

**TITLE 16. CALIFORNIA ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS**

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:** TBD

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

**SECTIONS AFFECTED:** Section 1399.469 of Title 16, Division 13.7, California Code of Regulations (CCR) and the Disciplinary Guidelines 1996 incorporated by reference

**BACKGROUND, IDENTIFICATION OF PROBLEM, AND ANTICIPATED BENEFIT:**

**Senate Bill 1441:**

On March 10, 2008, the Senate Business, Professions and Economic Development Committee (Senate Committee) held a hearing to review physician's and health practitioner's substance abuse programs. The resulting legislation, authored by the Senate Committee Chair, Senator Ridley-Thomas, was Senate Bill (SB) 1441: Healing arts practitioners: substance abuse (Chapter 548, Statutes of 2008).

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the Department of Consumer Affairs (Department) establish a Substance Abuse Coordination Committee (SACC) which was subject to the Bagley-Keene Open Meeting Act and comprised of the Executive Officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The SACC was charged with developing consistent and uniform standards and best practices in 16 specific areas for use in dealing with substance-abusing licensees.

The proposed changes would amend the Disciplinary Guidelines 1996 to add the language required to implement SB 1441 by including the Uniform Standards and substance-abusing terms and conditions of probation imposing to those standards. The anticipated benefit will be to provide maximum protection to California consumers from licensees who may be a danger to, or lack competence to treat, patients due to substance abuse. The proposed adoption of the standards and additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public and will provide greater public protection through consistent standards for health care professionals. Additionally, the benefit of defining a substance-abusing licensee will provide greater protection to the public by providing clear direction as to when the standards and conditions apply.

### Additional Changes to Disciplinary Guidelines:

The Disciplinary Guidelines 1996 were adopted when the Acupuncture Board was known as the Acupuncture Committee; therefore, it is necessary to update this information. Additionally this document also includes conditions of probation, therefore amending the title to include conditions of probation provides clarity. The condition related to alcohol and controlled substances for non-substance abusing licensees is changed to include a provision for medically prescribed substances. The conditions are renumbered to identify the type of condition; standard, optional or substance abusing.

The anticipated benefit of these changes are to conform with current law and to provide greater clarity within the disciplinary guidelines as to the types of conditions and when they apply. Additionally, further benefit is gained by amending the condition related to alcohol and controlled substances used for non-substance abusing licensees for clarity and to create an exception for medical prescriptions.

### **SPECIFIC CHANGES, PURPOSE AND FACTUAL BASIS/RATIONALE:**

#### Existing Law:

Business and Professions Code (hereafter "BPC") Section 4928.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. BPC Section 4933 authorizes the Board to amend or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Acupuncture License Act (ALA).

BPC Section 315 established the SACC within the Department and required the SACC to formulate uniform and specific standards in 16 specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

BPC Section 315.2 specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

BPC Section 315.4 authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards amended and authorized under Section 315. The cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Government Code Section 11400.20 authorizes an agency to amend regulations to govern an adjudicative proceeding.

Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, and order standard of general application or other rule unless it has been adopted as a regulation.

California Code of Regulations, Title 16, Section 1399.469 specifies that the Board shall consider the disciplinary guidelines entitled *Department of Consumer Affairs, Acupuncture Board Disciplinary Guidelines 1996* in reaching a decision on a disciplinary action under the Administrative Procedures Act.

The Board is proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines through the regulatory process. Uniform Standards 13, 14, and 15 only apply to Boards with diversion programs and are not incorporated in these guidelines because the Acupuncture Board does not have a diversion program. Uniform Standard 16 is also omitted because it is each Board's reporting criteria to the Department and not pertinent to the Disciplinary Guidelines.

Specifically, the Board is proposing the following:

**Amendments to Section 1399.469 of Article 6 of Chapter 13.7 of Title 16 of the California Code of Regulations:**

This proposal would make several amendments to Section 1399.469 as follows:

- The header is changed to “Disciplinary Guidelines and Conditions of Probation”.
- The existing language of Section 1399.469 is moved into a newly added subsection (a).
- The language indicating the Board shall consider the disciplinary guidelines entitled “Department of Consumer Affairs Acupuncture Board Disciplinary Guidelines” was amended to specify that the Board shall comply with “Acupuncture Board Disciplinary Guidelines and Conditions of Probation” [September 2015], which is incorporated by reference.
- A new subsection (b) is added. This proposed subsection establishes that any licensee that has been found to have committed an act or offense involving drugs and/or alcohol shall be presumed to be a substance-abusing licensee. However, the language contained in this proposed regulatory action allows for a licensee to refute the presumption. It also clarifies that if a licensee was not successful refuting the presumption, the Board's Uniform Standards Related to Substance-Abusing Licensees shall apply and the substance-abusing conditions shall be used as written in the order placing the licensee on probation. This subdivision also indicates that nothing in Section 1399.469 prohibits the Board from imposing additional terms or conditions of probation when the Board determines such would provide greater public protection. In addition, this proposed amendment adds language to clarify that neither the Board nor an Administrative Law Judge

(ALJ) may impose any conditions or terms of probation that are less restrictive than the Board's Uniform Standards Related to Substance-Abusing Licensees in cases involving substance-abusing licensees.

- Additionally, the Authority and Reference citations are amended to comply with current law.

Purpose and Factual Basis/Rationale: The purpose of these proposed amendments is to increase public protection by ensuring healing arts boards have a uniform standard of discipline for substance-abusing licensees. The proposed amendments will protect the public by establishing clear guidelines and more consistent protection from substance-abusing licensees. This proposed regulatory action will establish a clear definition of a substance-abusing licensee and clearly outline when the Uniform Standards and conditions thereto are applicable. In addition to increased public protection, another anticipated benefit of this proposed regulatory action is enhanced and improved administration, coordination, and enforcement of disciplinary matters where licensees have been found to have used or abused controlled substances and/or alcohol in an illegal or dangerous manner. Adopting the Uniform Standards also allows the Board to comply with BPC sections 315 through 315.4. Incorporating by reference the Disciplinary Guidelines into Section 1399.469 is appropriate as to include the provisions in text of the regulation would be burdensome and inefficient.

### **Amendments to the 1996 Disciplinary Guidelines:**

This proposal would amend the 1996 Disciplinary Guidelines as follows:

#### **Cover page:**

Amends the cover page to rename the document to "Acupuncture Board Disciplinary Guidelines and Conditions of Probation." The revision date of the document is updated to September 2015 and a notice to the public regarding how they can obtain copies of the document is included.

Purpose and Factual Basis/Rationale: The purpose of these changes is to ensure clarity regarding the document for the public and licensees. The anticipated benefit is that the clarifications will avoid confusion about the document.

#### **Introduction (pg. 2):**

Amends the introduction section of the 1996 Disciplinary Guidelines and changes the page number from 1 to 2. The name of the document referenced is updated to Disciplinary Guidelines and Conditions of Probation, rather than referring to recommended guidelines. Language is added regarding: the use of the document; that it may be revised; that it shall be distributed upon request; explaining that the guidelines include considerations for probationary terms and specific offenses; and explaining the three categories (standard, optional, and a proposed new category labeled substance-abusing) for probation conditions. The passage that explains some rare cases may necessitate a departure from the guidelines is amended by adding a clause that

excludes cases involving a substance abusing license.. A statement is also added indicating that additional conditions of probation which afford greater public protection may be imposed. A brief preface directing readers to look past the section regarding the Board's Uniform Standards Related to Substance-Abusing Licensees is added so readers know the rest of the document contains penalty guidelines that cover all case types. A citation regarding Senate Bill 1980 that renamed the Acupuncture Committee to the Acupuncture Board is added so the reader is aware when the Committee changed to a Board.

Purpose and Factual Basis/Rationale: The purpose of these changes is to provide additional clarifying language in the introduction to increase understanding of the structure and purpose of the guidelines. The language clarifying that departures from the guidelines are allowed except for as provided in the Board's Uniform Standards Related to Substance-Abusing Licensees, and that additional conditions may be added will assist with appropriate application of the guidelines. In addition to clarity provided by these changes, the public is also benefited by increased public protection by providing more consistent protection from substance-abusing licensees through the Uniform Standards and by allowing for additional conditions which afford greater public protection.

### **Uniform Standards Related to Substance-Abusing Licensees (pg. 3)**

Adds a cover page to delineate the Uniform Standards Related to Substance-Abusing Licensees from the Guidelines for Disciplinary Orders and Conditions of Probation which follow later in the document.

Purpose and Factual Basis/Rationale: The purpose of this change is for the ease of reading and providing clarity that the Board's Uniform Standards are only related to cases involving substance-abusing licensees and not all disciplinary cases. The public will be benefitted by greater public protection through clarity.

### **The Board's Uniform Standards Related to Substance-Abusing Licensees (pg. 4 – 14)**

In order to comply with SB 1441, the Board proposes to adopt the following standards, which shall be adhered to in all cases involving a substance-abusing licensee. A reference to BPC Section 315 is provided to show where the standards derive from.

1. Clinical Diagnostic Evaluations: Requires that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator is required to prepare a report with an opinion setting forth whether the licensee has a substance abuse problem, whether the licensee is a threat to himself/herself or others, and recommendations for substance abuse treatment, practice restrictions, or other

recommendation for rehabilitation and safe practice. The proposed language also specifies if the evaluator determines the licensee is a threat, the evaluator shall notify the Board within 24 hours. Evaluators may not have a financial, personal or business relationship with the licensee within the last five years and shall provide an objective, unbiased, and independent evaluation. Reports shall be provided within 10 days and within 30 days if the evaluator requests additional information.

Purpose and Factual Basis/Rationale: The purpose of this standard is to increase consumer protection by:

- Specifying requirements for a clinical diagnostic evaluation of the licensee, requiring qualifications for the providers evaluating the licensee, and specifying timeframes for completion of the clinical diagnostic evaluation;
- Ensuring that the Board is notified quickly if the licensee is a threat to himself or herself or the public;
- Setting forth minimum standards for clinical diagnostic evaluations and ensuring evaluations are conducted in accordance with applicable best practices, while allowing the evaluator the discretion to determine and use the most appropriate tool in assessing the licensee;
- Providing the Board with a professional opinion as to whether the licensee has a substance abuse problem, and whether the licensee is a threat to himself or herself or others; and
- Prohibiting personal, financial and business relationships between the evaluator and licensee, thereby ensuring objectivity in assessments.

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee and evaluating the appropriate course of action to protect the public from harm. The evaluator can present recommendations for a therapeutic plan. Treatment recommendations may then be incorporated into a Board order as elements for monitoring or criteria toward re-entry requirements. By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice. This proposal will increase public protection by providing accurate, professional and objective information regarding a substance-abusing licensee and any threat from him or her.

2. Removal from Practice Pending Clinical Diagnostic Evaluation: Requires the Board to order the licensee to cease practice during the clinical diagnostic evaluation and until the Board reviews the results of the evaluation. This standard also requires the licensee to be randomly drug tested at least two (2) times per week while awaiting the results of the clinical diagnostic evaluation. Further, the Board proposes to require that Board take

into consideration certain factors when determining if the licensee is safe to return to either part-time or full-time practice. These factors include license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history and current medical condition, nature of substance abuse and whether a licensee is a threat to himself or herself or the public. A licensee shall not be returned to practice until he or she has at least 30 days of negative drug tests.

Purpose and Factual Basis/Rationale: The purpose of this standard is to assist the Board in its mandate to protect the public by requiring a licensee to refrain from practice during the clinical evaluation process. The Board's ability to remove licensees immediately from the work place is limited. There are due process requirements for the Board to take action against a licensee, which require certain notices and a certain level of evidence, such as clear and convincing evidence, the preponderance of evidence, or proof of immediate and imminent danger to the public or others. These requirements are necessary in order for the Board to legitimately prevent someone from practicing. In some cases, an Interim Suspension Order (ISO), Temporary Suspension Order (TSO), or Penal Code 23 (PC 23) is required. The ISO and TSO have a tendency to be expensive, labor intensive, and require time to process.

This standard provides the Board with the authority to quickly intervene when a licensee may have a substance abuse issue, while it determines the best course of action to protect the public; thereby benefitting the public by restricting a potentially dangerous or unfit practitioner from treating patients.

3. Board Communication with Probationer's Employer: Requires the Board to collect the names, physical and mailing addresses, and telephone numbers of all employers and supervisors of the licensee. The licensee will be required to give consent to authorize the Board to communicate with his or her employers regarding work status, performance, and monitoring.

Purpose and Factual Basis/Rationale: The purpose of this standard is to authorize the Board and employers to stay in contact in order to prevent relapse and ensure that the licensee is complying with probation. Open channels of communication will benefit the public safety by allowing the Board the authority to quickly intervene and take action if necessary.

4. Drug Testing Standards: Requires the Board to randomly test a licensee whose license is placed on probation due to substance abuse randomly 52-104 times per year in the first year of probation, and 36-104 times per year in the second year and each year thereafter up to 5 years. If there are no positive tests in the preceding 5 years of probation, testing is 1 time per month. The Board may increase the number of random tests for any reason, or return to the testing frequency of the first year for a violation of the testing program or a Major Violation pursuant to Uniform Standard 10. The drug testing standard also allows the Board to make exceptions to the testing frequency schedule if certain conditions exist, such as when a licensee is not practicing or has been participating in a treatment program requiring testing.

This standard specifies a set of standards that apply to drug testing, and outlines the following: testing may be required at any time on any day; daily contact to determine if a test is required; vacations, absences or alternative testing sites must be approved by the Board; testing shall be done on a random basis; requirements for specimen collectors and testing locations; collection of specimens must be observed; certification of laboratories by the U.S. Department of Health and Human Services is required; tests must be processed within 7 days; and requiring notification to the Board within one day of a positive result. The Board may also use other testing methods in place of or supplemental to biological fluid testing.

The Board may reduce or eliminate the testing standards pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or other statutes regarding reinstatement or reduction of penalty.

The standard provides requirements for the Board to collect and report historical and post implementation data.

Purpose and Factual Basis/Rationale: The purpose of this standard is to ensure testing is fair, effective and appropriate. Randomness is a very important component in drug testing. The testing frequency schedule being proposed by the Board allows for appropriate randomness in testing (without regular interval or pattern) to prevent licensees from gauging when they will be tested. By establishing minimum testing frequency “ranges” and employing randomness in testing, licensees will not be able to consider one or more days as a “safety period” following the submission of a biological sample for testing. At the same time, the prescribed schedule for frequency of testing ensures that licensees are treated equally in terms of how often testing will be done.

The exceptions included in this standard allow for more flexibility in the Board’s drug testing program to fit each licensee’s needs for appropriate rehabilitation. In cases where there is evidence that the person has randomly tested and has maintained sobriety, some flexibility should be granted to the Board in determining the duration of high frequency testing that is equivalent to the proposed testing schedule. Allowing exceptions will not only protect the public and fit each licensee’s needs, but it will ensure successful rehabilitation of the licensee by providing a plan that is manageable and realistic.

The requirements for the standards and methods used by the specimen collectors and labs ensure best practices and consistency in collecting and analyzing specimens. The time frames for testing and Board notification allow the Board to receive information in a timely fashion to allow for appropriate action based on the testing.

This standard benefits the public by providing consistent requirements for testing, ensuring that testing is effective through randomness and accepted standards, allowing for consideration of specific factual situations, and requiring results within a short period of time. An appropriate testing structure leads to better public protection by allowing the



Board to receive valid test results and take appropriate action if a licensee may be impaired.

5. Participation in Group Support Meetings: Requires the Board to follow criteria to determine the frequency of group meeting attendance and to verify that the meeting facilitator is an experienced, mental health professional. The criteria for determining frequency of meetings include: the recommendation of the clinical diagnostic evaluator; the licensee's history; length of sobriety; scope and pattern of use; treatment history; and nature, duration, and severity of substance abuse. The standard also requires the facilitator of the group support meeting to have certain qualifications, including three years of experience and a license in providing recovery services. The facilitator may not have a relationship with the licensee within the last year, must report unexcused absences, and must provide the Board a signed document showing information related to the licensee's participation and progress.

Purpose and Factual Basis/Rationale: The purpose of this standard is to increase consumer protection by:

- Holding licensees placed on probation due to substance abuse accountable for attending meetings and being active in their own recovery;
- Allowing the group meeting facilitator and the Board to work together to assist in the licensee's recovery and quickly prevent relapse with open channels of communication; and
- Ensuring that licensees are receiving professional help from a qualified person without a relationship with the licensee for objectivity during their recovery.

This standard will benefit the licensee and the public by ensuring the treatment is appropriate and that the Board has important information related to the licensee's treatment to use in determining if the licensee can safely return to practice.

6. Determining What Treatment is Necessary: Requires the Board to follow criteria to determine whether inpatient, outpatient, or other type of treatment is necessary. The criteria include the recommendation from the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, licensee's treatment history, licensee's medical history and current medical condition, whether he or she is a threat, and the nature, duration, severity of substance abuse.

Purpose and Factual Basis/Rationale: The purpose of this standard is to increase public protection by considering all aspects of the licensee's drug or alcohol condition in order to determine the appropriate treatment. Establishing criteria also ensures that each person whose license is placed on probation due to substance use will receive the same, standard considerations while allowing for flexibility on a case-by-case basis. The public will benefit from licensees that have received appropriate treatment to allow them to safely treat patients.

7. Worksite Monitor Requirements: Requires the Board to determine if a worksite monitor is necessary for a particular licensee and requires the worksite monitor to meet specified requirements. The monitor may not have a financial, personal, familial, or any other relationship with the licensee that may compromise the ability to render impartial and unbiased reports. The provision that allows the Board to waive this requirement accounts for situation when a licensee only has available a monitor who is their employer; it also restricts an employee from monitoring his or her employer. The monitor must meet specified licensing and practice requirements. The monitor must have face-to-face contact with the licensee in the workplace at least once per week. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse. The reporting criteria identifies a timeline for reporting to the Board of suspected substance abuse by the licensee, and what information must be included in the monitor report. Monitors also must submit a monthly report to the Board. Also, included in the standard is the language to require the licensee and monitor to sign and submit the required consent forms and agreement for the Board to communicate with the monitor.

Purpose, Factual Basis/Rationale and Anticipated Benefits: The purpose of this standard is to ensure appropriate supervision for the licensee. The requirements for the monitor will ensure that the monitor is qualified to monitor licensee and to provide impartial evaluations. Frequent face-to-face contact with the licensee important in order to assess appearance, eye contact, and behavior. Implementing this standard would provide (1) ongoing documentation of the licensee's behavior and to ensure the public's safety and (2) immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol. This will benefit the public safety by allowing the Board to be notified of suspected substance abuse so that the Board can take quick action to protect patients.

8. Procedure for Positive Testing: Requires the Board to suspend a licensee's license if he or she tests positive for a banned substance. The Board must also notify licensee and the employer of the suspension.

Purpose and Factual Basis/Rationale: Protection of the public is the highest priority of the Board in exercising its disciplinary functions. In order to carry out this mandate, it is appropriate for the Board to immediately suspend a licensee's license if he or she tests positive for a banned substance until he or she has been assessed and the results interpreted. It is also appropriate for the Board to notify the licensee's employer that the licensee may not practice until the suspension is lifted. Testing positive for a banned substance is a violation of probation and in the past, many licensees have continued to work because of the Board's inability to communicate with their employer. This will allow the necessary communication between the Board and employer, and prevent confusion about licensee's ability to practice. When a licensee continues to practice when he or she is not safe to do so, not only are the licensees putting themselves at risk, but they are putting their employer at risk and most importantly, their patients.

9. Procedures for a Confirmed Ingested Banned Substance: This standard specifies that if the Board confirms that a positive drug test evidences use of a prohibited substance, the licensee has committed a major violation and the Board shall impose the consequences outlined in Standard 10, Major and Minor Violations & Consequences.

Purpose and Factual Basis/Rationale: The purpose of this standard is to give notice of what consequences will result from a test positive for banned substance. This will benefit and protect the public by ensuring an appropriate penalty is imposed as well as provide clear direction to licensees.

10. Major and Minor Violations & Consequences: This standard defines major and minor violations and the consequences for each. If a licensee commits a major violation, the Board is required to automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board. If a licensee commits a minor violation, the Board is required to determine what action is appropriate.

Purpose and Factual Basis/Rationale Benefits: The purpose of this standard is to define the consequences for different types of violations. This ensures consistent discipline. The public benefits through increased protection resulting from appropriate discipline being imposed. Licensees benefit by advance notice and clarity as to consequences for specific violations.

11. Petition for Return to Practice: This standard provides a definition of petition and sets out the criteria to be met before submitting the petition to the Board. The criteria are sustained compliance with his or her recovery program, ability to practice safely as evidenced by work site reports, and six (6) months of negative drug tests.

Purpose and Factual Basis/Rationale: The purpose of this standard is to set forth criteria for a request to return to full-time practice. This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their recovery program before becoming eligible to submit a request to be allowed to resume practice. Additionally this allows for a consistent standard to be applied to all licensees.

12. Petition for Reinstatement: This condition provides a definition of petition and sets out the criteria to be met before submitting the petition to the Board for an unrestricted license. The criteria are sustained compliance with the terms of the disciplinary order, consistent and sustained participation in activities that support recovery, and continuous sobriety of at least 3 to 5 years.

Purpose and Factual Basis/Rationale: This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their disciplinary order, active participation in a recovery program and a period of sustained sobriety before becoming eligible to submit a request to the Board for an unrestricted license. Additionally, this allows for a consistent standard to be applied to all licensees.

## **Recommended Guidelines for Disciplinary Orders and Conditions of Probation (pg. 15)**

Adds a cover page to delineate the Recommended Guidelines for Disciplinary Orders and Conditions of Probation from the Board's Uniform Standards Related to Substance-Abusing Licensees section.

Purpose and Factual Basis/Rationale: This was added for the ease of reading and provides clarity that the standards are related to all case types involving discipline. The licensee and public are benefitted by avoiding confusion.

### **Terms and Conditions (p.16)**

The introduction that precedes the list of terms and conditions is amended to specify that there are three categories of terms and conditions of probation: optional, standard and substance-abusing. It adds substance-abusing licensee terms and conditions as the third category and clarifies that this type of term and condition should be included in all decisions that involve substance-abusing licensees.

Purpose and Factual Basis/Rationale: The purpose of this proposal is to add clarity for the reader; thereby avoiding confusion about which sections apply to a licensee and providing greater public protection.

### **Substance-Abusing Conditions of Probation**

A new category of probation conditions is added to present the conditions that only pertain to cases involving substance-abusing licensees.

The following new Substance-Abusing Conditions are proposed:

#### **Substance-Abusing 1. Clinical Diagnostic Evaluation (CDE) (pg. 21)**

In order to comply with the SB 1441 Uniform Standards, the Board proposes a new condition that requires that the licensee undergo a clinical diagnostic evaluation within 20 days of the effective date of the Board's Decision and at any time upon order of the Board. When licensee is ordered to undergo a clinical diagnostic evaluation, licensee shall cease practice pending the results and review of the results by the Board. During this time, licensee shall submit to random drug testing at least 2 times per week and not be returned to practice until he or she has 30 days of negative drug tests.

Licensee is required to provide the evaluator with the Board's decision prior to the evaluation and cause the evaluator to submit a report to the Board within a specific timeframe. The costs of the evaluation shall be paid by licensee. Additionally, the Board proposes to require compliance with the requirements of Uniform Standard 1 which includes that a Clinical Diagnostic Evaluation report be prepared and contain at least the evaluator's opinion, whether the licensee has a substance abuse problem and recommendations for substance abuse treatment, practice restrictions, or other recommendations. The evaluator must (1) hold a valid, unrestricted license, which includes a scope of practice to conduct a clinical diagnostic evaluation; (2) have three

years' experience in providing evaluations of health professionals with substance abuse disorders; and (3) be approved by the Board. The evaluator shall not have a financial, personal, business, or other relationship with the licensee within the last five years, which would prevent the evaluator from having an unbiased opinion or create a conflict of interest.

It is proposed that the final written report is to be provided to the Board no later than 10 days from the date the evaluation was completed unless the evaluator requests an extension, not to exceed 30 days. If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination. Licensee must comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. Licensee may return to full time work after at least 30 days of negative drug tests and the Board determines that licensee is safe to practice upon review of the report and specified criteria. The criteria include license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history and current medical condition, nature of substance abuse, and whether a licensee is a threat to himself or herself or the public.

A source was added to reference Uniform Standards #1 and #2 from which condition is derived.

Purpose and Factual Basis/Rationale: This condition is being added to implement the Uniform Standards applicable to substance-abusing licensees, which requires that substance-abusing licensees undergo a clinical diagnostic evaluation, provides for qualifications of the evaluator, and specifies information to be provided to the Board. Additionally, the condition sets forth specific timelines in which it must be completed, and clearly articulates the obligations of licensee. In addition to incorporating timelines contained in the Uniform Standards, the Board proposes that the evaluation be conducted within 20 days of the effective date of the Board's Decision so that the evaluation is conducted within a reasonable time and allows the licensee to either return to practice or move forward with required testing and treatment requirements promptly. Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee and evaluating the appropriate course of action to protect the public from harm. This proposal will increase public protection by providing accurate, professional and objective information regarding a substance-abusing licensee and any threat from him or her. The public will further benefit from increased public protection as licensee will be suspended from practice and regularly drug tested to ensure an unfit practitioner is not treating patients during this time period.

### **Substance-Abusing 2. Notice to Employer (pg. 22)**

In order to comply with SB 1441 Uniform Standards, the Board proposes to add a Notice to Employer condition. The condition specifies that the licensee must provide to the Board contact information related to all employers and supervisors, as well as provide written permission allowing the Board to have continuous contact with the

employers for the entire probationary period regarding work status, performance, and monitoring, including conduct that may violate a probationary condition. Licensee is required to provide current and future employers, supervisors, directors or contractors with the Board's Decision and Accusation within 14 calendar days of beginning or changing employers or supervisors. Licensee is required to ensure that the Board receives written confirmation directly from the employer that licensee has complied with the requirement to provide the Board's Decision and Accusation.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standard #3 from which condition is derived.

Purpose and Factual Basis/Rationale: This condition is being added to implement the Uniform Standards applicable to substance-abusing licensees, related to communication with licensee's employer. This condition allows the Board to be informed of any employment termination, or separation of the licensee from a position as an acupuncturist. The condition also provides the Board with a mechanism for ensuring that the employer providing acupuncture or other health-care related services is informed of the license status of the licensee so that if necessary, the work environment can be structured to ensure consumer safety. The Board also proposes that licensee provide the Decision and Accusation to employers, supervisors, and contractors within 14 calendar days to provide a reasonable time for licensee to provide the information, while increasing public protection by setting a specific time by which the notification must be completed. If the licensee were to exhibit work habits that would be unsafe for patients or if they violate any of the probation conditions as set forth in their Decision, the Board would be able to take the appropriate action to protect the public. By enabling the Board to communicate with employers, information can be shared that may keep patients from any potential danger. By giving the employer the Board's Accusation and Decision, this enables the employer to have the details of the conduct, which resulted in the licensee's license being placed on probation. This will also assist the employer in being cognizant of any alerting signs that would possibly arise during their work day that would need to be reported to the Board. By imposing this condition based on the Uniform Standards the public benefits from more consistent protection from substance-abusing licensees.

### **Substance-Abusing 3. Abstain from Alcohol, Controlled Substances, and Dangerous Drugs (pg. 22)**

In order to comply with SB 1441 Uniform Standards, the Board is proposing a new condition that sets forth: the substances licensees are prohibited from using or possessing; the conditions for lawfully prescribed medications; the requirements for a coordinating physician and surgeon in charge of monitoring licensee's prescriptions; and the terms regarding licensee ceasing the practice of acupuncture if there is a positive drug screen for any substance not legally authorized. The Board also proposes that a licensee notify the Board within 15 days of a new lawful prescription so that the

Board may accurately evaluate tests and the information is received in a reasonable and specific time period. Quarterly reports are required to allow the Board to monitor the licensee's lawful prescriptions with information from both the licensee and coordinating physician without being unduly burdensome.

The new condition specifies that licensee shall completely abstain from the use of alcoholic beverages and shall abstain completely from the personal use, possession, injection, consumption by any route, including inhalation, of all controlled substances and dangerous drugs, and any drugs requiring a prescription. Specifying each route of use or possession covers all methods of abuse so licensee clearly understands that there is no tolerance for any substance use or possession. An absolute prohibition also allows licensee to more effectively distance him or herself from the substance involved in the underlying cause for action.

The condition provides an exception allowing licensees to take prescription drugs that are lawfully prescribed by a licensed practitioner for a bona fide illness. Adding such an exception allows licensees to keep taking any medically necessary prescription drugs and provides transparency between the licensee and the Board so there are no false positive biological fluid tests. Licensee is required to notify the Board in writing within 15 days of receiving a lawful prescription for a controlled substance. A list of current prescribed medication with specified information shall be provided to the Board on a quarterly report. When a licensee is legally prescribed medication, this condition requires that a single coordinating physician and surgeon will coordinate and monitor prescriptions for licensee. The physician and surgeon is also required to report to the Board on a quarterly basis regarding the licensee's compliance with this condition.

The condition outlines that any positive drug screen for a substance not legally authorized will result in the licensee being ordered to cease the practice of acupuncture until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, licensee shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. The consequences provided are contained in SB 1441 Uniform Standards and provide more public protection when a violation of probation of such gravity occurs.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standards #4 and #8 from which condition is derived.

Purpose and Factual Basis/Rationale: This condition is being added to implement the Uniform Standards applicable to substance-abusing licensees related to abstaining from drugs and alcohol. The condition assists with identifying valid prescriptions and provides for a single physician aware of the Board's Accusation and Decision to ensure that

informed and comprehensive monitoring is provided. Substance abuse can also come in the form of abusing the drugs lawfully prescribed so appointing one provider to oversee the licensee's prescriptions who is aware of their substance abuse history, makes the licensee more accountable, and provides for a more effective monitoring mechanism. This information will allow for the clear determination whether a test is positive based on a valid medical prescription or substance abuse. Additionally, this condition implements and imposes the Uniform Standards requirement for a licensee to cease practice upon a positive test for a banned substance. This provides an important public safety benefit for patients to ensure patients are not being treated by impaired licensees, and provides clear direction to licensees about their use of controlled substances.

#### **Substance-Abusing 4. Alcohol and Drug Testing (pg. 23)**

This condition is being added to implement the Uniform Standards applicable to substance-abusing licensees, related to alcohol and drug testing. The condition sets forth that licensee is required to pay for any random and directed biological fluid, hair sample, breath alcohol, or any other mode of testing required by the Board. Licensee must comply with alcohol and drug testing, including the fiscal responsibility of procuring the necessary tests. The condition sets forth the frequency of testing that licensee will be ordered to test on a random basis required by SB 1441's Uniform Standard #4. However, the condition provides a set of criteria allowing the Board to lessen the frequency of ordered tests, which includes: licensee previously underwent testing during the completion of a treatment or monitoring program; the basis for probation or discipline was a single incident or conviction involving drugs or alcohol, or two incidents or convictions involving drugs or alcohol that were at least seven (7) years apart that did not occur at work on the way to or from work; licensee is not employed in any health care field; licensee has demonstrated a period of sobriety and/or non-use; and testing may be suspended during any period licensee's probationary period is tolled. Licensees are allowed to request modifications to the testing frequency in writing to the Board. There may be certain cases where such a strict testing frequency is not appropriate.

The condition also specifies that the licensee is required to make daily contact as directed by the Board to determine when he or she is required to submit to a drug test. The condition further details the mechanics of how the testing works and how positive results are dealt with. If a licensee tests positive for a banned substance, he or she shall be contacted and instructed to leave work and ordered to cease practice of acupuncture. Practice cannot be resumed until notified by the Board. Lastly, the condition indicates that alternative drug testing sites must be approved by the Board prior to any vacation or travel. Licensee will still be responsible for daily contact and testing even while away from their residence or place of business to ensure sobriety.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.



A source was added to reference Uniform Standards #4, #8 and #9 from which condition is derived.

Purpose and Factual Basis/Rationale: The purpose of this condition and its components is to impose the requirements of the Uniform Standards, which provide protection of the public through consistent standards. It also allows the Board to monitor the licensee to ensure he or she is free of controlled substances, unless medically authorized. This standard benefits the public by providing consistent requirements for testing, ensuring that testing is effective through randomness and accepted standards, allowing for consideration of specific factual situations, and requiring results within a short period of time. An appropriate testing structure leads to better public protection by allowing the Board to receive valid test results and take appropriate action if a licensee may be impaired. The requirement to cease practice and leave work allows the Board to take prompt action to protect patients from an impaired licensee.

#### **Substance-Abusing 5. Facilitated Support Group Meetings (pg. 24)**

This condition implements the requirements of the Uniform Standards related to facilitated support group methods. The condition includes a requirement that in determining the type of frequency of meetings the Board will to consider: the licensee's history, length of sobriety, recommendation of the clinical diagnostic evaluator; the scope and pattern of use, licensee's treatment history, and the nature, duration, and severity of substance abuse. The condition also requires licensee to submit the name or names of meeting facilitators for the Board's approval within 15 days of the effective date of the Board's decision and requires that the licensee participate in facilitated group support meetings within 15 days after the Board's approval.

The condition requires the facilitator of the group support meeting to have certain qualifications including three years of experience and a license in providing recovery services. The facilitator may not have a relationship with the licensee within the last year, must report unexcused absences, and must provide the Board a signed document showing information related to the licensee's participation and progress. Verified documentation of attendance is required to be submitted to the Board on a quarterly basis.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the Licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standard #5 from which condition is derived.

Purpose and Factual Basis/Rationale: The purpose of this condition is to implement the Uniform Standards and will increase consumer protection by:

- Holding licensees placed on probation due to substance abuse accountable for attending meetings and being active in their own recovery;

- Allowing the group meeting facilitator and the Board to work together to assist in the licensee's recovery and quickly preventing relapse with open channels of communication;
- Ensuring that licensees are receiving professional help from a qualified person without a relationship with the licensee for objectivity during their recovery; and
- Requiring that the licensee provide the names of facilitators within 15 days of the effective date of the Board's Decision and requires the licensee to begin participation within 15 days of the Board's approval to provide a specific time by which licensee must complete the requirements.

The provision of this standard will benefit the licensee and the public by ensuring the treatment is appropriate.

**Substance-Abusing 6. Treatment Program for Cases Involving Substance-Abusing Licensees (pg. 25)**

In order to comply with the SB 1441 Uniform Standards, the Board proposes the following new condition which sets forth the procedures to follow when a licensee is required to enter a treatment program, whether it be inpatient, outpatient or any other type. Additionally, the condition outlines the factors the Board should consider when determining what type of treatment program the licensee must enter. The factors to consider include the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration, and severity of substance abuse and whether the licensee is a threat to himself or herself or others. These considerations derive from SB 1441's Uniform Standard #6. The condition indicates that the costs associated with the treatment program are the licensee's full responsibility so the Licensee is aware that although the requirement is ordered by the Board, the costs are not covered by the Board.

The condition requires that the program director, psychiatrist, or psychologist confirm licensee's compliance with the requirements of the Board's Decision and he or she is required to notify the Board immediately if he or she believes licensee cannot practice safely. To facilitate the implementation of this responsibility, the condition requires the licensee to sign a release authorizing the treatment program to report all aspects of participation in the treatment program as requested by the Board or its designee, and requires that the licensee is required to enter treatment within 30 days of the effective date of the Board decision. There is a clause that explains that if licensee fails to comply with the requirements of the treatment program or no longer participates in the program for whatever reason, it is considered a violation of probation and licensee is immediately suspended from the practice of acupuncture. Non-compliance with the treatment program calls for the licensee to cease the practice of acupuncture to ensure public safety. Additionally, the condition states that the licensee's probation is automatically extended if he or she hasn't successfully completed his or her treatment program.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standards #6 from which condition is derived.

Purpose and Factual Basis/Rationale: This condition implements the Uniform Standard related to treatment program for substance-abusing licensees. This condition will increase public protection by allowing for communication between the treatment program and the Board about the licensee and his or her compliance with the Board's Decision. It will also protect the public by allowing the immediate suspension from practicing when a licensee fails to comply with the program. The requirement that licensee enter treatment within 30 days will allow the licensee time to locate an appropriate treatment program prepare the enter treatment while providing a specific time by which the treatment must begin. As other methods of discipline are not immediate, this will ensure the Board can act quickly in these circumstances. Establishing criteria also ensures that each person whose license is placed on probation due to substance use will receive the same, standard considerations while allowing for flexibility on a case-by-case basis. The public will benefit from licensees that have received appropriate treatment to allow them to safely treat patients.

### **Substance-Abusing 7. Worksite Monitor (pg. 26)**

The Board proposes a new condition to implement the worksite monitor Uniform Standard. The condition requires the licensee to have a worksite monitor with no current or former financial, personal, familial or other relationship with the licensee that could compromise impartiality. A provision allows the Board to waive this requirement when it is impracticable for anyone other than the employer to serve as monitor. It also prohibits a worksite monitor employed by the licensee.

The monitor is required to be an acupuncturist, or another licensed healthcare professional in certain circumstances, with an active unrestricted license with no disciplinary action in the last 5 years. The licensee is required to submit to the Board the name of the proposed monitor within 20 days of the effective date of the Board's Decision. The monitor must affirm in writing that he or she has reviewed the Board's Decision and agrees to monitor the licensee as set forth by the Board. The licensee must consent in writing that the worksite monitor may communicate with the Board. Once the worksite monitor is approved, the licensee may not practice unless that person is present at the worksite. The worksite monitor must have frequent face-to-face contact with the licensee at a minimum of once per week, interview staff in the office in regard to the licensee's behavior, and review the licensee's attendance at work.

The monitor is required to verbally report to the Board and the licensee's employer any suspected substance abuse within one business day of the occurrence. A written report of such an occurrence shall be submitted to the Board within 48 hours. The worksite monitor must submit a written report to the Board monthly or as directed. The report shall include: licensee's name, license number, worksite monitor's name and signature,

worksite monitor's license number, worksite locations, dates licensee had face-to-face contact with the monitor, staff interviewed, attendance report, any change in behavior or habits, and any indicators that can lead to suspected substance abuse.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standard #7 from which the condition is derived.

Purpose and Factual Basis/Rationale: The purpose of this condition is to implement the Uniform Standard related to worksite monitoring. The requirements for the monitor ensure that the monitor is qualified to monitor licensee and to provide impartial evaluations. The Board proposes that the name of the monitor be submitted within 20 days of the effective date of the Board's Decision to provide licensee a reasonable amount of time to locate a monitor while providing a specific time by which such must be done. The activities the monitor shall engage in will allow for appropriate monitoring and detection of suspected substance abuse. This condition benefits the public safety by allowing the Board to be notified of suspected substance abuse so that the Board can take quick action to protect patients.

### **Substance-Abusing 8. Major Violations (pg. 26)**

The requirements for this condition implements the Uniform Standard related to what are considered major violations by the Board. The condition states that if the licensee commits a major violation, he or she shall immediately cease practice upon notification from the Board. Licensee is prohibited from practicing acupuncture until otherwise notified in writing by the Board.

Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee.

A source was added to reference Uniform Standards #9 and #10 from which the condition is derived.

Purpose and Factual Basis/Rationale: When a probationer commits a major violation, ensuring public safety is paramount. The only way to protect the public from a probationer who is non-compliant with his or her conditions of probation or found to be under the influence of drugs or alcohol is to bar him or her from treating patients. Additionally, this condition provides notice to licensees as to what constitutes a major violation and the consequences of such.

**In addition to the proposed changes related to the Uniform Standards, the Board proposes to the disciplinary guidelines:**

**Committee to Board:**

Anywhere Committee or AC (abbreviation of Acupuncture Committee) is referenced in the document has been replaced with Board. This updates the guidelines and aligns it with current law.

Purpose and Factual Basis/Rationale: Senate Bill 1980, which became effective January 1, 1999, renamed the Acupuncture Committee to the Acupuncture Board. The purpose of changing all references to Acupuncture Board is to be consistent with current law and to avoid any confusion that the disciplinary guidelines apply to licensees of the Acupuncture Board.

**Probationary Terms and Conditions Renumbered and Re-labeled:**

To avoid confusion, the current terms and conditions have been renumbered and identified by type: optional and standard. Optional and standard terms and conditions are identified by the word optional or standard and each represent a stand-alone series. For convenience, this amendment highlights which terms and conditions are optional and which are standard.

The following terms and conditions have been renumbered:

**Standard Terms and Conditions:**

13. Obey All Laws is now Standard 1 (pg. 20)
14. Quarterly Reports is now Standard 2 (pg. 20)
15. Surveillance Program is now Standard 3 (pg. 20)
16. Interview with the Board or Its Designee is now Standard 4 (pg. 20)
17. Changes of Employment is now Standard 5 (pg. 20)
18. Tolling for Out-of-State Practice or Residence is now Standard 6 (pg. 20)
19. Employment and Supervision of Trainees is now Standard 7 (pg. 20)
20. Cost Recovery is now Standard 8 (pg. 21)
21. Violation of Probation is now Standard 9 (pg. 21)
22. Completion of Probation is now Standard 10 (pg. 21)

Purpose and Factual Basis/Rationale: The purpose of renumbering the conditions is to make it clear in the condition number whether it is optional, standard or substance-abusing, and to number conditions in sequence for each type of condition. Although the current disciplinary guidelines have headings under which the conditions are placed,

adding the type into the number improves clarity. The benefit is that licensees, administrative law judges crafting proposed decisions, and the public know when the various conditions apply.

**Amended Optional Probation Conditions are as follows:**<sup>1</sup>

**Optional 9. Abstain from Drugs and Alcohol and Submit to Tests and Samples (pg. 19)**

Has been renumbered from #9 to Optional 9.

The word “completely” is added to the condition to emphasize total abstention from personal use or possession of controlled substances, and to move the reference to alcohol into the same sentence as controlled substance, while removing the last sentence referencing only alcohol. The condition is further amended by adding an exception allowing licensees to take prescription drugs that are lawfully prescribed by a licensed practitioner for a bona fide illness. The legal references in the condition are also updated to reflect current law.

Purpose, Factual Basis/Rationale: The Board is retaining this condition to use in cases where the licensee successfully rebuts the presumption that he or she is a substance-abusing licensee, but the Board determines that abstention and biological fluid testing is an appropriate condition for public protection. The exception for medically necessary prescription drugs ensures that a licensee can undergo medical treatment while still complying with the conditions of probation.

**UNDERLYING DATA:**

1. Senate Bill 1441 (Chapter 548, Statutes of 2008), authored by Senator Ridley-Thomas
2. The Substance Abuse Coordination Committee’s “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, April 2011”
3. Approved meeting minutes of the California Acupuncture Board – August 19, 2010
4. Approved meeting minutes of the California Acupuncture Board – October 25, 2013
5. Approved meeting minutes of the California Acupuncture Board – September 18, 2015
6. A memo, dated April 5, 2012, from Doreathea Johnson, Deputy Director of Legal Affairs, addressed to the healing arts boards with respect to the Department of Consumer Affairs opinion regarding Uniform Standards for substance-abusing licensees (SB 1441).

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<sup>1</sup> Optional Condition 6 has the word severe underlined in the portion labeled NOTE. The underline does not denote an addition based on this proposal, rather the word is underlined in the current document.

7. A letter, dated October 27, 2011, from the Legislative Counsel Bureau addressed to the Honorable Curren D. Price, Jr. with respect to the healing arts boards amendment of Uniform Standards.
8. A memorandum from Kathleen A. Lynch, Deputy Attorney General from the Government Law section of the Attorney General's Office, addressed to the Department of Consumer Affairs Legal Affairs Division regarding Uniform Standards Related to Substance-Abusing Licensees as provided in Business and Professions Code §§ 315-315.4.

**BUSINESS IMPACT:**

The Board has made an initial determination that the proposed regulation may have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other states.

The following types of businesses would be affected:

- Businesses owned by licensees of the Board who face disciplinary action due to substance abuse; and
- Businesses that employ licensees of the Board who face disciplinary action due to substance abuse.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Probationers are responsible for paying all costs during their probation, including, but not limited to the clinical diagnostic evaluations, biological testing, treatment program, and facilitated group support meetings. The average salary of a practicing acupuncturist in California is approximately \$35,000 per year.

*A licensee on probation (probationer) will not incur any significant fiscal impact associated with paying for costs associated with the following proposed conditions of probation:*

Probation Condition (Substance-Abusing 2) Notice to Employer  
Probation Condition (Substance-Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs

The costs to the probationer associated with Condition (Substance-Abusing 2) Notice to Employer would be minor and absorbable. Probationers may incur nominal costs associated with providing notification to the employer of the Board's Decision or Accusation. Additionally, the probationer may incur nominal costs associated with providing the names, physical addresses; mailing addresses, and telephone numbers of all employers and supervisors, or contractors, as well as the facility or facilities where the probationer practices. This regulation does not specifically state the manner of how a probationer is to provide the specified information. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their letter to the Board.

The costs to the probationer associated with Condition (Substance-Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs would be minor and absorbable. There is no cost associated with abstaining from the use of alcohol, drugs, controlled substances, and dangerous drugs. Probationers may incur nominal costs associated with providing the Board with specified information regarding lawful prescription medications lawfully prescribed by a physician and surgeon or nurse practitioner for a bona fide illness or condition. This regulation does not specifically state the manner of how a probationer is to provide the specified information. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing his or her letter to the Board. The licensee may also incur minimal costs associated with regularly reporting to his or her single coordinating physician and surgeon depending upon their health insurance coverage and the frequency necessitated by his or her condition. For purposes of this analysis, the Board estimates that if a probationer has a \$15 co-pay for visits with his or her coordinating physician and surgeon and makes monthly visits, then the probationer could incur \$180 in doctor's fees annually.

*The probationer will incur significant fiscal impact associated with paying for costs associated with the following proposed conditions of probation:*

Probation Condition (Substance-Abusing 1) Clinical Diagnostic Evaluation;  
Probation Condition (Substance-Abusing 4) Alcohol and Drug Testing;  
Probation Condition (Substance-Abusing 5) Facilitated Support Group Meetings;  
Probation Condition (Substance-Abusing 6) Treatment Program for Cases Involving Substance-Abusing Licensees;  
Probation Condition (Substance-Abusing 7) Worksite Monitor;  
and Probation Condition (Substance-Abusing 8) Major Violations.

Probation Condition (Substance-Abusing 1) Clinical Diagnostic Evaluation specifies that all costs associated with such evaluation shall be paid by the probationer. The costs associated with clinical diagnostic evaluation may vary from \$3,000 to \$10,000 based upon the provider and the extent of the evaluation. There can be a significant difference in cost between a 3-day evaluation and a 10-day evaluation. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$5,000 per evaluation.



Additionally, when a probationer is ordered to undergo a clinical diagnostic evaluation, the probationer is also required to cease practice for a minimum of 30 days. Probationers will incur lost wages as a result of a cease practice order. The Board estimates an Acupuncturist will lose approximately \$2,917 in wages (\$35,000/12 months) for every 30-day cease practice order.

Probation Condition (Substance-Abusing 4) Alcohol and Drug Testing specifies that all costs of the testing shall be paid by the probationer. The rate associated with the drug test and collection fee varies based on the rate charged by the collection company. The Board would contract with a specific drug testing collection agency. The probationer would be required to submit to testing through the Board-contracted agency. The Board estimates that the probationer would be charged an estimated fee of \$100 per drug test. This would include the average fee for urine analysis (\$50) and average collection fee (\$50). The proposed regulation specifies that the probationer would be tested at least 52 times during the first year of probation; at least 36 times during the second through fifth years of probation; and at least once per month after the fifth year as long as there have not been any positive results during the previous five years. The Board estimates the probationer would incur a cost of \$433.33 per month for the first year of probation, \$300 per month for years two through five, and \$100 per month for years six through seven. This would equate to an approximate cost of \$5,200 for the first year, \$3,600 per year for the second through fifth year, and \$1,200 per year for the sixth through seventh year. The probationer would pay approximately \$19,600 to comply with this condition over the course of a 5-year probation term and approximately \$22,000 to comply with this condition over the course of a 7-year probation term.

Probation Condition (Substance-Abusing 5) Facilitated Support Group Meetings specifies that all costs incurred are with facilitated meetings and shall be paid by the probationer. The rate associated with support meetings varies based on the support group facilitator and frequency. The charge to attend meetings may vary from \$50 to \$160 per week. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$100 per week to attend facilitated group support meetings twice a week. This cost would translate to approximately \$433.33 per month or \$5,200 annually. A probationer would pay approximately \$26,000 over the course of a 5-year probation term, and \$36,400 over the course of a 7-year probation term.

Probation Condition (Substance-Abusing 6) Treatment Program for Cases Involving Substance-Abusing Licensees specifies that all costs associated with the completion of such program shall be paid by the probationer. The costs associated with completing a drug or alcohol abuse treatment program may vary from \$10,000 to \$35,000 depending on the treatment program, facility, insurance, and length of program. However, county facilities and The Salvation Army offer treatment programs on a sliding scale or at no cost. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$20,000 per treatment.

Probation Condition (Substance-Abusing 7) Worksite Monitor specifies that all costs of supervision shall be paid by the probationer. The fee a supervisor may charge a

licensee can vary. The Board estimates a supervisor may charge a probationer a fee of \$0 to \$200 per month for services. For the purposes of this analysis, the Board estimates a probationer will incur a cost of \$100 per month for supervised practice. This cost would translate to \$1,200 annually or \$6,000 over the course of a 5-year probation term, and \$8,400 over the course of a 7-year probation term.

Probation Condition (Substance-Abusing 8) Major Violations specifies that if a licensee commits a major violation, he or she shall immediately cease practice until notified otherwise by the Board. During the time the probationer is not practicing he or she is not earning any income. For the purposes of this analysis, the Board estimates a probationer would be ordered to not practice acupuncture for a period of at least 30 days to undergo another Clinical Diagnostic Evaluation and demonstrate 30 days of negative tests. Based upon an average annual salary of \$35,000 for an acupuncturist, the probationer would lose an estimated \$2,916.67 of income for the year if he or she committed a major violation once during a year of their probation term.

For the purposes of this analysis, the estimated fiscal and economic impact of the proposed conditions of probation will be based on five (5) and seven (7) year terms of probation. The following table (Table: Estimated Costs of Each Proposed Probation Condition Incurred by Probationer) delineates the estimated monthly and annual cost of each condition of probation as well as the average cost over the course of a 5-year probation term and a 7-year probation term:

**Table: Estimated Costs of Each Proposed and Amended Probation Condition Incurred By Probationer**

	<b>Avg. Monthly Cost</b>	<b>Avg. Annual Cost</b>	<b>Avg. Cost for 5 Yrs Probation</b>	<b>Avg. Cost for 7 Yrs Probation</b>
(Substance-Abusing 1) Clinical Diagnostic Evaluation	Varies Depending on Level of Evaluation Est. \$5,000 per Evaluation			
(Substance-Abusing 2) Notice to Employers	\$0	\$0	\$0	\$0
(Substance-Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs	Varies Est. \$15	\$180	\$900	\$1,260
(Substance-Abusing 4) Alcohol and Drug Testing	Est. \$100 per test Year 1: \$433.33 Year 2-5: \$300 Year 6-7: \$100	Year 1: \$5,200 Year 2-5: \$3,600 Year 6-7: \$1,200	\$19,600	\$22,000

(Substance-Abusing 5) Facilitated Support Group Meetings	Varies Est. \$100 per week Est. \$433.33 per month	\$5,200	\$26,000	\$36,400
(Substance-Abusing 6) Treatment Program for Cases Involving Substance-Abusing Licensees	Varies Depending on Treatment Program, Facility, Insurance, and Length of Treatment --Est. \$20,000 per Treatment *County Facilities and Salvation Army typically have a sliding scale or offer treatment at no cost.			
(Substance-Abusing 7) Worksite Monitor	Varies Est. \$100	Varies Est. \$1,200	Varies Est. \$6,000	Varies Est. \$8,400
(Substance-Abusing 8) Major Violations	Varies depending on whether probationer commits a major violation during his or her probation.			
Total Est. Cost of Probation Conditions	Varies			

\*Assumes One Clinical Diagnostic Evaluation Completed During Year 1

Assuming that the probationer is only ordered to undergo one clinical diagnostic evaluation and one drug and alcohol abuse treatment program during the first year or probation, the Board estimates a probationer will pay approximately \$36,600 during the first year of probation, \$10,000 each year for the second through fifth year of probation, and \$7,600 each year for the sixth through seventh year of probation to comply with the terms of probation. This would equate to an approximate total cost to the probationer of \$76,600 to comply with a 5-year probation term and \$91,800 to comply with a 7-year probation term. Over the course of a 5-year probation term an Acupuncturist earning \$35,000 per year would pay approximately 44% of their total income towards the costs of complying with the proposed conditions of probation. Over the course of a 7-year probation term an Acupuncturist earning \$35,000 per year would pay approximately 37% of their total income towards the costs of complying with the proposed conditions of probation.

Acupuncturist \$35,000 Earned Annually x 5 Years = \$175,000  
\$76,600 Total Probation Costs / \$175,000 Earned over 5 Years = Approx. 44%

Acupuncturist \$35,000 Earned Annually x 7 Years = \$245,000  
\$91,800 Total Probation Costs / \$245,000 Earned over 7 Years = Approx. 37%

Effect on Housing Costs: None

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

This regulatory proposal will have the following effects:

Creation or Elimination of Jobs within the State of California

This proposal may create or eliminate jobs within the State of California because a license that has been revoked, suspended, reprimanded, or placed on probation may cause a licensee to lose their job depending on the nature and severity of the violation. An individual who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board, on average, suspends or revokes, or places practice restrictions on less than 1% of licensees per year.

Creation of New or Elimination of Existing Businesses Within the State of California:

This proposal may not create new business or may eliminate existing businesses within the State of California because a license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California:

This proposal may affect the expansion of businesses currently doing business within the State of California. An individual's license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Benefits for the Health and Welfare of California Residents:

The Board has determined that this regulatory proposal benefits the health and welfare of California residents by providing maximum protection to the California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse. These

benefits are a direct result of the Board's statutorily mandated priority (BPC Section 4928.1). The protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The proposed amendments of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, these probation conditions provide the Board with an effective tool to discipline substance-abusing licensees who are in violation of the Acupuncture License Act.

#### Benefits for Worker's Safety:

This regulatory proposal benefits worker safety because providing maximum protection to the California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse is in the public's interest. These benefits are a direct result of the Board's statutorily mandated priority (BPC Section 4928.1). The protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The proposed amendments of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, these probation conditions provide the Board with an effective tool to discipline substance-abusing licensees who are in violation of the Acupuncture License Act.

#### Benefits for the State's Environment:

This regulatory proposal does not affect the state's environment because the focus is on the disciplinary guidelines used for individuals, not the environment.

### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

This regulation does not mandate the use of specific technologies or equipment.

### **CONSIDERATION OF ALTERNATIVES**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulations.

One alternative is to not adopt the regulations. This alternative was rejected. The Board is directed by statute to adopt the Uniform Standards. Failure to adopt the regulatory proposal also limits the Board's tools to deal with substance-abusing licensees, does not add clarity to the guidelines, and does not allow for an exception in other cases for a licensee to use medically prescribed substances.

The alternative to adopt this regulatory proposal was selected by the Board. This regulatory proposal will provide the Board with additional tools, the standards and conditions based on the standards, to discipline and monitor substance-abusing

licensees. This also allows for consistent standards to be applied to health care professionals, thus, providing greater public protection. Further, this proposal provides a definition of substance-abusing licensee so that there is a standard for when the Uniform Standards and implementing conditions apply. This definition allows the licensee to rebut the presumption that he or she is a substance-abusing licensee, which ensures that a person is only deemed a substance-abusing licensee when appropriate. The regulatory proposal also provides updated information for clarity in the disciplinary guidelines and allows for a medical exception to the condition related to substance use in non-substance-abusing licensee cases. Adopting this regulatory proposal allows the Board to most effectively fulfill its regulatory mandate of consumer protection.