction for a ~~violent~~  
 22 ~~felony, as defined in Section 667.5 of the Penal Code.~~ **serious felony as defined in**  
**the Penal Code.**  
 23 The board may deny a license pursuant to this subparagraph only  
 24 if the crime is ~~directly and adversely~~ **substantially** related to the qualifications,  
 25 functions, or duties of the business or profession for which  
 26 application is made.  
 27 (B) The applicant has been subjected to formal discipline by a  
 28 licensing board within the preceding ~~five~~ **seven** years based on  
 29 professional misconduct that would have been cause for discipline  
 30 before the board for which the present application is made and that  
 31 is ~~directly and adversely~~ **substantially** related to the qualifications, functions,  
 32 or duties of the business or profession for which the present  
 33 application is made. However, prior disciplinary action by a  
 34 licensing board within the preceding ~~five~~ **seven** years shall not be the  
 35 basis for denial of a license if the basis for that disciplinary action  
 36 was a conviction that has been dismissed pursuant to Section

37 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable  
38 dismissal or expungement.

39 ~~(2) Denial of a license includes denial of an unrestricted license~~  
40 ~~by issuance of a restricted or probationary license.~~

P5 1 (b) Notwithstanding any other provision of this code, a person  
2 shall not be denied a license on the basis that he or she has been  
3 convicted of a crime, or on the basis of acts underlying a conviction  
4 for a crime, if he or she has obtained a certificate of rehabilitation  
5 under Chapter 3.5 (commencing with Section 4852.01) of Title 6  
6 of Part 3 of the Penal Code, has been granted clemency or a pardon  
7 by a state or federal executive, or has ~~made a showing of~~ **provided evidence of**  
8 rehabilitation pursuant to Section 482.

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

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

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

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

30 (1) A board shall not require an applicant for licensure to  
31 disclose any information or documentation regarding the  
32 applicant's criminal history.

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

36 (A) The denial or disqualification of licensure.

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

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

P6 1 (D) The processes for the applicant to request a copy of his or  
2 her complete conviction history and question the accuracy or  
3 completeness of the record pursuant to Sections 11122 to 11127  
4 of the Penal Code.

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

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

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

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

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

21 (D) The final disposition and demographic information,  
22 including, but not limited to, voluntarily provided information on  
23 race or gender, of any applicant described in subparagraph (A),  
24 (B), or (C).

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

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

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

35 ~~(i) This section supersedes any contradictory provision in a~~  
36 ~~licensing act under this code or initiative act referred to in Division~~  
37 ~~2 (commencing with Section 500) that authorizes license denial~~  
38 ~~based on a criminal conviction, arrest, or the acts underlying an~~  
39 ~~arrest or conviction.~~



P7 1 SEC. 3. Section 481 of the Business and Professions Code is  
2 amended to read:

3 481. (a) Each board under this code shall develop criteria to  
4 aid it, when considering the denial, suspension, or revocation of  
5 a license, to determine whether a crime is ~~directly and adversely~~ **substantially**  
6 related to the qualifications, functions, or duties of the business or  
7 profession it regulates.

8 (b) Criteria for determining whether a crime is ~~directly and adversely~~ **substantially**  
9 related to the qualifications, functions, or duties of the  
10 business or profession a board regulates shall include all of the  
11 following:

12 (1) The nature and gravity of the offense.

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

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

16 (c) A board shall not deny a license based in whole or in part  
17 on a conviction without considering evidence of rehabilitation.

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

23 ~~SEC. 4. Section 481.5 is added to the Business and Professions~~  
24 ~~Code, to read:~~

25 ~~481.5. (a) Probationary terms or restrictions placed on a license~~  
26 ~~by a board shall be limited to two years or less. Any additional~~  
27 ~~conditions may be imposed only if the board determines that there~~  
28 ~~is clear and convincing evidence that additional conditions are~~  
29 ~~necessary to address a risk shown by clear and convincing~~  
30 ~~evidence.~~

31 ~~(b) Each board under this code shall develop criteria to aid it~~  
32 ~~when considering the imposition of probationary conditions or~~  
33 ~~restrictions to determine what conditions may be imposed to~~  
34 ~~address a risk shown by clear and convincing evidence.~~

35 ~~(c) (1) A licensee or registrant whose license or registration~~  
36 ~~has been placed on probation may petition the board for a change~~  
37 ~~to the probation, including modification or termination of~~  
38 ~~probation, one year from the effective date of the decision. The~~  
39 ~~board shall issue its decision on the petition within 90 days of~~  
40 ~~submission of the petition. The petition shall be deemed granted~~

~~by operation of law if the board does not file a decision denying the petition within 90 days of submission of the petition.~~

~~(2) The one-year time period to petition for modification or termination of penalty shall control over longer time periods under a licensing act under this code or initiative act referred to in Division 2 (commencing with Section 500).~~

SEC. 5 ~~4~~. Section 482 of the Business and Professions Code is amended to read:

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

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

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

(b) Each board shall find ***consider*** that an applicant or licensee has made a showing of rehabilitation if any of the following are met:

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

~~(2) (A) The applicant or licensee documents that he or she has worked in a related field continuously for at least one year prior to licensure or successfully completed a course of training in a related field, unless the board finds a public record of an official finding that the applicant committed professional misconduct in the course of that work.~~

~~(B) Work in a related field may include, but is not limited to, work performed without compensation and work performed while incarcerated.~~

~~(C) "Related field," for purposes of this paragraph, means a field of employment whose duties are substantially similar to the field regulated by the board.~~

(3) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

SEC. 6 ~~5~~. Section 488 of the Business and Professions Code is amended to read:

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

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

P9 1 ~~(b) Grant the license effective upon completion of all licensing~~  
2 ~~requirements by the applicant, grant the license and immediately~~  
3 ~~issue a public reproof pursuant to Section 495, immediately revoke~~  
4 ~~the license, stay the revocation, and impose probationary conditions~~  
5 ~~on the license, which may include suspension.~~

6 (c) Deny the license.

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

9 ~~SEC. 7 Section 490 of the Business and Professions Code is~~  
10 ~~amended to read:~~

11 ~~490. (a) (1) In addition to any other action that a board is~~  
12 ~~permitted to take against a licensee, a board may suspend or revoke~~  
13 ~~a license on the ground that the licensee has been convicted of a~~  
14 ~~crime for which the applicant is presently incarcerated or for which~~  
15 ~~the conviction occurred within the preceding five years. However,~~  
16 ~~the preceding five year limitation shall not apply to a conviction~~  
17 ~~for a violent felony, as defined in Section 667.5 of the Penal Code.~~

18 ~~(2) The board may suspend or revoke a license pursuant to this~~  
19 ~~subdivision only if the crime is directly and adversely related to~~  
20 ~~the qualifications, functions, or duties of the business or profession~~  
21 ~~for which application is made.~~

22 ~~(b) Notwithstanding any other provision of law, a board may~~  
23 ~~exercise any authority to discipline a licensee for conviction of a~~  
24 ~~crime that is independent of the authority granted under subdivision~~  
25 ~~(a) only if both of the following are met:~~

26 ~~(1) The crime is directly and adversely related to the~~  
27 ~~qualifications, functions, or duties of the business or profession~~  
28 ~~for which the licensee's license was issued.~~

29 ~~(2) The licensee was convicted of the crime within the preceding~~  
30 ~~five years or is presently incarcerated for the crime. However, the~~  
31 ~~preceding five year limitation shall not apply to a conviction for~~  
32 ~~a violent felony, as defined in Section 667.5 of the Penal Code.~~

33 ~~(c) Notwithstanding any other provision of this code, a board~~  
34 ~~shall not suspend or revoke a license on the basis of a conviction,~~  
35 ~~or of the acts underlying a conviction, where that conviction has~~  
36 ~~been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or~~  
37 ~~1203.42 of the Penal Code or a comparable dismissal or~~  
38 ~~expungement.~~

39 ~~(d) Notwithstanding any other provision of this code, a board~~  
40 ~~shall not suspend or revoke a license on the basis of an arrest that~~

~~P10 1 resulted in a disposition other than a conviction, including an arrest  
2 that resulted in an infraction, citation, or juvenile adjudication.~~

~~3 (e) The board shall use the following procedures in requesting  
4 or acting on a licensee's criminal history information:~~

~~5 (1) A board shall not require a licensee to disclose any  
6 information or documentation regarding the licensee's criminal  
7 history.~~

~~8 (2) If a board chooses to file an accusation against a licensee  
9 based solely or in part on the licensee's conviction history, the  
10 board shall notify the licensee in writing of the processes for the  
11 licensee to request a copy of the licensee's complete conviction  
12 history and question the accuracy or completeness of his or her  
13 criminal record pursuant to Sections 11122 to 11127, inclusive,  
14 of the Penal Code.~~

~~15 (f) (1) For a minimum of three years, each board under this  
16 code shall retain all documents submitted by a licensee, notices  
17 provided to a licensee, all other communications received from or  
18 provided to a licensee, and criminal history reports of a licensee.~~

~~19 (2) Each board under this code shall retain all of the following  
20 information:~~

~~21 (A) The number of licensees with a criminal record who received  
22 notice of potential revocation or suspension of their license or who  
23 had their license suspended or revoked.~~

~~24 (B) The number of licensees with a criminal record who  
25 provided evidence of mitigation or rehabilitation.~~

~~26 (C) The number of licensees with a criminal record who  
27 appealed any suspension or revocation of a license.~~

~~28 (D) The final disposition and demographic information,  
29 including, but not limited to, voluntarily provided information on  
30 race or gender, of any applicant described in subparagraph (A),  
31 (B), or (C).~~

~~32 (3) (A) Each board under this code shall annually make  
33 available to the public through the board's Internet Web site and  
34 through a report submitted to the appropriate policy committees  
35 of the Legislature deidentified information collected pursuant to  
36 this subdivision. Each board shall ensure the confidentiality of the  
37 individual licensees.~~

~~38 (B) A report pursuant to subparagraph (A) shall be submitted  
39 in compliance with Section 9795 of the Government Code.~~

P11 1 ~~(g) (1) This section supersedes any contradictory provision in~~  
2 ~~a licensing act under this code or initiative act referred to in~~  
3 ~~Division 2 (commencing with Section 500) that authorizes action~~  
4 ~~based on a criminal conviction, arrest, or the acts underlying an~~  
5 ~~arrest or conviction.~~

6 ~~(2) This section shall not prohibit any agency from taking~~  
7 ~~disciplinary action against a licensee for professional misconduct~~  
8 ~~in the course and scope of the licensee's profession that is based~~  
9 ~~on evidence that is independent of an arrest.~~

10 ~~SEC. 8. Section 490.5 of the Business and Professions Code~~  
11 ~~is repealed.~~

12 ~~SEC. 9.~~

13 ~~SEC. 8. Section 492 of the Business and Professions Code is~~  
14 ~~amended to read:~~

15 ~~492. (a) Notwithstanding any other provision of law, successful~~  
16 ~~completion of any diversion program under the Penal Code,~~  
17 ~~successful completion by a licensee or applicant of any~~  
18 ~~nonstatutory diversion program, deferred entry of judgment, or~~  
19 ~~successful completion of an alcohol and drug problem assessment~~  
20 ~~program under Article 5 (commencing with Section 23249.50) of~~  
21 ~~Chapter 12 of Division 11 of the Vehicle Code, shall prohibit any~~  
22 ~~board from taking disciplinary action against a licensee or from~~  
23 ~~denying a license for professional misconduct.~~

24 ~~(b) This section shall not prohibit any agency established under~~  
25 ~~Division 2 (commencing with Section 500) of this code, or any~~  
26 ~~initiative act referred to in that division, from taking disciplinary~~  
27 ~~action against a licensee for professional misconduct in the course~~  
28 ~~and scope of the profession, which is based on evidence that is~~  
29 ~~independent of an arrest.~~

30 ~~SEC. 10.~~

31 ~~SEC. 9<sup>6</sup>. Section 493 of the Business and Professions Code is~~  
32 ~~amended to read:~~

33 ~~493. (a) Notwithstanding any other provision of law, in a~~  
34 ~~proceeding conducted by a board within the department pursuant~~  
35 ~~to law to deny an application for a license or to suspend or revoke~~  
36 ~~a license or otherwise take disciplinary action against a person~~  
37 ~~who holds a license, upon the ground that the applicant or the~~  
38 ~~licensee has been convicted of a crime directly and adversely substantially~~  
39 ~~related to the qualifications, functions, and duties of the licensee~~  
40 ~~in question, the record of conviction of the crime shall be~~

P12 1 conclusive evidence of the fact that the conviction occurred, but  
2 only of that fact.

3 (b) (1) Criteria for determining whether a crime is ~~directly and adversely~~  
**substantially**

4 related to the qualifications, functions, or duties of the  
5 business or profession the board regulates shall include all of the  
6 following:

7 (A) The nature and gravity of the offense.

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

9 (C) The nature and duties of the profession.

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

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

15 ~~SEC. 11. Section 1005 of the Business and Professions Code~~  
16 ~~is amended to read:~~

17 ~~1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,~~  
18 ~~104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141,~~  
19 ~~143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, 491, 494,~~  
20 ~~495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716,~~  
21 ~~730.5, 731, and 851 are applicable to persons licensed by the State~~  
22 ~~Board of Chiropractic Examiners under the Chiropractic Act.~~

23 ~~SEC. 12.~~

24 ~~SEC. 107.~~ Section 11345.2 of the Business and Professions Code  
25 is amended to read:

26 11345.2. (a) An individual shall not act as a controlling person  
27 for a registrant if any of the following apply:

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

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

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

P13 1 in any other state shall report that fact or cause that fact to be  
2 reported to the office, in writing, within 10 days of the date he or  
3 she has knowledge of that fact.

#21 (D)

AB 3142

(Committee on Business  
and Professions)

Acupuncture Licensure Act:  
Acupuncture Board



AMENDED IN SENATE JUNE 19, 2018

AMENDED IN ASSEMBLY APRIL 26, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 3142**

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**Introduced by ~~Committee on Business and Professions (Assembly Members Low (Chair), Brough (Vice Chair), Bloom, Chiu, Cunningham, Holden, Irwin, Mullin, and Steinorth) Assembly Member Low~~**

February 16, 2018

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

LEGISLATIVE COUNSEL'S DIGEST

AB 3142, as amended, ~~Committee on Business and Professions Low~~.  
Acupuncture Licensure Act: Acupuncture Board.

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

This bill would extend the operation of the board and the authority to appoint an executive officer to January 1, 2021. The bill would require an approved educational and training program to be granted

preaccreditation status, rather than candidacy status, by the Accreditation Commission for Acupuncture and Oriental Medicine.

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

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

Existing law provides that unprofessional conduct includes the knowing failure to protect patients by failing to follow infection control guidelines, as specified, and requires the board to consult, as necessary, with the Medical Board of California and certain other healing arts boards to encourage appropriate consistency in implementing that provision.

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

The bill would make other technical changes.

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

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

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

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

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

3 4927.5. (a) For purposes of this chapter, “approved educational  
4 and training program” means a school or college offering education  
5 and training in the practice of an acupuncturist that meets all of  
6 the following requirements:

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

17 (2) Has received full institutional approval under Article 6  
18 (commencing with Section 94885) of Chapter 8 of Part 59 of  
19 Division 10 of Title 3 of the Education Code in the field of  
20 traditional Asian medicine, or in the case of institutions located  
21 outside of this state, approval by the appropriate governmental  
22 educational authority using standards equivalent to those of Article  
23 6 (commencing with Section 94885) of Chapter 8 of Part 59 of  
24 Division 10 of Title 3 of the Education Code.

25 (3) Meets any of the following:

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

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

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

35 (b) Within 30 days after receiving curriculum pursuant to  
36 paragraph (1), the board shall review the curriculum, determine  
37 whether the curriculum satisfies the requirements established by  
38 the board, and notify the school or college, the Accreditation

1 Commission for Acupuncture and Oriental Medicine, and Bureau  
2 of Private and Postsecondary Education of whether the board has  
3 approved the curriculum.

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

6 4928. (a) The Acupuncture Board, which consists of seven  
7 members, shall enforce and administer this chapter.

8 (b) This section shall remain in effect only until January 1, 2021,  
9 and as of that date is repealed.

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

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

15 4934. (a) The board, by and with the approval of the director,  
16 may appoint an executive officer who is exempt from the State  
17 Civil Service Act (Part 2 (commencing with Section 18500) of  
18 Division 5 of Title 2 of the Government Code).

19 (b) This section shall remain in effect only until January 1, 2021,  
20 and as of that date is repealed.

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

23 4935. (a) (1) It is a misdemeanor, punishable by a fine of not  
24 less than one hundred dollars (\$100) and not more than two  
25 thousand five hundred dollars (\$2,500), or by imprisonment in a  
26 county jail not exceeding one year, or by both that fine and  
27 imprisonment, for any person who does not hold a current and  
28 valid license to practice acupuncture under this chapter or to  
29 advertise or otherwise represent that he or she is practicing or  
30 engaging in the practice of acupuncture.

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

37 (b) Notwithstanding any other law, any person, other than a  
38 physician and surgeon, a dentist, or a podiatrist, who is not licensed  
39 under this article but is licensed under Division 2 (commencing  
40 with Section 500), who practices acupuncture involving the

1 application of a needle to the human body, performs any  
2 acupuncture technique or method involving the application of a  
3 needle to the human body, or directs, manages, or supervises  
4 another person in performing acupuncture involving the application  
5 of a needle to the human body is guilty of a misdemeanor.

6 (c) A person advertises or otherwise represents that he or she  
7 is practicing or engaging in the practice of acupuncture by the use  
8 of any title or description of services incorporating the words  
9 “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed  
10 acupuncturist,” “Asian medicine,” “oriental medicine,” or any  
11 combination of those words, phrases, or abbreviations of those  
12 words or phrases, or by otherwise representing that he or she is  
13 trained, experienced, or an expert who is qualified to practice in  
14 the field of acupuncture, Asian medicine, oriental medicine, or  
15 any other complimentary or integrative medicine associated with  
16 an Asian subgroup, including Chinese medicine, Japanese  
17 medicine, or Korean medicine.

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

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

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

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

29 4938. (a) The board shall issue a license to practice  
30 acupuncture to any person who makes an application and meets  
31 the following requirements:

32 (1) Is at least 18 years of age.

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

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

36 (ii) If an applicant began an educational and training program  
37 at a school or college that submitted a letter of intent to pursue  
38 accreditation to, or attained candidacy status from, the  
39 Accreditation Commission for Acupuncture and Oriental Medicine,  
40 but the commission subsequently denied the school or college

1 candidacy status or accreditation, respectively, the board may  
2 review and evaluate the educational training and clinical experience  
3 to determine whether to waive the requirements set forth in this  
4 subdivision with respect to that applicant.

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

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

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

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

18 (5) Completes a clinical internship training program approved  
19 by the board. The clinical internship training program shall not  
20 exceed nine months in duration and shall be located in a clinic in  
21 this state that is an approved educational and training program.  
22 The length of the clinical internship shall depend upon the grades  
23 received in the examination and the clinical training already  
24 satisfactorily completed by the individual prior to taking the  
25 examination. The purpose of the clinical internship training  
26 program shall be to ensure a minimum level of clinical competence.

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

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

32 4955. The board may deny, suspend, or revoke, or impose  
33 probationary conditions upon, the license of any acupuncturist  
34 who is guilty of unprofessional conduct.

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

37 (a) Using or possessing any controlled substance, as defined in  
38 Division 10 (commencing with Section 11000) of the Health and  
39 Safety Code, dangerous drug, or alcoholic beverage to an extent  
40 or in a manner dangerous to the acupuncturist, or to any other

1 person, or to the public, and to an extent that the use impairs the  
2 acupuncturist's ability to engage in the practice of acupuncture  
3 with safety to the public.

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

7 (c) False or misleading advertising.

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

11 (e) Except for good cause, the knowing failure to protect patients  
12 by failing to follow infection control guidelines of the board,  
13 thereby risking transmission of blood-borne infectious diseases  
14 from licensee to patient, from patient to patient, and from patient  
15 to licensee. In administering this subdivision, the board shall  
16 consider referencing the standards, regulations, and guidelines of  
17 the State Department of Health Services developed pursuant to  
18 Section 1250.11 of the Health and Safety Code and the standards,  
19 regulations, and guidelines pursuant to the California Occupational  
20 Safety and Health Act of 1973 (Part 1 (commencing with Section  
21 6300) of Division 5 of the Labor Code) for preventing the  
22 transmission of HIV, hepatitis B, and other blood-borne pathogens  
23 in health care settings. As necessary, the board shall consult with  
24 healing arts boards within this division, including, but not limited  
25 to, the Medical Board of California, the California Board of  
26 Podiatric Medicine, the Dental Board of California, the Board of  
27 Registered Nursing, and the Board of Vocational Nursing and  
28 Psychiatric Technicians, to encourage appropriate consistency in  
29 the implementation of this subdivision.

30 The board shall seek to ensure that licensees are informed of the  
31 responsibility of licensees and others to follow infection control  
32 guidelines, and of the most recent scientifically recognized  
33 safeguards for minimizing the risk of transmission of blood-borne  
34 infectious diseases.

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

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

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

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

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

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

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

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

23 4961. (a) Every person who is now or hereafter licensed to  
 24 practice acupuncture in this state shall register, on forms prescribed  
 25 by the Acupuncture Board, the licensee’s place of practice, or, if  
 26 the licensee has more than one place of practice, all of the places  
 27 of practice. If the licensee has no place of practice, the licensee  
 28 shall notify the board of that fact. A person licensed by the board  
 29 shall register within 30 days after the date of his or her licensure.

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

36 (c) Any licensee that changes the location of his or her place of  
 37 practice shall register each change within 30 days of making that  
 38 change. In the event a licensee fails to notify the board of any  
 39 change in the address of a place of practice within the time  
 40 prescribed by this section, the board may deny renewal of licensure.



1 An applicant for renewal of licensure shall specify in the  
2 application whether or not there has been a change in the location  
3 of the licensee's place of practice and, if so, the date of that change.  
4 The board may accept that statement as evidence of the change of  
5 address.

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

O

ASSEMBLY THIRD READING  
 AB 3142 (Committee on Business and Professions)  
 As Amended April 26, 2018  
 Majority vote

Committee	Votes	Ayes	Noes
<b>Business &amp; Professions</b>	15-0	Low, Brough, Arambula, Baker, Bloom, Chen, Chiu, Cunningham, Eggman, Fong, Grayson, Holden, Irwin, Mullin, Ting	
<b>Appropriations</b>	16-0	Gonzalez Fletcher, Bigelow, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Fong, Friedman, Gallagher, Eduardo Garcia, Nazarian, Obernolte, Quirk, Reyes	

**SUMMARY:** Extends the operation of the California Acupuncture Board (CAB) and the CAB's authority to appoint an executive officer for two years and makes various changes to the Acupuncture Licensure Act raised during sunset review and intended to improve oversight of acupuncture licensees. Specifically **this bill**:

- 1) Extends the sunset date of the CAB and the CAB's authority to appoint an executive officer from January 1, 2019 to January 1, 2021.
- 2) Replaces the term "candidacy" with "pre-accreditation" to match the terms used by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).
- 3) Clarifies the use of titles and representations, including that the prohibition against holding oneself out as an expert in acupuncture only applies if the person making the representation also conveys the idea that the person is qualified to practice.
- 4) Deletes an outdated and inconsistent reference to the number of required clinical training hours.
- 5) Clarifies that, consistent with the CAB's current policies, the CAB should consult with all necessary healing arts boards for purposes of developing infection control guidelines.
- 6) Clarifies that a licensee must hang a wall license in each practice location, not a pocket card license.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, cost of approximately \$3.5 million per year, for calendar years 2019 and 2020, to continue the operation of the CAB beyond the current sunset date of January 1, 2019 (Acupuncture Fund).

**COMMENTS:**

**Purpose.** This bill is one of four "sunset review bills" authored by the Assembly Business and Professions Committee. This bill extends the sunset date for the Board and makes other technical and clarifying changes.

**Background.** The California Acupuncture Board (CAB) is a state licensing board under the Department of Consumer Affairs (DCA). The CAB's purpose is to protect consumers from incompetent and fraudulent acupuncture practice through licensing and regulation of acupuncturists. The CAB and the laws relating to the practice of acupuncture are established under the Acupuncture Licensure Act.

The Acupuncture Licensure Act makes it a misdemeanor to practice acupuncture or hold oneself out as being able to practice acupuncture, via titles or other methods, unless licensed as an acupuncturist, a physician and surgeon, a dentist, or a podiatrist, or otherwise authorized by law. The act also makes it unprofessional conduct for a licensed acupuncturist to use the title "Doctor" or the abbreviation "Dr." unless the licensee possesses a license that allows it or has earned a doctorate degree from an approved program.

As of June 30, 2017, the CAB oversaw 11,981 licensed acupuncturists. During each of the last three Fiscal Years (FYs), the CAB issued an average of 536 initial licenses and renewed an average of 5,533 licenses.

**Sunset Review Oversight Hearings.** Beginning in 2017, the Senate Business and Professions Committee and the Assembly Business and Professions Committee (Committees) began their comprehensive sunset review oversight of seven regulatory entities and the DCA including: Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation, CAB, Bureau of Automotive Repair, Professional Fiduciaries Bureau, Structural Pest Control Board, California Tax Education Council, and Dental Hygiene Committee of California.

The Committees conducted two oversight hearings in February and March. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

**Continued Regulation of Acupuncturists by the CAB.** As noted under Issue #15 of the 2018 *Sunset Review Background Paper for the CAB*, in the short amount of time since 2016, the CAB has shown an improved commitment to its mission and a willingness to work with the Legislature. This is demonstrated by the CAB's recent decision to support legislation relating to the examination, progress on implementation of prior sunset bills, and overall responsiveness. However, much of the CAB's progress was made under prior board leadership. Half of the current CAB members are relatively new and there is still one vacant professional member position.

The CAB should also continue to seek ways to improve its structural budget deficit, CE auditing processes, and consumer outreach efforts, such as improving its relationships with stakeholder groups, exploring outstanding issues, and educating the public through ongoing stakeholder meetings. CAB should continue to regulate licensed acupuncturists order to protect the interests of the public. However, given the CAB's inconsistent past and recent membership change, the

CAB should be extended for two years with a reduced reporting requirement unless the CAB and can demonstrate that the current progress and focus will continue.

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

FN: 0003140

#21 (F)

AB 1448 (Hill)

Healing arts licensees:

probation status:

disclosure

AMENDED IN ASSEMBLY JUNE 11, 2018

AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE APRIL 9, 2018

**SENATE BILL**

**No. 1448**

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**Introduced by Senator Hill**

*(Principal coauthor: Assembly Member Low)*

February 16, 2018

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law, the Medical Practice Act, establishes the Medical Board of California for the licensing, regulation, and discipline of physicians and surgeons. Existing law establishes the California Board of Podiatric Medicine within the Medical Board of California for the licensing, regulation, and discipline of podiatrists. Existing law, the Osteopathic Act, enacted by an initiative measure, establishes the Osteopathic Medical Board of California for the licensing and regulation of osteopathic physicians and surgeons and requires the Osteopathic Medical Board of California to enforce specified provisions of the Medical Practice Act with respect to its licensees. Existing law, the Naturopathic Doctors Act, establishes the Naturopathic Medicine Committee within the Osteopathic Medical Board of California for the licensing and regulation of naturopathic doctors. Existing law, the Chiropractic Act, enacted by an initiative measure, establishes the State Board of Chiropractic Examiners for the licensing and regulation of

chiropractors. Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board for the licensing and regulation of acupuncturists. Existing law authorizes each of these regulatory entities to discipline its licensee by placing her or him on probation, as specified.

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

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

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

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Patient’s Right to Know Act of 2018.
- 3 SEC. 2. Section 1007 is added to the Business and Professions
- 4 Code, to read:
- 5 1007. (a) On and after July 1, 2019, except as otherwise
- 6 provided in subdivision (c), the board shall require a licensee to
- 7 provide a separate disclosure that includes the licensee’s probation
- 8 status, the length of the ~~probation~~ and *probation*, the probation
- 9 end date, all practice restrictions placed on the licensee by the
- 10 board, the board’s telephone number, and an explanation of how
- 11 the patient can find further information on the licensee’s probation
- 12 on the licensee’s profile page on the board’s online license

1 information Internet Web site, to a patient or the patient’s guardian  
2 or health care surrogate before the patient’s first visit following  
3 the probationary order while the licensee is on probation pursuant  
4 to a probationary order made on and after July 1, 2019.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

5 2228.1. (a) On and after July 1, 2019, except as otherwise  
6 provided in subdivision (c), the board shall require a licensee to  
7 provide a separate disclosure that includes the licensee’s probation  
8 status, the length of the ~~probation~~ and *probation*, the probation  
9 end date, all practice restrictions placed on the licensee by the  
10 board, the board’s telephone number, and an explanation of how  
11 the patient can find further information on the licensee’s probation  
12 on the licensee’s profile page on the board’s online license  
13 information Internet Web site, to a patient or the patient’s guardian  
14 or health care surrogate before the patient’s first visit following  
15 the probationary order while the licensee is on probation pursuant  
16 to a probationary order made on and after July 1, 2019, in any of  
17 the following circumstances:

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

21 (A) The commission of any act of sexual abuse, misconduct, or  
22 relations with a patient or client, including, but not limited to, any  
23 of the acts described in Section 726 or 729.

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

27 (C) Criminal conviction involving harm to patient safety or  
28 health.

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

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

39 (b) A licensee required to provide a disclosure pursuant to  
40 subdivision (a) shall obtain from the patient, or the patient’s

1 guardian or health care surrogate, a separate, signed copy of that  
2 disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 2228.5. (a) On and after July 1, 2019, except as otherwise  
38 provided in subdivision (c), the board shall require a licensee to  
39 provide a separate disclosure that includes the licensee's probation  
40 status, the length of the ~~probation~~ and *probation*, the probation

1 end date, all practice restrictions placed on the licensee by the  
2 board, the board's telephone number, and an explanation of how  
3 the patient can find further information on the licensee's probation  
4 on the licensee's profile page on the board's online license  
5 information Internet Web site, to a patient or the patient's guardian  
6 or health care surrogate before the patient's first visit following  
7 the probationary order while the licensee is on probation pursuant  
8 to a probationary order made on and after July 1, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (f) For purposes of this section:

7 (1) “Board” means the California Board of Podiatric Medicine.

8 (2) “Licensee” means a person licensed by the California Board  
9 of Podiatric Medicine.

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

12 2459.4. (a) On and after July 1, 2019, except as otherwise  
13 provided in subdivision (c), the board shall require a licensee to  
14 provide a separate disclosure that includes the licensee’s probation  
15 status, the length of the ~~probation~~ and *probation*, the probation  
16 end date, all practice restrictions placed on the licensee by the  
17 board, the board’s telephone number, and an explanation of how  
18 the patient can find further information on the licensee’s probation  
19 on the licensee’s profile page on the board’s online license  
20 information Internet Web site, to a patient or the patient’s guardian  
21 or health care surrogate before the patient’s first visit following  
22 the probationary order while the licensee is on probation pursuant  
23 to a probationary order made on and after July 1, 2019, in any of  
24 the following circumstances:

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

28 (A) The commission of any act of sexual abuse, misconduct, or  
29 relations with a patient or client, including, but not limited to, any  
30 of the acts described in Section 726 or 729.

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

34 (C) Criminal conviction involving harm to patient safety or  
35 health.

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

38 (2) An accusation or statement of issues alleged that the licensee  
39 committed any of the acts described in subparagraph (A) to (D),  
40 inclusive, of paragraph (1), and a stipulated settlement based upon

1 a nolo contendere or other similar compromise that does not include  
2 any prima facie showing or admission of guilt or fact but does  
3 include an express acknowledgment that the disclosure  
4 requirements of this section would serve to protect the public  
5 interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (f) For purposes of this section:

3 (1) “Board” means the Osteopathic Medical Board of California.

4 (2) “Licensee” means a person licensed by the Osteopathic  
5 Medical Board of California.

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

8 3663.5. (a) On and after July 1, 2019, except as otherwise  
9 provided in subdivision (c), the committee shall require a licensee  
10 to provide a separate disclosure that includes the licensee’s  
11 probation status, the length of the ~~probation~~ and *probation*, the  
12 probation end date, all practice restrictions placed on the licensee  
13 by the committee, the committee’s telephone number, and an  
14 explanation of how the patient can find further information on the  
15 licensee’s probation on the licensee’s profile page on the  
16 committee’s online license information Internet Web site, to a  
17 patient or the patient’s guardian or health care surrogate before  
18 the patient’s first visit following the probationary order while the  
19 licensee is on probation pursuant to a probationary order made on  
20 and after July 1, 2019.

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

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

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

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

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

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

39 (d) On and after July 1, 2019, the committee shall provide the  
40 following information, with respect to licensees on probation and

1 licensees practicing under probationary licenses, in plain view on  
2 the licensee’s profile page on the committee’s online license  
3 information Internet Web site.

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

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

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

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

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

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

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

20 4962. (a) On and after July 1, 2019, except as otherwise  
21 provided in subdivision (c), the board shall require a licensee to  
22 provide a separate disclosure that includes the licensee’s probation  
23 status, the length of the ~~probation~~ and *probation*, the probation  
24 end date, all practice restrictions placed on the licensee by the  
25 board, the board’s telephone number, and an explanation of how  
26 the patient can find further information on the licensee’s probation  
27 on the licensee’s profile page on the board’s online license  
28 information Internet Web site, to a patient or the patient’s guardian  
29 or health care surrogate before the patient’s first visit following  
30 the probationary order while the licensee is on probation pursuant  
31 to a probationary order made on and after July 1, 2019.

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

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

38 (1) The patient is unconscious or otherwise unable to  
39 comprehend the disclosure and sign the copy of the disclosure

1 pursuant to subdivision (b) and a guardian or health care surrogate  
2 is unavailable to comprehend the disclosure and sign the copy.

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

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

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

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

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

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

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

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

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

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



Date of Hearing: June 19, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

SB 1448 (Hill) – As Amended June 11, 2018

**SENATE VOTE:** 29-3

**SUBJECT:** Healing arts licensees: probation status: disclosure

**SUMMARY:** Enacts the Patient's Right to Know Act of 2018 to require healing arts licensees on probation for certain offenses to provide their patients with information about their probation status prior to the patient's first visit following the probationary order beginning July 1, 2019.

**EXISTING LAW:**

- 1) Establishes the Medical Board of California (MBC), a regulatory board within the Department of Consumer Affairs (DCA) comprised of 15 appointed members, including 7 public members. (Business and Professions Code (BPC) § 2001)
- 2) Requires the MBC to post on its Internet Web site the current status of its licensees; any revocations, suspensions, probations, or limitations on practice, including those made part of a probationary order or stipulated agreement; historical information regarding probation orders by the board, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by the board; and other information about a licensee's status and history. (BPC § 2027)
- 3) Establishes the Osteopathic Medical Board of California (OMBC), which regulates osteopathic physicians and surgeons that possess effectively the same practice privileges as those regulated by the MBC but with a training emphasis on diagnosis and treatment of patients through an integrated, whole-person approach. (BPC § 2450)
- 4) Establishes the California Board of Podiatric Medicine (BPM) within the jurisdiction of the MBC, which regulates health practitioners whose scope of practice is restricted to the foot and ankle. (BPC §§ 2460 et seq.)
- 5) Establishes the California Acupuncture Board (CAB) to regulate licensed acupuncturists in the state. (BPC § 4928)
- 6) Establishes the Board of Chiropractic Examiners to license and regulate the practice of chiropractic. (The Chiropractic Initiative Act of California, an uncodified initiative act approved by electors November 7, 1922)
- 7) Establishes the Naturopathic Medicine Committee (NMC) within the OMBC to enforce and administer the Naturopathic Doctors Act. (BPC § 2450.3)
- 8) Requires healing arts boards to each create and maintain a central file of the names of all persons who hold a license or similar authority from the board confidentially containing an individual historical record for each licensee containing, among other things, disciplinary information. (BPC § 800)

- 9) Requires the MBC, the OMBC, the BPM, and the Physician Assistant Board to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including probationary status and limitations on practice. (BPC § 803.1)

**THIS BILL:**

- 1) Requires podiatrists regulated by the BPM; acupuncturists regulated by the CAB; chiropractors regulated by the BCE; and naturopathic doctors regulated by the NMC to disclose to their patient or their patient's guardian or health care surrogate before the patient's first visit following a probationary order made on and after July 1, 2019, the following information:
  - a) The licensee's probation status;
  - b) The length of the probation;
  - c) The probation end date;
  - d) All practice restrictions placed on the licensee by the licensee's board;
  - e) The board's telephone number; and
  - f) An explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the board's license information website.
- 2) Requires physicians and surgeons regulated by the MBC or the OMBC to provide the above disclosure only when a final adjudication by the board following an administrative hearing or admitted findings or prima facie showing in a stipulated settlement establish that the physician and surgeon did any of the following:
  - a) The commission of any act of sexual abuse, misconduct, or relations with a patient or client.
  - b) Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely.
  - c) Criminal conviction involving harm to patient safety or health.
  - d) Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.
- 3) Requires physicians and surgeons regulated by the MBC or the OMBC to provide a disclosure to their patients under the above circumstances following a stipulated settlement based upon a nolo contendere or other similar compromise that does not include any prima facie showing or admission of guilt or fact when an accusation or statement of issues alleged any of the acts and the settlement includes an express acknowledgment that the disclosure requirements of this section would serve to protect the public interest.
- 4) Requires a licensee subject to any of the above disclosures to obtain from the patient, or the patient's guardian or health care surrogate, a separate, signed copy of that disclosure.

- 5) Exempts from all of the disclosure requirements described above any of the following circumstances:
- a) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure;
  - b) The visit occurs in an emergency room or an urgent care facility or the visit is unscheduled, including consultations in inpatient facilities;
  - c) 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;
  - d) The licensee does not have a direct treatment relationship with the patient.
- 6) On and after July 1, 2019, requires the aforementioned boards to provide the following information, with respect to licensees on probation and licensees practicing under probationary licenses, in plain view on the licensee's profile page on the board's website:
- a) For probation imposed pursuant to a stipulated settlement, the causes alleged in the operative accusation along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt.
  - b) For probation imposed by an adjudicated decision of the board, the causes for probation stated in the final probationary order.
  - c) For a licensee granted a probationary license, the causes by which the probationary license was imposed.
  - d) The length of the probation and end date.
  - e) All practice restrictions placed on the license by the board.
- 7) States that a violation of any of the above requirements shall not be punishable as a crime.

**FISCAL EFFECT:** According to the Senate Committee on Appropriations, likely ongoing costs in the low hundreds of thousands of dollars per year for increased enforcement costs and disciplinary hearings for physicians licensed by the MBC and additional costs to the other affected boards and programs; precise amounts are unknown but are expected to be absorbable within existing resources.

**COMMENTS:**

**Purpose.** This board is sponsored by the author. According to the author:

*SB 1448 requires that physicians disciplined by their regulatory board for the following offenses will have to notify their patients prior to their visit:*

1. *Sexual misconduct with a patient*
2. *Drug abuse that can harm patients*

3. *Criminal conviction involving harm to patients*
4. *Inappropriate prescribing resulting in patient harm*

*These categories include the most egregious probation cases. The bill has been amended to exclude less serious offenders.*

*Currently doctors have to notify their insurer and their hospital or clinic about their probation status, but patients receive no notice – they are left in the dark and susceptible to future abuse.*

**Background.** The probation disclosure requirements contained within this bill were previously proposed by the author in prior legislative vehicles, including Senate Bill 798, the sunset extension vehicle for the MBC and the OMBC. The proposal stems from a concern that many health practitioners are able to actively practice on patients or clients despite being guilty of misconduct, including certain egregious offenses such as sex or drug-related crimes. In many of these instances, a licensee accepts or receives probationary status and continues to practice with certain conditions, such as practice restrictions, monitoring requirements, or mandatory substance abuse counseling. Attention to these concerns was partly heightened by public awareness surrounding the victimization of star athletes, including Olympic gymnasts, by licensed health practitioners in other states.

Efforts to include probation disclosure requirements in the sunset vehicle for the MBC and OMBC were stalled by stakeholder opposition and reservations within the committee that adequate due process was not safeguarded for physicians and surgeons where the serious offense was not proven through an adjudication or settlement stipulation. This bill has been amended to address those concerns by including language in the MBC and OMBC provisions that in the event a settlement for probation did not feature any stipulations or admissions but the underlying accusation alleged one of the included crimes, the settlement must include an express acknowledgment that the disclosure requirements will apply in order to serve to protect the public interest.

For physicians and surgeons regulated by the MBC and OMBC, the disclosure requirements only apply to licensees on probation for serious offenses including sexual abuse, misconduct, or relations with a patient or client; drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely; criminal convictions involving harm to patient safety or health; and inappropriate prescribing resulting in harm to patients and a probationary period of five years or more. For other regulatory entities included in the provisions of this bill, all licensees on probation would be required to disclose their probation status.

Information regarding many licensees' probation status is already available on the board's website. The MBC is finalizing development of a mobile application that would further enable patients to learn about new disciplinary actions against their physician. However, there is a belief that the majority of patients will not proactively research their practitioner prior to a visit. This bill would provide the information for physicians and other healing arts licensees automatically at the beginning of a visit, allowing patients to make their own determination about whether to see a licensee who is allowed to practice but on probation following an offense.

**Current Related Legislation.** AB 505 (Caballero) would prohibit the MBC from entering into any stipulation for disciplinary action if the stipulation places a licensee on probation and the operative accusation includes a felony conviction involving harm to patient safety or health; drug or alcohol abuse directly resulting in harm to patient safety or health; or sexual act or sexual exploitation as defined. *This bill is pending in the Senate Business, Professions and Economic Development Committee.*

**Prior Related Legislation.** SB 763 (Hill) of 2015 would have required the MBC, the OMBC, and the BPM to disclose to an inquiring member of the public and to post on their websites specified information concerning each licensee including revocations, suspensions, probations, or limitations on practice. *This bill died in Assembly Rules following substantial amendments.*

SB 1033 (Hill) of 2016 would have required physicians and surgeons, podiatrists, acupuncturists, chiropractors, and naturopathic doctors to notify patients of their probationary status before visits take place. *This bill failed passage on the Senate Floor.*

SB 798 (Hill, Chapter 775, Statutes of 2017) originally contained language that would have required physicians and surgeons to notify patients of their probationary status. *This bill was chaptered with the provisions regarding probation status disclosure removed.*

#### **ARGUMENTS IN SUPPORT:**

The Consumer Attorneys of California (CAOC) writes in support. CAOC states that “the recent case against Olympic team doctor Larry Nasser, who was convicted after decades of abusing young athletes under his care, highlights the need to protect patients when regulators fail to act. Even more recently, Dr. George Tyndall, a USC gynecologist, was accused of conducting inappropriate pelvic exams on young students.” CAOC further states that “SB 1448 would help ensure that health care consumers are informed of a doctor’s previous misconduct, thereby improving patient safety and putting an end to a system that facilitates abuse.”

#### **ARGUMENTS IN OPPOSITION:**

None on file.

#### **REGISTERED SUPPORT:**

Center for Public Interest Law  
Consumer Attorneys of California  
Consumer Federation of California  
Consumer Watchdog  
Consumers Union

#### **REGISTERED OPPOSITION:**

None on file.

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

#22

Discussion and Possible  
Board Action on 2018-2021  
Acupuncture Board Strategic  
Plan

#22

Discussion and Possible  
Board Action on 2018-2021  
Acupuncture Board Strategic  
Plan

# Acupuncture Board

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## Strategic Plan

2018-2022

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# Acupuncture Board

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## Board Members

**Amy Matecki, MD, L.Ac**, President, Licensed Member

**Kitman Chan**, Vice-President, Public Member

**John Harabedian**, Public Member

**Ruben Osorio**, Public Member

**Vacant**, Licensed Member

**Vacant**, Licensed Member

**Vacant**, Public Member

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Edmund G. Brown Jr., Governor

Alexis Podesta, Secretary, Business Consumer Services and Housing Agency

Dean R. Grafilo, Director, Department of Consumer Affairs

Benjamin Bodea, Executive Officer, Acupuncture Board

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# Messages from the Board Executive Officer and Board President

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## Executive Officer

Please insert message from the Board Executive Officer if desired.

## Board President

Please insert message from the Board President if desired.

DRAFT

# About the Acupuncture Board

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The Acupuncture Board's (Board) legal mandate is to regulate the practice of acupuncture and Asian medicine in the State of California. The Board establishes and maintains entry standards of qualification and conduct within the acupuncture profession, primarily through its authority to license. The Acupuncture Licensure Act commences with Business and Professions (B&P) Code, Section 4925 et seq. The Board's regulations appear in Title 16, Division 13.7, of the California Code of Regulations (CCR).

The primary responsibility of the Acupuncture Board is to protect California consumers from incompetent, and/or fraudulent practice through the enforcement of the Acupuncture Licensure Act and the Board's regulations. The Board promotes safe practice through the improvement of educational training standards, continuing education, enforcement of the B&P Code, and public outreach.

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# Mission, Vision, and Values

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## Mission

To protect the people of California by upholding acupuncture practice standards through the oversight and enforcement of the Acupuncture Licensure Act.

## Vision

The exemplary practice of acupuncture for the health and safety of the people of California.

## Values

Consumer Protection

Collaboration

Excellence

Integrity

Professionalism

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# Strategic Goal Areas

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## 1. Licensing

*Establishes and maintains licensing requirements that protect consumers through improving standards in licensing examination, continuing education, and reasonable access to the profession.*

## 2. Enforcement

*Protects the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.*

## 3. Education

*Advances education standards to increase the quality of education and ensure consumer protection.*

## 4. Legislation and Regulation

*Advocates for statutes and adopts regulations, policies, and procedures that strengthen and support its mandate, mission, and vision.*

## 5. Outreach

*Educates consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.*

## 6. Board Administration

*Continues to build and maintain an excellent organization through the development of staff, responsible management, strong leadership, and effective Board governance.*

# Goal 1: Licensing

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*Establishes and maintains licensing requirements that protect consumers through improving standards in licensing examination, continuing education, and access to the profession.*

- 1.1 Develop and implement the computerized licensing examination to increase access and facilitate entry into the profession.
- 1.2 Adopt regulations requiring a passing Test of English as a Foreign Language (TOEFL) score for international applicants to enhance communication with the healthcare industry.
- 1.3 Research the feasibility of establishing a clinical inspection program to educate licensees and promote compliance with the laws and regulations relating to the practice of acupuncture.
- 1.4 Improve pocket license material quality to reduce fraudulent activity.

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## Goal 2: Enforcement

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*Protects the health and safety of consumers through the enforcement of the laws and regulations governing the practice of acupuncture.*

- 2.1 Develop and implement the continuing education provider audit process to increase compliance.
- 2.2 Recruit additional subject matter experts to meet the needs of the Examination, Enforcement, and Education units to increase enforcement resources.
- 2.3 Research the feasibility of requiring licensees to maintain medical records in English to facilitate enforcement efforts and increase accessibility.
- 2.4 Update disciplinary guidelines to preserve consistency, fairness, and ensure effective consumer protection when taking disciplinary actions against licensees.
- 2.5 Promulgate uniform standard regulations on substance abuse to safeguard the health and safety of licensees and consumers.

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## Goal 3: Education

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Advance education standards to increase the quality of education and ensure consumer protection.

- 3.1 Research transfer credit policies and procedures to ensure competent education outcomes.
- 3.2 Conduct a cost analysis on training program curriculum application reviews to properly allocate costs and ensure training program compliance.
- 3.3 Review current curriculum standards to ensure it prepares licensees for entry level practice and consumer safety.
- 3.4 Define what constitutes live continuing education courses to ensure that hands on training for continuing education in treatment methods is received in the proper setting with the appropriate supervision to practice on the public.

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## Goal 4: Legislation and Regulation

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The Board advocates for statutes and adopts regulations, policies, and procedures that strengthen and support its mandate, mission, and vision.

- 4.1 Recommend legislation relating to the number of times an applicant can take the examination for licensure to reduce fraud and enhance qualification of licensees.
- 4.2 Investigate the feasibility of site inspection authority of licensees to increase enforcement resources and access.
- 4.3 Seek citation authority over curriculum violations of training programs to enforce curriculum requirements established in regulation.
- 4.4 Review and update regulations to align with statutory requirements.
- 4.5 Research the feasibility of amending Business and Professions code 4935 to coincide with general Business and Professions code (change from misdemeanor to felony) to establish deterrent to protect the public.
- 4.6 Implement a continuing education course and monitoring fee structure to allocate the cost of the process to the continuing education provider applicant.

## Goal 5: Outreach

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The Board educates consumers, licensees, and stakeholders about the practice and regulation of the acupuncture profession.

- 5.1 Develop and implement a communication plan to inform the public about the practice and regulation of the Acupuncture profession.
- 5.2 Develop and release a digital newsletter to inform and educate the public.
- 5.3 Determine and communicate licensing reciprocity to and from California to convey California's standards to the public and ensure consumer protection.
- 5.4 Update and publish an informational brochure to educate the public on the standards of practice.

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## Goal 6: Board Administration

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The Board continues to build and maintain an excellent organization through the development of staff, responsible management, strong leadership, and effective Board governance.

- 6.1 Conduct a yearly workload study to ensure adequate staffing levels.
- 6.2 Map the Board's business processes to procure an internet technology system that addresses the Board's functions.
- 6.3 Conduct a fee study, at appropriate time, to address the Board's budgetary structural imbalance.
- 6.4 Respond to Department of Consumer Affairs' routine internal audit to address any findings.
- 6.5 Expand targeted training and materials for Board members to educate on governance and the subject matter of the Board.

# Strategic Planning Process

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To understand the environment in which the Board operates as well as identify factors that could impact the Board's success in carrying out its regulatory duties, the Department of Consumer Affairs' SOLID Unit conducted an environmental scan of the Board's internal and external environments by collecting information through the following methods:

- ◆ Interviews conducted with current and former Board members in August 2017. There was a total of four responses from a population of eight for 50%<sup>1</sup> response rate.
- ◆ Interview conducted with Board Executive Officer in August 2017. There was a total of one participant from a population of one for 100% response rate.
- ◆ Online survey sent to Board staff in August 2017. There was a total of twelve responses from a population of twelve for 100% response rate.
- ◆ Online survey sent to the Board's stakeholders via several resources<sup>2</sup> in August 2017. There was a total of 156 responses from a sample size<sup>3</sup> of 1,394 for 11% response rate.

The most significant themes and trends identified from the environmental scan were discussed by the Board Members, Executive Officer, Board staff, and stakeholders during the strategic planning sessions facilitated by SOLID on December 15, 2017 and March 30, 2018. This information guided the Board in the development of its strategic objectives outlined in this 2018 – 2021 strategic plan.

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<sup>1</sup> All response rates are rounded to the nearest one (whole number).

<sup>2</sup> List Serve subscribers and schools lists.

<sup>3</sup> Sample size is an approximation.



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Prepared by:



Department of Consumer Affairs  
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*Strategic plan adopted on (enter month here) 2018.*

*This strategic plan is based on stakeholder information and discussions facilitated by SOLID for the Acupuncture Board in December 2017 and March 30, 2018. Subsequent amendments may have been made after the Board's adoption of this plan.*

#23

## Memo to the Board

Proposed 2018 Acupuncture  
Board Disciplinary Guidelines  
and Uniform Standards  
Related to Substance  
Abusing Licensees

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<b>DATE</b>	June 29, 2018
<b>TO</b>	Board Members
<b>FROM</b>	Marc Johnson – Policy Coordinator Kristine Brothers – Enforcement Coordinator
<b>SUBJECT</b>	Proposed 2018 Acupuncture Board Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Licensees

**Summary of Issue:**

Proposed 2018 Update of the Board’s Disciplinary Guidelines (hereafter ‘Guidelines’ and adoption of the new Uniform Standards Relating to Substance Abusing Licensees (hereafter ‘Standards’). This proposal would amend the existing text to California Code of Regulations (CCR) §1399.469, amend the existing 1996 Disciplinary Guidelines already in regulation to a newer 2018 version, and adopt into regulation the Uniform Standards handbook. If approved, the proposed text and both documents would be submitted as a combined rulemaking package to DCA for initial approval, and then submitted to OAL and published for a 45-day public comment period.

**Action Items for the Board:**

1. Review, discussion and possible approval of proposed regulatory changes to the text of CCR §1399.469. (Attachment A)

Suggested motion to approve text: *“I move to approve the proposed amended regulatory text for California Code of Regulations section 1399.469 as presented here today, for a 45-day public comment period, and if there are no adverse comments, to delegate the authority to the executive officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes.”*

2. Review, discussion and possible approval of the proposed ‘Acupuncture Board Disciplinary Guidelines revised June 2018’ document incorporated by reference into CCR §1399.469. (Attachment B)

Suggested motion to approve Guidelines: *“I move to approve and adopt the proposed ‘Acupuncture Board Disciplinary Guidelines Revised June 2018’ document, incorporated by reference into California Codes of Regulations Section 1399.469, as presented here today with the changes made today, for a 45-day public comment period, and if there are no adverse comments, to delegate the authority to the executive*



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*officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes.”*

3. Review, discussion and possible approval of the proposed ‘Uniform Standards Related to Substance Abusing Licensees – April 2018’ document incorporated by reference into CCR §1399.469(b). (Attachment C)

Suggested motion to approve Standards: *“I move to approve and adopt the proposed ‘Uniform Standards Related to Substance Abusing Licensees – June 2018’ document, incorporated by reference into California Codes of Regulations Section 1399.469, for a 45-day public comment period, and if there are no adverse comments, to delegate the authority to the executive officer to make any technical and non-substantive changes that may be required and to adopt the proposed regulatory changes.”*

**Brief History and Discussion:**

**Disciplinary Guidelines:** The Board’s current Guidelines, which are used by attorneys, administrative law judges (ALJ’s), licensees, others involved in the disciplinary process, and ultimately the Board itself, date to 1996. The Guidelines are used to impose discipline including conditions of probation for licensees that address the violations charged and provide public protection. The current 1996 Guidelines are outdated as there have been multiple changes to the laws and regulations, as well as changes to discipline standards. This proposal would incorporate those changes, modify existing probation standards and add new probation standards into the document. Many of the proposed changes are based on best practices exemplified by DCA’s various Boards and Bureaus that have proven to be effective. Implementing the Guidelines provides increased public protection.

The Board has been reviewing and refining the Guidelines in various forms since 2012. At the December 16, 2016 public meeting, the Board’s Enforcement Committee reviewed and approved the proposed Guidelines with several changes. Staff completed the changes and the full Board reviewed and approved the revised Guidelines and text at the February 24, 2017 public meeting. Subsequently, the Attorney General’s (AG) office was requested by Board staff in March 2017 to review and suggest changes to the Disciplinary Guidelines. Their review was completed in July 2017 and contained multiple changes. Board staff further revised the Guidelines based upon the AG’s recommendations, culminating in the rulemaking package for Board review in June 2018.

**Uniform Standards for Substance Abusing Licensees:** In 2008, SB 1441 (Ridley-Thomas, Chapter 548, September 28, 2008) was signed into law. This bill established the Substance Abuse Coordination Committee (SACC) within the California Department of Consumer Affairs (DCA), which required SACC to formulate, by January 1, 2010,

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uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with persons designated as substance abusing licensees. The SACC developed sixteen uniform standards as required by SB 1441 and published 'the Uniform Standards Regarding Substance Abusing Licensees (April 2011)'. Thus, the Board is directed to implement these standards, as required by Business and Professions Code (BPC) §315, via the regulatory process.

Similar to the Guidelines, the Board has approved several versions of this rulemaking since 2012, although none have become regulation. Most recently, the Board approved a proposed rulemaking package for the Uniform Standards and concurrent updates to the Disciplinary Guidelines at the September 18, 2015 public board meeting. Staff then commenced the rulemaking process by filing the regulatory package with OAL and releasing the rulemaking package for public comment. No comments were received. The Board then approved a revised Uniform Standards rulemaking package at the October 26, 2016 public meeting. However, recent disapprovals by the Office of Administrative Law (OAL) to other Boards' Uniform Standards rulemaking packages highlighted several deficiencies with the Board's own rulemaking package. As a result, the Board elected to abandon the rulemaking package. As with the Guidelines, the AG's office reviewed the Board's proposed Standards and suggested changes, which staff integrated within the document, culminating in the new rulemaking package for Board review in June 2018.

If approved by the Board, the proposed text and both documents would be submitted as a combined rulemaking package to DCA for initial approval, and then submitted to OAL and published for a 45-day public comment period.

**Proposed amendments to the text of CCR §1399.469 (Attachment A):**

Within the proposed text, new text approved by the Board at the February 24, 2017 public meeting is underlined and text removed is ~~struck through~~. For changes suggested, since the February 24, 2017 public meeting, new text will be identified as double underlined, and by ~~double strikethrough~~ for removed text.

Three non-substantive changes are proposed. The proposed text would change the title of the Division 13.7 to "Acupuncture Board", which reflects current name style within the statute. Two new article headings "Citations" and "Enforcement" would be created to better group the sections referred. Finally, the authority and reference citations are updated.

The proposed text changes to the section itself include the following:

1. Addition of the current proposed 2018 Guidelines document incorporated by reference into the section (a).

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2. Addition of a new section (b), which would create the definition of a substance-abusing licensee if the Board finds that an individual is a substance-abusing licensee and when the Standards may apply. This would be done after a notice and hearing, and the Board or the ALJ finds that the evidence establishes that the individual is a substance abusing licensee. It incorporates the proposed Standards document by reference into the regulation.
3. Addition of a new section (c), which would provide that the Board is not prohibited from imposing additional terms and conditions of probation that would provide greater public protection.

**Proposed amendments to the 1996 Disciplinary Guidelines (Attachment B – ‘Acupuncture Board Disciplinary Guidelines Revised June 2018’)**

Within the Guidelines document, new text approved by the Board at the February 24, 2017 public meeting is underlined and text removed is ~~struck through~~. For the purposes of this memo, these amendments are referred to as Version 1 (V1). Within the Guidelines document, additional new proposed text added after the February 24, 2017 meeting is double underlined for new text, and ~~double strikethrough~~ for removed text. For the purposes of this memo, these amendments are referred to Version 2 (V2).

In V1, a new cover sheet and table of contents was added. Throughout the document, the words ‘Board’ has replaced ‘AC’ and ‘or its designee’ was added to denote board staff. The page numbers within the document are not necessarily the final page numbers; these will be adjusted as the document changes and are considered a non-substantive change.

Introduction (Pgs. 4-5):

In V1, the introduction has been expanded to explain the purpose of the Guidelines and identifies who the interested parties are to enhance clarity. New language has been added that sets out the different categories of probation terms and conditions. V2 adds a reference to the Uniform Standards regulation to carry through authority.

General Considerations (Pg. 6):

In V1, a new proposed section with a list of general considerations has been added to help users determine whether revocation, suspension or probation is to be imposed in a given case, with a list of factors to be considered. V2 adds items 8 and 9 to provide for the Board’s review of Respondent’s acceptance of responsibility for their actions and Respondent’s honesty during the proceedings.

Terms and Conditions (Pgs. 7):

In V1, a third condition category was added to set out special conditions that require a specific penalty. V2 adds a reference to 1399.469(b).

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#2 Psychological Evaluation (Pg. 8):

In V1, language was added to provide authority that allows the Board to require respondent to comply with psychotherapy if deemed necessary by the evaluator, to be paid by respondent. V2 added a reference to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM-5) to be used during the evaluation. Also in V2, the note was amended to require an additional term #15 (supervised practice) be added to the disciplinary order if the evaluator finds the need. Additionally, a second note further clarified that therapists shall have the correct knowledge and experience in the area involved in the violation.

#3 Physical Examination (Pg. 9):

In V1, this optional condition was amended to add a requirement that the licensee shall be responsible for the costs associated with the physical evaluation and failure to pay them is a violation of probation.

#4 Practice/Billing Monitor (Pgs.10-11):

In V1, this optional condition was re-written for clarity, adding 'Billing' to the title and providing more detail on the role of the Board reviewing the monitor's monitoring plan to provide more instruction. Language regarding a specific frequency of meetings with the monitor was removed so the Board or its designee can determine the appropriate frequency on a case by case basis, and additional language was added that addresses when a monitor resigns or is no longer available to provide more guidance on the mechanics of how that process would occur. Finally, language was added to provide the Board authority to inspect or copy records retained by respondent. V2 added a clause providing more discretion to the Board enabling the rejection of proposed monitors for any reason. V2 also added a time frame for when the monitor's inspection rights begin, and that the Board shall have the option to reject the proposed monitor. Lastly, V2 specified that the notice to patients about this term be in writing.

#5 Psychotherapy (Pg. 9):

In V1, this optional condition was added to appear in a decision and orders either concurrently with condition number two (2), Psychological Evaluation, or on its own. It details when a respondent is ordered to undergo psychotherapy during his or her probation, how the condition operates, the qualifications for the therapist conducting the therapy, how the therapist's evaluation is provided to the Board, and what the consequences are if respondent is deemed unsafe to practice. V2 adds that the Board shall retain jurisdiction over a license and the period of probation shall be extended if the respondent is declared mentally unfit to practice. It also clarifies the use of the word 'therapist'.

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#6 Restrictions on Patient Population or Practice Setting (Pg. 12):

In V1, this optional condition was renamed and has been amended to provide actual language to be used in probation orders. V2 changed the number of days from the effective date to 60 days to allow the respondent more time to submit a plan to implement the restriction to the Board.

#7 Restrictions on Practice Techniques and Modalities (Pg. 13):

In V1, this new optional condition was added to allow the Board to place restrictions on types of practice and requires the licensee to submit to the Board a plan to implement this restriction. A note is also added to clarify that restrictions shall be appropriate to the violation and specifies when the condition should be used.

#8 Examination(s) (Pgs. 13):

In V1, this renumbered optional condition has been amended to remove the reference to a clinical exam as the Board no longer requires this as part of the California Acupuncture Licensing Exam (CALE). It also requires a probationer to take and pass the exam within 15 months before practicing acupuncture or respondent will be considered in violation of their probation.

#9 Restitution (Pg. 13-14):

In V1, this optional condition has been re-numbered to #9.

#10 Alcohol and Drug Abuse Treatment Program (Pg. 14):

In V1, this renumbered optional condition was amended, adding 'Program' to the title for clarity and a note which allows the Board to consider previous court ordered treatment programs within the last three years. Several changes were made to bring the Board in line with current court practices for DUI, and a requirement of submission of program completion to be submitted within 15 days has been added. Further, language from existing condition that addressed twelve step meetings and group therapy was removed because a more clear and updated condition is being proposed to put in its place. In V2, language has been added to the note setting out if an individual has found that the evidence establishes them as a substance abusing licensee, that the Uniform Standards shall be used in any probationary order.

(Removed Condition) Reimbursement for Probation Surveillance Monitoring (Pg. 14):

In V1, this optional condition has been deleted as its provisions have been incorporated into a new standard condition, #25.

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#11 Attend Chemical Dependency Support and Recovery Groups (Pg. 15):

In V1, this condition was added to allow the Board to require a licensee to attend support and recovery groups as a condition of probation. In V2, a note has been added setting out that if an individual has found that the evidence establishes them as a substance abusing licensee, that the Uniform Standards shall be used in any probationary order.

#12 Abstain from Drugs and Alcohol and Submit to Tests and Samples (Pgs. 15-16):

In V1, this optional condition has been re-written for better clarity, with BPC section reference updated and an exception was added allowing respondent the use of prescription drugs if lawfully prescribed by a licensed practitioner with documentation as proof. A reference to the Board's Uniform Standards was added. In V1, references to abstaining for marijuana were added, but in V2 the references were removed due to the legalization of marijuana for medicinal uses.

#13 Coursework (Pg. 16):

In V1, this renumbered optional condition has been re-written. It removes the requirement that coursework be at the graduate level, and the coursework area and number of units are no longer specified. Instead, it is stated that the coursework must be substantially related to the violation(s) and that the course content and hours are set by the Board. Further, instead of requiring the coursework be completed within the first three years of probation, respondent is now required to complete the required coursework within the first year of probation, which accommodates probation terms shorter than three years.

#14 Community Service (Pgs. 16-17):

In V1, this renumbered optional condition has been amended to detail how the Board may require a licensee to complete community service as a condition of probation and how the Board may consider various forms of service. It also requires the licensee to submit to the Board details about the program within 60 days and submit documentation of the service hours on a quarterly basis. Finally, the licensee is required to complete the service six months prior to the end of his or her probation.

#15 Supervised Practice (Pgs. 17-18):

In V1, this new optional condition allows the Board to impose supervised practice on licensees under the direction of a supervisor who is another licensed acupuncturist approved by the Board. The qualifications for the supervisor match up with the qualifications required in the Practice/Billing Monitor condition. It does provide that if a licensed acupuncturist cannot be secured, then another supervisor in another field of practice may be submitted for approval. The condition sets out requirements for the supervisor and imposes various reporting requirements, and would be used in cases of

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sexual misconduct, incompetency and any other violation which would suggest respondent and the public would benefit from it.

#16 Obey All Laws (Pg. 19):

In V1, this standard condition has been renumbered to #16 and was amended to indicate all applicable laws must be obeyed. V2 adds in the requirement that respondent must be in full compliance with any court orders or probation terms.

#17 Quarterly Reports (Pg. 19):

In V1, this renumbered standard condition has been amended to allow the Board to extend probation if the final report is not submitted on time. This allows the Board continuing jurisdiction if not all matters of probation have been met.

#18 Monitoring Program (Pg. 19-20):

In V1, this renumbered standard condition has been amended with terms that reflect current Enforcement terminology. In V2, language was added directing respondent to have no contact with witnesses or persons who have rendered expert opinions on behalf of the Board in a probation case. The term "surveillance" has been removed from the condition as it was not descriptive of the condition.

#19 Interview with the Board or Its Designee (Pg. 20):

In V1, this standard condition has been renumbered to #19. V2 adds language allowing the Board to request interviews with or without prior notice throughout the term of probation.

#20 Changes of Employment (Pg. 20):

In V1, this renumbered standard condition has been amended to provide clarity and update terminology to the standard use of "probation monitor."

#21 Tolling for Out-of-State Practice or Residence (Pgs. 20):

In V1, this renumbered standard condition has been amended to require a licensee to report to the Board when vacationing out of state longer than 30 days, further defining how long a respondent would have to be residing out of state for it to qualify for his or her probation to be tolled. Language was also added to specify that ordered suspension or non-practice in compliance with another condition of probation shall not be tolled.

#22 Employment and Supervision of Trainees (Pg. 20):

In V1, this renumbered standard condition has been amended with a prohibition on a licensee teaching at any Board approved training program.

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#23 Cost Recovery (Pg. 20-21):

In V1, this renumbered standard condition has been amended to allow for a licensee to submit a payment plan to the Board, also allowing for probationary time to be extended in order to fulfill the probationary order at respondent's request. Further, it states that cost recovery can no longer be tolled and the filing of bankruptcy does not relieve respondent from his or her responsibility to pay the ordered costs.

#24 Violation of Probation (Pg. 21):

In V1, this renumbered standard condition was amended to allow the Board to continue monitoring a licensee's probation if any terms or conditions have not been met or probation terms are violated.

#25 Probation Monitoring Costs (Pg. 21):

In V1, this new standard condition was added to require that a licensee shall pay any costs associated with probation monitoring as designated by the Board, and that the costs may be adjusted by the Board on an annual basis.

#26 License Surrender (Pg. 21):

In V1, this new standard condition allows a licensee to surrender his or her license to the Board if certain criteria are met, and the Board may evaluate and take action on the request. It also states that the licensee will not be subject to probation once a surrender is made, but that the licensee's disciplinary history will reflect the surrender. V2 removed the clause in V1 that a respondent may not petition the Board for reinstatement.

#27 Severability Clause (Pg. 22):

In V1, this new standard condition was added specifying that each condition of probation is a separate and distinct condition, and that if one condition becomes unenforceable the rest still apply.

#28 Notification of Name, Address, Telephone Number or Email Address Changes (Pg. 22):

In V1, this new standard condition was added to require that a licensee submit any changes to their name, address, phone number or email address to the Board within 10 days.

#29 Maintenance of Valid License (Pgs. 22):

In V1, this new standard condition requires that a respondent maintain an active and current license with the Board during the time he or she is on probation. It also requires



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that a respondent granted an initial license complete the licensure process within two years from the effective decision date. The condition also states that if respondent's license does expire, all probationary conditions shall be complied with that were not previously satisfied.

#30 Completion of Probation (Pg. 22):

In V1, this standard condition was renumbered from #22 to #30.

Penalty Guidelines (Pg. 23):

V1 amended this section with removal of a note that referred to the Guidelines only providing examples of violations for illustrative purposes since the new Guidelines have the penalty guidelines structured by section number. In addition, a reference specific to providing information regarding offenses under the Acupuncture Licensure Act (ALA) has been removed since general provisions of the Business and Professions Code (BPC) are now being added. Therefore, the range of offenses are not just specific to the ALA.

Recommended Action by Violation of General California Business and Professions Code Provisions (Pg. 24):

This new section added in V1 provides a list of commonly used or violated BPC Sections (outside of the ALA) which a licensee may violate and includes the recommended minimum and maximum penalties. These new sections include:

1. BPC Section 651, Advertising
2. BPC Section 726, Commission of Act of Sexual Abuse or Misconduct with Patient

Recommended Action by Violation of Acupuncture Licensure Act (Pgs. 25-31):

As part of V1, this section has been amended and reformatted. The previous system of listing violations with the corresponding penalty (i.e. "resulting in substantial harm to patients" or "convictions of a crime of violence...") has been deleted. Staff found that formatting the penalties by the use of violation examples was more limiting and confusing. Instead, the violations have been grouped and titled by their specific ALA statute (i.e. Unprofessional Conduct, Fraud, etc) with each specific violation listed. The minimum and maximum penalties for each violation available to the Board are listed below the statute, giving users more flexibility in assessing discipline.

Further, as part of V1, the revised Guidelines are proposing a minimum probation term of three (3) years instead of the previous five (5) years' probation minimum penalty. This change is based upon standards within Enforcement among the Department and a precedence set by decisions being adopted currently by the Board. There are only two exceptions within the Act that propose a lower minimum penalty of two (2) years: 4955

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(c), False or Misleading Advertising and 4955.1(e), Failing to Maintain Adequate and Accurate Records. A lower penalty is being recommended for these two less egregious statute violations.

1. Violation: Unprofessional Conduct:

The following violations, not previously addressed in the 1996 Guidelines, were added:

- Failing to Follow Infection Control Guidelines
- The Use of Threats or Harassment Against a Licensee/Patient
- Disciplinary Action Taken by Any Public Agency
- Action or Conduct that Warrants a Denial of License
- Violation of Any Law or Local Ordinance on Business Premises

Existing violations which have been changed; staff added/updated standard terms and conditions and applicable optional terms and conditions to each:

- Using or Possessing Any Controlled Substance – added reference to Board’s ‘Uniform Standards for Substance-Abusing Licensees’ document.
- Conviction of Crime – this violation has been renamed, a reference to BPC§ 4956 has been added, and a note about the only applicable penalty standard for cases involving registered sex offenders has also been added.
- False or Misleading Advertising – this violation has been renamed.
- Aiding or Abetting or Violating Terms of this Chapter or Any Board Regulation
  - this violation has been renamed and no longer strictly ties the section to only the aiding and abetting of unlicensed practice.

2. Violation: Fraud:

The following violation was added:

- Failing to Maintain Adequate and Accurate Records (repeated acts).

Existing violations which have been changed; staff added standard terms and conditions and applicable optional terms and conditions to each:

- Securing a License by Fraud or Deceit
- Any Act involving Fraud, Dishonesty or Corruption as an Acupuncturist
  - this violation has been renamed from “Committing a Fraudulent or Dishonest Act as an Acupuncturist Resulting in Injury to Another”

3. Violation: Negligence:

Existing violations which have been changed; added standard terms and conditions and applicable optional terms and conditions to each:

- Gross Negligence
- Repeated Negligent Acts
- Incompetence

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Accusations (Pg. 32):

This section has been amended in V1 with the correct statutory authority within the ALA to recover costs.

Statements of Issues (Pg. 32):

In V2, a reference to BPC § 480 was added.

Language for Probation Orders (Pg. 33):

As part of V1, this new section adds recommended language for interested parties in writing probation orders for licensees, applicants and those who are granted reinstatements. The language used is commonly found in the Board's past probation orders and is provided to assure clarity and uniformity for users.

Recommended Language for Cost Recovery for Surrenders (Pg. 34):

This new section added as part of V1 sets out recommended language for cost recovery when ordered in Decisions that result in license surrenders. This language used is commonly found in the Board's past cost recovery orders and is provided to assure clarity and uniformity.

Demonstrations of Rehabilitation (Pgs. 35-36):

In V1, this new section sets out different criteria which the Board may consider when determining a denial of license, suspension or revocation is more appropriate. This gives the Board examples of evidence and factors to consider when a respondent is trying to demonstrate rehabilitation.

Evidence of Mitigation (Pg. 37):

In V1, this new section was added to provide guidance for licensees as to how they may present evidence to demonstrate rehabilitation and recovery.

Evidence of Aggravation (Pg. 38):

In V1, this new section was added to assist Administrative Law Judges with examples of aggravating circumstances which may be considered in their proposed decisions. This provides more consistency in making decisions among similar cases.

Proposed Decisions (Pg. 39):

In V1, this section was amended with new numbering used from the terms and conditions. V2 adds a reference to the applicable Governmental Code section.

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Reinstatement / Penalty Relief Hearings (Pgs. 40-41):

In V1, this section has been amended with minor changes to the language for clarity. In V2, the sentence referring to the prohibition of retrying facts of the original case was added to give a clear understanding the purpose of a petition hearing.

Index of Violations (Pgs. 42):

In V1, an index was added to refer readers to specific violations listed within the disciplinary guidelines. V2 adds a reference to the applicable Governmental Code section.

**Proposed 'Uniform Standards Related to Substance Abusing Licensees June 2018' (Attachment C):**

As the Board is proposing to include the Standards document by reference into the existing approved Disciplinary Guidelines rulemaking package, the text in the Standards document is double-underlined. Each of the Board's Uniform Standards within the document is taken verbatim from the SACC's Uniform Standards handbook, which is included for reference as an 'Attachment D' (but will not be incorporated by reference into the Board's proposed 1399.469 text). The Board is proposing to implement the SACC Uniform Standards 1-12 and 16; Uniform Standards 13-15 only apply to Boards with a diversion program, which the Acupuncture Board does not have.

A short introduction is provided to refer to the BPC §315, and an explanation is provided as to how an individual shall be presumed to be a substance abusing licensee if the evidence establishes as such.

Uniform Standard #1: Clinical Diagnostic Evaluation (Pgs. 2-3):

This standard addresses specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee. It requires all evaluations be conducted in accordance with acceptable professional standards, and sets out what the evaluation report must contain. Finally, the standard details how the evaluator may not have a relationship with the licensee and that the Board must be notified within 24 hours if the licensee is a threat to themselves or others.

Uniform Standard #2: Removal from Practice Pending Clinical Diagnostic Evaluation (Pg. 3):

This standard addresses specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation and any treatment recommended by the evaluator and approved by the

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board. It also lists specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

Uniform Standard #3. Board Communication with Probationer's Employer (Pg.4):

This standard sets out specific requirements that govern the ability of the Board to communicate with the licensee's employer about the licensee's status or condition.

Uniform Standard #4. Drug Testing (Pgs. 4-7):

This standard governs all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test. The section also details how the Board will collect and report historical and post implementation data to DCA and the Legislature relating to the drug testing standards. This is for the purpose of measuring outcomes and effectiveness.

Uniform Standard #5. Participating in Group Support Meetings (Pgs. 7-8):

This standard sets out requirements governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

Uniform Standard #6. Determining What Treatment is Necessary (Pg.8):

This standard determines whether inpatient, outpatient, or other type of treatment is necessary. While this standard would not be necessary in a disciplinary order or decision, it is included as part of implementation of the SACC's Uniform Standards.

Uniform Standard #7. Work Site Monitor Requirements (Pgs. 8-10):

This standard sets out various worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors. It sets out what the written report submitted by the monitor must contain, and how a licensee must sign a consent form allowing the monitor to communicate with the Board.

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Uniform Standard #8. Procedure for Positive Testing (Pg. 10):

Sets forth procedures to be followed when a licensee tests positive for a banned substance. While this standard would not be necessary in a disciplinary order or decision, it is included as part of implementation of the SACC's Uniform Standards.

Uniform Standard #9. Procedures for a Confirmed Ingested Banned Substance (Pg. 10):

When the Board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

Uniform Standard #10. Major and Minor Violations & Consequences (Pg. 11):

This standard addresses what a major violation would include, such as failure to undergo a board-ordered program, drug and alcohol violations and other major violations. It lists the consequences for a major violation. Additionally, the standard lists minor violations and the consequences for doing so. While this term would not be necessary in a disciplinary order or decision, it is included as part of implementation of the SACC's Uniform Standards.

Uniform Standard #11. Petition for Return to Practice (Pg. 12):

This standard addresses the criteria that a licensee must meet in order to informally petition for return to practice on a full time basis.

Uniform Standard #12. Petitions for reinstatement (Pg.12):

This standard sets out criteria that a licensee must meet in order to informally petition for reinstatement of a full and unrestricted license.

Uniform Standard #16. Criteria and Standards to determine a Board's method in dealing with substance abusing licensees (Pgs. 12-13):

This standard sets out criteria and standards to determine whether each board's method of dealing substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term. While this standard would not be necessary in a disciplinary order or decision, it is included as part of implementation of the SACC's Uniform Standards.

Language to be included in all Stipulations and Proposed Decisions when it has been determined case fits criteria for a substance-abusing licensee (Pgs 13-21):

In order to ensure that stipulated settlements and proposed decisions submitted to the Board do not deviate in any way from the SACC's Uniform Standards, this proposed

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section sets out language which must be included in any proposed settlement or decision involving a respondent who has been designated a substance abusing licensee. It is necessary that probationary conditions be developed from each of the Uniform Standards to lay out the framework of how the standard is implemented in a Decision and Order. All of the six conditions further expand the mechanics of how each standard is applied to a substance-abusing licensee on probation. It provides deadlines for the respondent, criteria for the Board to approve, and details out how each standard works as a condition of probation.

#23

Acupuncture Board  
Disciplinary Guidelines  
(Rev. June 2018)



~~Department of Consumer Affairs~~

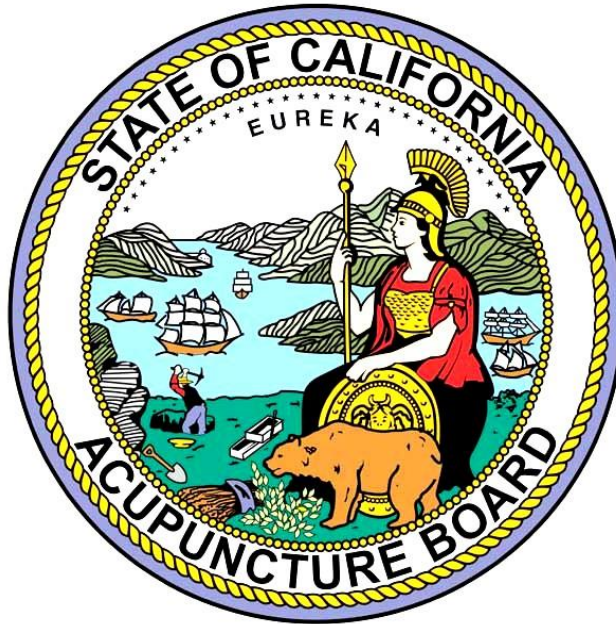
~~Medical Board of California~~

~~ACUPUNCTURE COMMITTEE~~

~~DISCIPLINARY  
GUIDELINES~~

~~1996~~

# Acupuncture Board



## Disciplinary Guidelines

Revised December 2016-June 2018

CHANGES APPROVED BY THE BOARD AT THE FEBRUARY 24, 2017 PUBLIC MEETING ARE UNDERLINED TO DENOTE NEW TEXT AND ~~STRIKETHROUGH~~ TO DENOTE REMOVED TEXT.

NEW CHANGES PROPOSED ARE DOUBLE UNDERLINED TO DENOTE NEW TEXT AND ~~DOUBLE STRIKETHROUGH~~ TO DENOTE REMOVED TEXT.

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at [www.acupuncture.ca.gov](http://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 (Revised June 2018)" for disciplinary orders and conditions of probation for violations of the Acupuncture Licensure Act.

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

This document, designed for use by attorneys, administrative law judges, acupuncturists, others involved in the disciplinary process, and ultimately the Board, 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. 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, and

2. Standard Conditions are those conditions of probation which should be used in all cases.

3. Special Conditions and specific penalty guidelines shall be adhered to in the following cases:

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee pursuant to Title 16, California Code of Regulations section 1399.469, subdivision (b), then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016-June 2018)", shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations section 1399.469.1, if an individual is required to register as a sex offender pursuant to section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law,

the Board shall do the following: (1) Deny an application by the individual for licensure; (2) Revoke the license of the individual and shall not stay the revocation nor place their license on probation; or (3) Deny any petition to reinstate or reissue the individual's license.

If there are deviations or omissions from the Guidelines in formulating a Proposed Decision, the Board always requests that the Administrative Law Judge hearing the case will 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.

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

## General Considerations

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following factors should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. Respondent's ability or inability to convey remorse for his or her unprofessional conduct and whether Respondent accepts or does not accept responsibility for the actions which are resulting in the imposition of discipline on Respondent's license.
9. Evidence that Respondent was dishonest, untruthful, or engaged in corruption during the pendency of the Board's proceedings.
- ~~8-10.~~ In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
- ~~9-11.~~ Overall criminal record.
- ~~10-12.~~ Time passed since the act(s) or offense(s) occurred.
- ~~11-13.~~ If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.

## Terms and Conditions

Terms and conditions of probation are divided into ~~two~~ three categories. The first category consists of **optional terms and conditions** that may be appropriate as demonstrated in the Penalty Guidelines depending on the nature and circumstances of each particular case. The second category consists of the **standard terms and conditions** which must appear in all proposed Decisions and proposed stipulated settlements. The third category consists of **special conditions** that call for specific penalty guidelines in the following cases:

a. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee pursuant to Title 16, Code of Regulations section 1399.469, subdivision (b), then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (~~September 2016~~ June 2018)", shall be used in any probationary order of the Board affecting that licensee.

b. As provided in California Code of Regulations section 1399.469.1, if an individual is required to register as a sex offender pursuant to section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Board shall do the following: (1) Deny an application by the individual for licensure; (2) Revoke the license of the individual and shall not stay the revocation nor place the licensee on probation; or (3) Deny any petition to reinstate or reissue the individual's license.

To enhance the clarity of a proposed Decision or stipulation, the AC Board requests that all optional conditions that are being imposed be listed first in sequence followed immediately by all of the standard terms and conditions.

# Optional Terms and Conditions

- |  |   |
|--|---|
| <u>1</u> <u>Actual Suspension</u>                                      | <u>9</u> <u>Restitution</u>   |
| <u>2</u> <u>Psychological Evaluation</u>                               | <u>10</u> <u>Alcohol and Drug Abuse Treatment Program</u>   |
| <u>3</u> <u>Physical Examination</u>                                   | <u>11</u> <u>Attend Chemical Dependency Support and Recovery Groups</u>                               |
| <u>4</u> <u>Practice/Billing Monitor</u>                               | <u>12</u> <u>Abstain from Drugs, <del>Marijuana</del> and Alcohol and Submit to Tests and Samples</u> |
| <u>5</u> <u>Psychotherapy</u>  | <u>13</u> <u>Coursework</u>   |
| <u>6</u> <u>Restrictions on Patient Population or Practice Setting</u> | <u>14</u> <u>Community Service</u>  |
| <u>7</u> <u>Restrictions on Practice Techniques and Modalities</u>     | <u>15</u> <u>Supervised Practice</u>  |
| <u>8</u> <u>Examination(s)</u>   |   |

Listed below are optional conditions of probation which the AC 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 AC Board depending on the unique aspects of an individual case.

## 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.

## 2. **Psychological Evaluation**

Within 90 days of the effective date of this Decision and on a periodic basis thereafter as may be required by the AC Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by an AC Board appointed California licensed psychologist. The AC Board or its designee shall receive a diagnosis based on currently accepted standards, such as the Diagnostic and Statistical Manual of Mental Disorders, 5<sup>th</sup> Edition (DSM-5)-III-R diagnosis and a written report regarding the respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the AC Board or its designee deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the AC Board. 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 AG Board or its designee. If the AG Board or its designee concludes from the results of the evaluation that Respondent would benefit from ongoing psychotherapy, Respondent shall comply with the AG's Board's directives in that regard. If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by Respondent.

Note: If supervised practice is not part of the order, and the evaluator finds the need for supervised practice, then the following term 15, Supervised Practice, shall be added to the disciplinary order. If a psychological or psychiatric evaluation indicates a need for supervised practice, (within 30 days of notification by the Board), Respondent shall submit to the Board or its designee, for its prior approval, the name and qualification of one or more proposed supervisors and a plan by each supervisor by which the Respondent's practice will be supervised.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

***NOTE:*** *Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the respondent or where there has been a history of abuse ~~of~~ or dependency ~~on~~ of alcohol or controlled substances. When appropriate, Respondent shall be barred from rendering acupuncture services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the AG Board has accepted and approved the evaluation. The Board requires that therapists have appropriate knowledge, training and experience in the area involved in the violation*

### **3. Physical Examination**

Within 90 days of the effective date of this Decision, Respondent shall undergo a physical examination by a licensed physician and surgeon approved by the AG Board or its designee. Respondent shall bear all costs of such an examination. Failure to pay costs will be considered a violation of the probation order. The AG Board shall receive the physician's report which shall provide an assessment of Respondent's physical condition and capability to safely provide acupuncture services. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician providing written progress reports to the AG Board or its designee on a quarterly basis or as otherwise determined by the AG Board or its designee.

It shall be the respondent's responsibility to assure that the required progress reports are filed in a timely manner.

***NOTE:*** *This condition permits the AG Board to require the probationer to obtain*

*appropriate treatment for physical problems/disabilities which could affect safe practice of acupuncture. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.*

#### **4. Practice/Billing Monitor**

~~Within 90 days of the effective date of this decision, Respondent shall submit to the AC for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice monitor. Once approved, the monitor shall submit to the AC a plan by which Respondent's practice shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the Respondent. The monitor shall submit written reports to the AC on a quarterly basis verifying that monitoring has taken place and providing an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely fashion. The Respondent shall provide access to the monitor of Respondent's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with Respondent. Respondent shall execute a release authorizing the monitor to divulge any information that the AC may request.~~

~~If the monitor quits or is otherwise no longer available, Respondent shall not practice until a new monitor has been approved by the AC. All costs of monitoring shall be borne by the Respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.~~

Within 90 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a \_\_\_\_\_ (i.e., practice, billing, or practice and billing) monitor(s), the name and qualifications of one or more licensed acupuncturists whose license is clear and active, in good standing and not disciplined by the Board. Prior to the Board's approval, Respondent shall provide a copy of the Board's Accusation and Decision to the monitor(s). A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board or its designee, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs. The Board in its sole discretion shall have the option of rejecting the proposed monitor(s) for any reason and Respondent shall work to provide an alternative monitor(s) as set forth above.

Upon approval of the monitor(s), the Board or its designee shall provide a monitoring plan. Within 15 days of receipt of the monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed

statement.

Within 120 days of the effective date of this Decision, and continuing through probation, Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

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

If the monitor resigns or is no longer available, Respondent shall, within five days of such resignation or unavailability notify the Board. Within 30 days, Respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor. Upon approval, the monitor shall assume immediate responsibility. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, after notification by the Board, Respondent shall be suspended from the practice of acupuncture until a replacement monitor is approved and prepared to assume immediate monitoring responsibility.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above, is a violation of probation.

***NOTE:*** *Monitoring shall be utilized when Respondent's ability to function independently is in doubt, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment.*

## **5. Psychotherapy**

Respondent shall participate in ongoing psychotherapy with a California licensed mental health professional who has been approved by the Board or its designee. Within 15 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for its prior approval the name and qualifications of one or more therapists of Respondent's choice. Such therapist shall possess a valid

California license to practice and shall have had no prior business, professional, or personal relationship with Respondent. Counseling shall be at least once a week unless otherwise determined by the Board or its designee. Respondent shall continue in such therapy at the Board's or its designee's discretion. Cost of such therapy is to be borne by the respondent.

Respondent shall provide the therapist with a copy of the Board's Decision no later than the first counseling session. Upon approval by the Board, Respondent shall undergo and continue treatment until the Board or its designee determines that no further psychotherapy is necessary.

Respondent shall take all necessary steps to ensure that the treating psychotherapist 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 psychotherapist finds that Respondent cannot practice safely or independently, the psychotherapist 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.***

#### **6.5. Restrictions of on Patient Population or Practice Setting**

Respondent's practice shall be restricted to [specify patient population and/or setting] for the first \_\_\_\_\_ years of probation. Within 60 days from the effective date of the Decision, Respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof, satisfactory to the Board, of compliance with this term of probation.

***NOTE: The restrictions shall be appropriate to the violation. This condition shall be***

included in cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the respondent. The condition shall also be used in cases where public protection is achieved by Respondent having a specified practice setting (e.g. no solo practice, third party chaperone, etc.). language appropriate to the case may be developed to restrict such a population. The language would vary greatly by case.

## **7. Restrictions on Practice Techniques and Modalities**

Respondent's practice shall be ~~limited to~~ prohibited from providing \_\_\_\_\_ [insert treatment modalities]. Within 30 days from the effective date of the Decision, Respondent shall submit to the Board or its designee, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board or its designee of compliance with this term of probation. Respondent shall notify ~~their supervisor~~ all present and future employers of the restrictions imposed on their practice.

**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.)

## **8.6. Examination(s)**

Respondent shall take and pass the ~~written and/or clinical~~ licensing examination(s) prior to the termination of probation. licensure exam(s) currently required of new applicants for the license possessed by Respondent. Respondent shall not practice acupuncture until such time as Respondent has taken and passed these examinations. 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 15 months from the effective date of this Decision, Respondent shall be considered to be in violation of probation.

**NOTE:** In cases involving evidence of *severe* deficiencies in the body of knowledge required to be minimally competent to practice independently, it may be appropriate to require the respondent to pass ~~both the written and clinical~~ the examination(s) during the course within the first 15 months of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).

## **9.7. Restitution**

Within 90 days of the effective date of this Decision, Respondent shall provide

proof to the AC Board or its designee of restitution in the amount of \$\_\_\_\_\_ paid to \_\_\_\_\_.

**NOTE:** *In offenses involving breach of contract, restitution is an appropriate term of probation. The amount of restitution shall be the amount of actual damages sustained as a result of breach of contract. Evidence relating to the amount of restitution would have to be introduced at the administrative hearing.*

### **10.8 Alcohol and Drug Abuse Treatment Program**

Effective 30 days from the date of this Decision, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program (a minimum of ~~six (6)~~ three months duration) or an equivalent program as approved by the AC Board or its designee. The Board may consider accept a recovery program taken under court order within the last three years prior to the effective date of the Decision. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. ~~Subsequent to the program, Respondent shall submit proof of completion of the recovery program to the Board or its designee within 15 days of its conclusion. participate in on-going treatment such as receiving individual and/or group therapy from a psychologist trained in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved by the AC at least three times a week during the first year of probation; and/or other substance abuse recovery programs approved by the AC. Respondent shall pay all costs of treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the equivalent as approved by the AC. The psychologist shall confirm that Respondent has complied with the requirements of this Decision and shall notify the AC immediately if he or she believes the Respondent cannot safely render acupuncture services. Respondent shall execute a release authorizing the psychologist to divulge the aforementioned information to the AC.~~

**NOTE:** *Alcohol and other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by Respondent has impaired Respondent's ability to safely provide acupuncture services to patients. This condition must be accompanied by conditions # 911 and 12. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (June 2018)", shall be used in any probationary order of the Board affecting that licensee.*

### **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.~~

**11. Attend Chemical Dependency Support and Recovery Groups**

Within 30 days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Frequency and duration shall be determined by the Board or its designee.

**NOTE:** If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (June 2018)", shall be used in any probationary order of the Board affecting that licensee.

**12.9. Abstain from Drugs, ~~Marijuana~~ and Alcohol and Submit to Tests and Samples**

~~Respondent shall abstain completely abstain from the personal use or possession or use of alcohol, marijuana and controlled substances, as defined in the California Uniform Controlled Substances Act (Division 10, commencing with Section 11000, Health and Safety Code) and dangerous drugs as defined in section 4244 4022 of the Business and Professions Code, or any drugs requiring a prescription and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Respondent shall abstain completely from the use of alcoholic beverages.~~

Upon request of the Board or its designee, Respondent shall provide documentation from the licensed practitioner that the prescription or referral for the drug was legitimately issued and is a necessary part of the medical treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any possession or use of alcohol, marijuana, 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 with a mechanism through which to require*

*additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016-June 2018)", shall be used in any probationary order of the Board affecting that licensee.*

### **13.11. 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 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 plan prior to enrollment in any course of study.

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

### **14.12. Community Service**

Within 60 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, a community service program in which Respondent shall provide volunteer services on a regular basis to a community or charitable facility or agency for at least \_\_\_\_\_ hours per month for the first \_\_\_\_\_ months of probation. Such community service does not necessarily include acupuncture service. Respondent shall ensure that the Board receives



documentation and/or certification of community service hours by the facility or agency on a quarterly basis. ~~Failure to complete the community service as set out hereinabove is grounds for filing a petition to revoke probation.~~

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.~~*

## **15. Supervised Practice**

During the period of probation, when Respondent conducts evaluations and treatments on \_\_\_\_\_ (specific population of patients), such evaluations and treatments shall be performed only under the supervision and direct observation of a 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 treatments provided to all \_\_\_\_\_ (specific population of patients).

The supervisor shall be a current California licensed acupuncturist, who shall submit written reports to the Board or its designee on a quarterly basis verifying that supervision has taken place as required and including an evaluation of Respondent's performance. ~~Failure to cause the direct supervisor to submit timely acknowledgements to the Board or its designee shall be considered a violation of probation.~~ The supervisor shall be independent, with no prior business, professional or personal relationship with Respondent. If Respondent is unable to secure a supervisor in his or her field of practice due to the unavailability of licensed acupuncturists in the area, then the Board or its designee may consider permitting Respondent to secure a supervisor not in the respondent's field of practice. The Board or its designee may require that Respondent provide written documentation of his or her good faith attempts to secure face-to-face supervision or to locate another licensed acupuncturist.

Within 30 days of the effective date of this Decision, Respondent shall have his or her supervisor submit notification to the Board or its designee in writing stating that the supervisor ~~have~~ has read the Decision in case number \_\_\_\_\_ and is familiar with the required level of supervision as determined by the Board or its designee. It shall be the respondent's responsibility to ensure that his or her

supervisor submit timely acknowledgement(s) to the Board or its designee. If Respondent changes employment, it shall be the respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board or its designee. Respondent shall have his or her new supervisor, within 15 days after employment commences, submit notification to the Board or its designee in writing stating the direct supervisor has read the Decision and is familiar with the level of supervision as determined by the Board or its designee. Respondent shall not practice acupuncture and his or her license shall be automatically suspended until the Board or its designee approves a new supervisor. Failure to cause the direct supervisor to submit timely acknowledgements to the Board or its designee shall be considered a violation of probation. Within 10 days of leaving employment, Respondent shall notify the Board or its designee in writing.

# Standard Terms and Conditions

(To be included in all Decisions)

<u>16</u>	<u>Obey All Laws</u>	<u>24</u>	<u>Violation of Probation</u>
<u>17</u>	<u>Quarterly Reports</u>	<u>25</u>	<u>Probation Monitoring Costs</u>
<u>18</u>	<u>Surveillance Monitoring Program</u>	<u>26</u>	<u>License Surrender</u>
<u>19</u>	<u>Interview with the Board or Its Designee</u>	<u>27</u>	<u>Severability Clause</u>
<u>20</u>	<u>Changes of Employment</u>	<u>28</u>	<u>Notification of Name, Address, Telephone Number or E-mail Address Changes</u>
<u>21</u>	<u>Tolling for Out-of-State Practice or Residence</u>	<u>29</u>	<u>Maintenance of Clear and Active License</u>
<u>22</u>	<u>Employment and Supervision of Trainees</u>	<u>30</u>	<u>Completion of Probation</u>
<u>23</u>	<u>Cost Recovery</u>		

## **16. 13 Obey All Laws**

Respondent shall obey all ~~federal, state and local~~ 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

## **17. 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.

## **18.15 ~~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 monitor ~~surveillance monitor~~ regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) victims, witnesses, and/or complainants associated with the case; (2) Board members and/or members of its staff; (3) persons serving the 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 unless the respondent obtains prior approval from his or her assigned Board probation monitor to allow for contact.

#### **19.16 Interview with the AC Board or Its Designee**

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

#### **20.17 Changes of Employment**

Respondent shall notify the AC Board in writing, through the assigned probation monitor surveillance compliance officer of any and all changes of employment, location and employment address within 30 days of such change.

#### **21.18 Tolling for Out-of-State Practice or Residence**

In the event Respondent should leave California to reside, to vacation exceeding 30 days, or to practice outside the State, Respondent must notify the AC Board or its designee immediately in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be tolled. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled.

#### **22.19 Employment and Supervision of Trainees**

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisory relationship in existence on the effective date of this probation. Respondent shall not teach at any Board approved training program during the course of this probation.

#### **23. 20 Cost Recovery**

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

At Respondent's request, if Respondent has not complied with this condition during

the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board or its designee, in its discretion, may grant an extension of Respondent's probation period up to two years without further hearing in order to comply with this condition. During the two years extension, all original conditions of probation will apply. The filing of bankruptcy by Respondent shall not relieve Respondent of his/her responsibility to reimburse the Board for its investigation and prosecution costs.

#### **24.21 Violation of Probation**

If Respondent violates probation in any respect, the 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.

#### **25. Probation Monitoring Costs**

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

#### **26. License Surrender**

Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of his or her license or registration. The Board or its designee reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 days, deliver Respondent's pocket and/or wall certificate to the Board or its designee and Respondent shall no longer practice acupuncture. Upon formal acceptance of the tendered license, Respondent will no longer be subject to the terms and conditions of probation.

Voluntary surrender of Respondent's license shall be considered to be disciplinary action and shall become a part of Respondent's license history with the Board. Respondent may not petition the Board for reinstatement of the surrendered license. If Respondent reapplies for an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked or surrendered license.

## **27. Severability Clause**

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

## **28. Notification of Name, Address, Telephone Number or E-mail Address Changes**

Respondent shall notify the assigned probation monitor, in writing within 10 days, of any and all name, address, telephone and/or e-mail address changes.

## **29. Maintenance of Clear and Active License**

Respondent shall, at all times, maintain a clear and active current license with the Board, including any period of suspension or tolled probation.

If an initial license must be issued (Statement of Issues) or a license is reinstated, probation shall not commence until a license is issued by the Board. Respondent must complete the licensure process within two years from the effective date of the Board's Decision.

Should Respondent's license expire, by operation of law or otherwise, upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of this probation not previously satisfied.

***NOTE: If Respondent violates this term and a petition to revoke probation is filed that results in a default revocation, any outstanding cost recovery shall be ordered to be paid by the effective Decision date.***

## **30. 22 Completion of Probation**

Upon successful completion of probation, Respondent's license will be fully restored.

## **Penalty Guidelines**

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

If there are deviations or omissions from the Guidelines in formulating a Proposed Decision, the AC 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 AC Board during its review and consideration of the Proposed Decision for final action.

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

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

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

Note: Under conditions of probation you will find the applicable numbered conditions to include in a Decision and Order.

# Recommended Action by Violation of General California Business and Professions Code Provisions

## Section 651 Advertising

- Maximum Penalty: *Revocation stayed, 3 years probation*
- Minimum Penalty: *Revocation stayed, 1 year probation*
  1. Standard Terms and Conditions (#16 – #30)
  2. Optional Conditions (#13, 14)

## 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' probation*
  3. Standard Terms and Conditions (#16 – #30)
  4. Optional Conditions (#1, #2, #5, #6, #13, #15)



# 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 [4], 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 4955(a) Using or possessing any controlled substance, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that such use impairs his or her ability to engage in the practice of acupuncture with safety to the public.**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 30 days suspension, with 3 years' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #10, #11, #12, #13)
3. Special Condition: If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (September 2016 June 2018)", shall be used in any probationary order of the Board affecting that licensee. The probation terms contained in the "Uniform Standards Related to Substance-Abusing Licensees shall replace optional conditions # 10, #11, and #12.

### **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' probation

1. All Standard Terms and Conditions (#16 – #30)

2. Optional Conditions (#1, #9, #13, #14)

3. Special Condition: If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees (~~September 2016~~ June 2018)", shall be used in any probationary order of the Board affecting that licensee. The probation terms contained in the "Uniform Standards Related to Substance-Abusing Licensees shall replace optional conditions # 10, #11, and #12.

NOTE: If an individual is required to register as a sex offender pursuant to section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the only penalty mandated by law is revocation or denial of license. Section 4955 (b) is in conjunction with section 4956.

### **Section 4955 (c) False or Misleading Advertising**

Repeated infraction of statute regarding advertising.

- Maximum Penalty:       Revocation, stayed, 3 years' probation
- Minimum Penalty:       Revocation, stayed, 1 year probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#13, #14)

### **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' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Condition (#13)

### **Section 4955 (e) Failing to Follow Infection Control Guidelines**

- Maximum Penalty:       Revocation or denial of license
- Minimum Penalty:       Revocation, stayed with 3 years' probation, depending on nature and severity of violation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#4, #13)

**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. All Standard Terms and Conditions (#16 – #30)
  2. Optional Condition (#13)

**Section 4955 (h) Disciplinary Action Taken by Any Public Agency**

- Maximum Penalty: Revocation or denial of license
  - Minimum Penalty: Revocation, stayed with 3 years' probation
1. All Standard Terms and Conditions (#16 – #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' probation
1. Standard Terms and Conditions (#16 – #30)
  2. Optional Condition (#13)

**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' probation
1. All Standard Terms and Conditions (#16 – #30)
  2. Optional Conditions (#13, #14)

**Violation: Fraud**

**Section 4955.1 (a) Securing a License by Fraud or Deceit**

Revocation is the only suitable penalty inasmuch as the license would not have been issued but for the fraud or deception. If the fraud is substantiated prior to issuance of the license or registration, then denial of the application is the only suitable penalty.

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 3 years' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#8, #13)

**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' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #2, #4, #9, #13, #14)

**Section 4955.1 (e) Failing to Maintain Adequate and Accurate Records (repeated acts)**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed with 2 years' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#4, #13)

**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' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #4, #6, #7, #13)

**Section 4955.2 (b) Repeated Negligent Acts**

- Maximum Penalty: Revocation or denial of license
- Minimum Penalty: Revocation, stayed, 90 days suspension with 3 years' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #4, #6, #7, #13)

**Section 4955.2 (c) Incompetence**

- Maximum Penalty: Revocation or denial of license

- Minimum Penalty: \_\_\_\_\_ Revocation, stayed, 90 days suspension with 3 years' probation

1. All Standard Terms and Conditions (#16 – #30)
2. Optional Conditions (#1, #4, #6, #7, #8, #13)

## **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 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.

## **Demonstration of Rehabilitation**

When the Board receives information that an applicant or licensee has a criminal conviction, there is a set of criteria the Board considers when determining a denial of license or revocation, or suspension of license is appropriate.

- In evaluating the rehabilitation of an applicant/licensee and to determine if action is necessary, the Board considers the following:
  1. The nature and severity of the crime(s) under consideration.
  2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license.
  3. The time that has elapsed since the commission of the crime(s).
  4. The extent to which the applicant/licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant/licensee.
  5. Evidence, if any, of rehabilitation by the applicant/licensee.
  
- The petitioner should provide details regarding rehabilitation that include:
  1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
  2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
  3. Letters of reference from professors or colleagues within the field of acupuncture.
  4. Letters of reference from past and/or current employers.
  5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
  6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of an acupuncture profession for the applicant.
  7. Letters of reference from other knowledgeable professionals, such as probation

or parole officers.

8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

## **Evidence of Mitigation**

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

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

1. Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, or ongoing therapy, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and 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, nurse practitioner, or physician assistant.
5. Certificates or transcripts of courses related to acupuncture which Respondent may have completed since the date of the violation.

## **Evidence of Aggravation**

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

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

## Proposed Decisions

The **AG Board** requests that proposed decisions include the following:

1. Names and addresses of all parties to the action.
2. Specific code section violated with the definition of the code in the Determination of Issues.
3. Clear description of the acts or omissions which caused the violation.
4. Respondent's explanation of the violation if he/she is present at the hearing in the findings of fact.
5. Explanation of deviation from AG's Board's Disciplinary Guidelines.

When a probation order is imposed, the **AG Board** requests that the order first list any combination of the Optional Terms and Conditions as they may pertain to the case followed by all of the Standard Terms and Conditions [~~13—22~~ 16-30].

If the Respondent fails to appear for his/her scheduled hearing or does not submit a Notice of Defense form, such inaction shall result in a default Decision to revoke licensure or deny application pursuant to Government Code section 11520.

## Reinstatement/Penalty Relief Hearings

The primary concerns of the AG Board at reinstatement or penalty relief hearings ~~are~~ is ~~that~~ the evidence presented by the petitioner of his/her rehabilitation. The AG Board ~~is~~ not interested in retrying the original revocation or probation case. will not re-litigate the facts of the original disciplinary case in determining whether or not to grant reinstatement.

The AG Board will consider the following criteria of rehabilitation:

1. Nature and severity of the act(s) or offense(s).
2. Total criminal record.
3. The time that has elapsed since commission of the act(s) or offense(s).
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
5. If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
6. Evidence, if any, of rehabilitation submitted by the licensee ~~or registration holder.~~

~~In the Petition Decision, The AG Board requests that would appreciate~~ a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license be included in the Petition Decision.

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

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



6. A culpability or excludability statement.

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

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

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